

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

v. S(7) 98 Cr. 1023

USAMA BIN LADEN, et al.,

Defendants.

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New York, N.Y.
February 5, 2001
9:10 a.m.

Before:

HON. LEONARD B. SAND,

District Judge

APPEARANCES

MARY JO WHITE
United States Attorney for the
Southern District of New York
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(Pages 3 through 6 sealed)
(In open court)

THE COURT: I just want to alert you to one thing which Joel Blum called to my attention. If there should ever be an occasion, which I hope would be rare, that the courtroom is cleared for purposes of some proceeding, we must bear in mind that room 7, the overflow room, must also be cleared, because otherwise we will have cleared the courtroom but not the overflow rooms.

We will await the jurors, all of whom are here, so the two alternate alternates will be excused.

(Recess)

THE COURT: You may bring in the jury.

(Time noted, 9:45 a.m.)

THE COURT: This is indeed a historic occasion, as we are starting 15 minutes before the appointed hour.

(Jury present)

THE CLERK: United States of America versus Mohamed Sadeek Odeh, Mohamed Rashed Al-'Owhali, Khalfan Khamis Mohamed, and Wadih El Hage. Attorneys for the government ready?

MR. FITZGERALD: Yes, your Honor, good morning.

THE CLERK: Attorneys for defendant Odeh ready?

MR. RICCO: Yes, we are, your Honor.

THE CLERK: For defendant Al-'Owhali?

MR. COHN: Yes, the defendants are ready. Your Honor, there are headphone problems.

The interpreters --

THE CLERK: Defendant Khalfan Khamis Mohamed ready?

MR. RUHNKE: Yes, your Honor.

THE COURT: For defendant El Hage ready?

MR. SCHMIDT: We are ready, your Honor.

THE COURT: Mr. Czakany, I am told that there are some problems with the headphones. Could you alert Mr. Blum and see whether there is something that can be done about that -- there he is.

Mr. Kenneally, will you swear the jury, please.

(The jury of 12 and 6 alternates was duly sworn.)

THE COURT: You recall, ladies and gentlemen, that I did explain the arrangements with the interpreters and the connections, and we had hoped that everything had been in order, but there appears to be some lag.

(Pause)

THE COURT: Ladies and gentlemen -- and finally, after weeks of careful screening and interviewing, I can greet you in this fashion, as ladies and gentlemen of the jury. First, on behalf of all the participants in this proceeding, I want to thank you for your willingness to serve on the jury

in this lengthy trial. We recognize that for many of you the call to lay aside the normal affairs of your life and to devote yourself to this trial entails sacrifices on your part, on the part of your families, on the part of your employers. We appreciate your willingness to discharge this high civic duty.

As you know, great pains were taken in your selection. Over 1,300 people chosen at random completed questionnaires containing some 96 questions to enable us to learn something about you, including everything from your reading habits to your views on profound philosophical questions. In addition, we interviewed you individually. Then, from a pool of 80 panelists, you 18 were selected by counsel for the parties.

I want to particularly thank the jury commissioner, Robert Rogers, for the smooth way in which the logistics were handle, and to Jack Radovich for his invaluable assistance in dealing with this fairly significant logistical problem.

Service on a jury requires patience, attentiveness, and discipline. For example, I cautioned you each time we met to make strenuous efforts to avoid reading, watching, listening to, or discussing anything that may appear in the media or that may be talked about in your presence relating to this case or in any way connected to this case. For example, although Usama Bin Laden is named as a defendant in the indictment before you, he is not a party to this case. He is not subject to the jurisdiction of this court. But I ask that you refrain from reading or listening to or watching anything that may appear in the media concerning Bin Laden or this case. If you see a reference to terror trial or embassy bombing case, please switch the TV dial or turn the page.

If anyone should seek to engage you in any discussion of the case, simply walk away. If the person persists, please advise me or the United States Marshals.

I may remind you of this caution from time to time, but even if I fail to do so on a daily basis, please always bear it in mind.

Another matter of discipline is that I ask that you not discuss the merits of this case even amongst yourselves until some months from now when all the evidence is in and you have heard the court's instruction and you begin your deliberations. Occasionally jurors ask why I impose this restriction. They say we are going to spend so much time together and this case is obviously what we have most in common. We know you don't want us to discuss this with others because you don't want outside influences on us, but why can't we talk among ourselves about the merits of the case? We ask that you not discuss the merits of the case with each other until you have heard all the evidence and the court's instructions on the law because experience tells us that once somebody openly expresses a view favoring one side or the other, there becomes an identification with that view and a reluctance to change an opinion once expressed. So please avoid discussing the merits of the case until you begin your deliberations.

Finally as to discipline, a trial is somewhat like a play. It cannot begin until all the performers are present. For us that means all the jurors, all the lawyers, interpreters, witnesses, court reporter, and myself. So please make every possible effort to be on time, because we cannot begin until you are all here. We will make every effort to begin promptly.

I have another instruction to you which is facetious but I mean it. Please, all stay healthy. Take good care of yourselves.

As I told you before during jury selection, I will meet every morning with the lawyers before court and every afternoon after you leave, to have the trial proceed as expeditiously as possible and not waste your time. When delays occur -- despite all our efforts there may be some unavoidable delays -- we will try to give you as much advance notice as possible. For example, last week I told you that we will not be sitting this Thursday, and of course we are not sitting on Friday, and Monday is a holiday. So that you have a five-day break from jury service, and I hope that you can use that opportunity to make arrangements for things that will be difficult to deal with while you are on jury duty.

As to logistics, we will sit Monday through Thursday from 10:00 a.m. to 4:30, unless you are otherwise advised. It may be that it would be convenient to start earlier than 10:00 a.m., judging by today's experience. We will see how that works. But for now we will sit from 10:00 a.m. to 4:30. We will take a mid-morning break, a midafternoon break, and break for lunch, which you will order each morning, which will be served to you in the jury room. Have you ordered lunch? You have ordered lunch, good. If at any time any juror wishes the court to declare a recess, please just raise your hand and say may we have a recess. No questions asked, we will be glad to accommodate you. If at any time you want to stand and stretch, because I know a lot of us have back problems, please feel free to do that.

Let me now ask that the participants in this case be reintroduced, because I know for some of you it has been a while. The first row seated in front of me, are the government attorneys and their staff, and the row seated behind them and to the right are defense counsel and the defendants, and I would ask that they now reidentify themselves.

MR. KARAS: Good morning, ladies and gentlemen. Ken Karas.

MR. FITZGERALD: Good morning. Pat Fitzgerald.

MR. BUTLER: Good morning. Paul Butler.

MS. GRANT: Good morning. Lillie Grant, paralegal specialist.

MS. MAEYAMA: Good morning, Naomi Maeyama, paralegal specialist.

MR. FRANCISCO: Good morning, Gerard Francisco, paralegal specialist.

MR. RICCO: Good morning, everyone. My name is Anthony Ricco, and, as I told you before, I represent this man seated here. His name is Mohamed Odeh. Also representing Mr. Odeh is Carl Herman and Ed Wilford. For some of the jurors I told you about an attorney who wasn't here before. Now she is here. Her name is Sandra Babcock. She will not be here throughout the trial. You will see her from time to time during the trial. Thank you very much.

MR. COHN: Good morning, ladies and gentlemen. My name is Fred Cohn and I represent Mohamed Al'Owhali, seated two seats to my left. Next to me is Laura Gasiorowski, my associate counsel. My cocounsel David Baugh is over there. In the audience, and you will see her from time to time, is Katie Tempone -- please stand up, Katie -- a paralegal in my office.

MR. RUHNKE: Ladies and gentlemen, my name is David Ruhnke. I am one of three attorneys representing Khalfan Khamis Mohamed, who will also be referred to as K.K. Mohamed. My cocounsel will introduce themselves at this time.

MR. STERN: My name is David Stern. I am one of Mr. Mohamed's attorneys.

MR. SCHNEIDER: Good morning. I am Jeremy Schneider. I will also be representing Mr. Mohamed.

MR. SCHMIDT: Good morning, ladies and gentlemen. My name is Sam Schmidt. I represent Wadih El Hage, seated to my right. Also representing Mr. Hage is Joshua Dratel. He is on my left. My associate Kristian Larsen is here. You will see him seated here at times, as well as Marshall Mintz, another attorney, and you will also see Elizabeth Besobrasow, who is seated back there, at times seated at counsel table. Thank you very much.

THE COURT: Let me briefly tell you of the sequence of events that will take place in the trial and discuss your role and my role in these proceedings.

A federal criminal proceeding of this sort begins with the filing of an indictment, and the four defendants on trial who have just been introduced to you have been named in various counts of an indictment. The indictment in this case contains 308 counts, or charges. You will during your deliberations and perhaps earlier have a copy of the indictment, so don't feel you have to memorize the particular counts. I am just going to briefly summarize them for you.

Counts 1, 2 and 3 of the indictment name all four defendants. Count 1 alleges a conspiracy to kill United States nationals. Count 2 alleges a conspiracy to murder, kidnap and maim United States nationals at places outside the United States. Count 3 alleges conspiracy to

murder. Count 4 names the defendants Odeh, Al-'Owhali and K.K. Mohamed, that is, all the defendants except El Hage, and that alleges a conspiracy to use weapons of mass destruction against the United States nationals. Counts 5 and 6 name all four defendants. Count 5 alleges a conspiracy to destroy United States buildings and property. And Count 6 alleges a conspiracy to attack national defense utilities. Counts 7 through 286 relate to the bombings in Africa, they relate to the bombings, the alleged murders, and I am not going to summarize them now. Counts 287 to 308 relate solely to the defendant El Hage. Counts 287 to 305 allege perjury before federal grand juries, and Counts 306, 307 and 308 allege false statements made to the FBI.

An indictment is not evidence, it is merely a charge. It is the means by which the defendants are brought before a jury such as yourselves. The defendants are presumed to be innocent and there is at present no evidence before you as to their guilt. The presumption of innocence remains with them until such time, if ever, as you the jury unanimously find that the government has proven guilt beyond a reasonable doubt. Guilt is individual, and you will be asked to consider separately the guilt of each defendant on each charge.

The first thing that happens in a criminal case is that the government makes an opening statement. Because it has the burden of proof, that is, the burden of proving guilt to your unanimous satisfaction, beyond a reasonable doubt, the government goes first. An opening is the opportunity to put before you what it is that the party making the opening statement believes that the evidence will show. Evidence does not always come in in an orderly chronological fashion, and an opening statement provides an opportunity to present an overall view of what the party anticipates the evidence will show.

After the government completes its opening statement defense counsel may, if they wish, make an opening statement. I say may if they wish because there is no burden on the part of any defendant to introduce any evidence or make any statement.

After all the openings are completed, the government will call its witnesses, and when all the government witnesses have testified, the government will rest. The defendants may then, if they wish, call defense witnesses. When all the defense witnesses have testified, the government may, if it wishes, call rebuttal witnesses, that is, witnesses whose testimony is offered to rebut evidence offered by defense witnesses.

After all the evidence has been heard, counsel are given the opportunity to make closing arguments, that is, to argue to you why, on the basis of the evidence you have already heard, you should find in favor of their respective clients.

The possibility of punishment that a defendant may receive if found guilty is not a consideration in determining whether or not a defendant has been proven by the government to be guilty beyond a reasonable doubt.

Let me now talk about my role at the trial and yours. My role, of course, is to preside at the trial, to rule on the legal matters which may arise from time to time during the course of the trial, for example, the admissibility of evidence. We shall try to keep any argument as to such matters to a minimum, but occasions may arise when counsel ask for a sidebar. That is the opportunity to take up a legal matter with me outside of your hearing. Please do not be offended if this should occur. These legal issues are not your concern and you should show no resentment towards an attorney who requests such a sidebar. But, as I have said, we will meet in the morning and in the afternoon to try and keep such interruptions to a minimum.

It is also my responsibility at the end of the trial and after closing statements to instruct you on the law to be applied by you to the facts as you find them. You are the sole determiners of the facts. You decide which witnesses you believe and which witnesses you do not believe. The finding of facts is your prime function. Issues of law are the sole prerogative of the court, and you are bound by your oath as jurors to apply to the facts as you find them the law as contained in the court's instructions. It would violate your oath as jurors to substitute for the law as contained in the

court's instructions any view you may have as to what the law is or ought to be, other than as set forth in the court's instructions.

My role is also to function as a timekeeper and to hold counsel to the reasonable periods of time they have requested. As I have said, your role is to find the facts, and your finding of the facts must be based entirely on the evidence introduced in this court. Evidence is a very specific, limited concept. Not everything that you see or hear in this courtroom is evidence. A very good example of that is what you are listening to now. What I say is not evidence. What the attorneys say in their opening or closing statements is not evidence. If there is a fact assumed in a question -- for example, were you standing on a street corner on January 3 when it was raining, and the answer is no, then there is no evidence that it was raining on January 3, unless that appears from other testimony, because the question isn't evidence.

Let me put it affirmatively. Let me tell you what is evidence. Evidence consists of the testimony, the answers given by the witnesses to the questions posed to them. Obviously, to evaluate the answer you have to consider it in connection with the question to which it is a response. But it is the answer which is the evidence, not the question.

Documents received in evidence, marked and received in evidence, are evidence, not merely papers waved around the courtroom or shown to a witness to refresh the witness's recollection. Documents received in evidence are evidence.

Stipulations are agreements between the parties that a certain fact is true or that if a certain witness were called, that witness's testimony would be as stated in the stipulation, and that is before you too as evidence. Nothing else is evidence unless I specifically tell you that a particular matter may be treated by you as evidence.

If you find it would be useful to you, you may take notes during the trial, and you will be furnished with writing material. That is an option entirely in your discretion. If you do take notes, be sure that your taking of notes does not interfere with your listening to and considering all the evidence and particularly observing the demeanor of the witness.

Also if you take notes, do not discuss your notes with anyone before or during your deliberations. Your notes are to be used solely to assist you and are not to substitute for your recollection of the evidence in the case. The fact that a particular juror takes notes entitles that juror's views to no greater weight than those of any other juror and your notes are not to be shown to any other juror during the course of your deliberations. If during your deliberations you have any doubt as to any testimony, you will be permitted to request that the official trial transcript which is being made of these proceedings be read to you. Your notes are to be left in the jury room, which will be locked, and are not to be taken home with you. But, as I said, if you wish to take notes you are free to do so.

Finally, if at any time in your wanderings around the city you happen to come across anyone you now see at counsel table and they don't greet you and exchange pleasantries, please don't think they are being rude. They are simply adhering to the instructions that this court gives in all cases, not just this case.

Ladies and gentlemen, that completes my preliminary remarks and the next order of business then is the opening statement on behalf of the government.

MR. BUTLER: May it please the court, ladies and gentlemen of the jury. It's August 7, 1998. It's a Friday, about 10:30 in the morning. It is downtown Nairobi, the capital of Kenya, a country located in eastern Africa. It's business as usual at the American Embassy, which means busy. You see, the embassy is an interesting place. It serves as a gateway to America overseas. It represents America in foreign countries like Kenya, and it serves the needs of the local community. So there are many different people inside an embassy. There are high public officials, like Julian Bartley, the consul general, who rose from a working class neighborhood in Queens to become the man responsible for looking after Americans in Kenya. There are interns

like his son Jay, who worked at the embassy to learn a little bit about his father's occupation. There are ordinary working people, like Michelle O'Connor, a secretary at the embassy, who was the mother to three young daughters. And there are Kenyans who work at the embassy, called foreign service nationals, like Tobias Otieno, who worked in the commercial department writing economic reports about the Kenyan economy.

Still other people come to the embassy for services, like Kenyans who come to get a visa to travel to this country. Or like Father John Kiogo, a Catholic priest in Kenya, who went to the embassy that day to visit his brother who worked there, and his niece, who was getting ready to travel to the United States to be a student. Father Kiogo and his brother and his niece sat down in the embassy that day doing a final count of her money and making sure that her paperwork was in order for her big trip.

The area outside the embassy is just as busy. Next to the embassy is a secretarial college where young people are preparing for their future. Inside that building there are some small offices where there are businesses, like the scrapmetal business of a Kenyan like Yoganda.

Across from the embassy parking lot there is a taller office building where people go about their everyday business. As a matter of fact, the American ambassador, Miss Prudence Bushnell, is there for a meeting. The streets outside the embassy are also busy as the morning rush hour is still in full force. Cars, trucks and buses are lined up in traffic, including a bus bringing children to school.

Then, in the blink of an eye, everything changed. A truck entered the rear parking lot of the American Embassy. In the back of that truck was a massive bomb which exploded with devastating force. The American Embassy and a tall office building were shattered. The secretarial college collapsed and was completely destroyed.

That's only what the bomb did to concrete and metal buildings. What it did to human beings that day defies description. Words and numbers just cannot capture the horror. When it was over, 213 men, women and children had lost their lives. Among them were Julian Bartley, the consul general, his only son, Jay, Michelle O'Connor, the mother to those three young daughters, and the brother and the niece of Father John Kiogo. Thousands more were injured, many blinded by flying glass from blown out windows, like Tobias Otieno, the foreign service national, who lost most of his sight in one eye, or Sammy Yoganda, the scrapmetal worker, who sat under the rubble of the secretarial college for three full days.

Why did these bombings happen? Who could be responsible for such horrible acts of violence?

Ladies and gentlemen, the evidence will show that these two bombings were a major strike in an ongoing terrorist plot carried out by a violent worldwide group. Four members of this overarching plot to kill Americans are the four defendants on trial before you today.

First is Mohamed Al-Owhali. Mohamed Al-Owhali left the headquarters of that terrorist group in Afghanistan on a mission to kill Americans. He left on a mission to kill and to die. You see, Mohamed Al-Owhali was actually in the truck that brought the bomb to Kenya that day. He went there on a mission to kill and to kill himself. But, ladies and gentlemen, the evidence will show that at the last minute Mohamed Al-Owhali ran away from that bomb truck, leaving 213 innocent men, women and children slaughtered behind him.

I told you about the bombing in Kenya and the horrible acts that occurred there, but, ladies and gentlemen, you will learn that on that Friday morning at 10:30, the carnage had not stopped. The horror repeated itself minutes, perhaps even seconds later, in another country in East Africa called Tanzania. Another truck pulled into the parking lot of the American Embassy in Dar es Salaam, the capital of Tanzania. Another bomb was in the back of that truck and exploded with devastating force. Eleven more innocent people were killed and dozens more were injured.

The second defendant before you is Khalfan Mohamed. Khalfan Mohamed was in a bomb truck that day too, the bomb truck in Tanzania. Khalfan Mohamed went toward the embassy that day intending to kill, but he did not intend to die. You see, Khalfan Mohamed got out of the truck well before it reached the embassy. But make no mistake about it, ladies and gentlemen, Khalfan Mohamed knew that the driver of that truck was about to deliver his lethal payload to the embassy, a truck bomb that would kill 11 people. How do we know this? Because the evidence will show that Khalfan Mohamed actually helped grind the TNT that was used to make that bomb and loaded that TNT onto the back of the truck.

Perhaps the only thing nearly as frightening as the carnage that was wrought by Al-'Owhali and Khalfan Mohamed that day is to learn how many people were involved in this terrorist plot to kill Americans, and to learn that these bombings were neither the beginning nor the end of that plot.

Who is this group? Who is it that sent Mohamed Al-'Owhali on his deadly mission from Afghanistan?

At this trial you will learn that a man named Usama Bin Laden formed this terrorist group known as Al Qaeda, which plotted for years to kill Americans. Bin Laden's group is spread throughout the world. Two members of that group from East Africa are the other two defendants before you here today: Mohamed Odeh and Wadih El Hage.

Wadih El Hage was a key member of Bin Laden's group in East Africa. Wadih El Hage is a naturalized US citizen from Lebanon. In the 1980's, he lived in the United States and in Pakistan, where he first met Usama Bin Laden. In the early 1990's, El Hage moved to the Sudan while Bin Laden was located there.

You will hear about some of the things that El Hage did on behalf of Bin Laden and his businesses in the Sudan. By 1994, El Hage became a trusted associate of Bin Laden, and he was sent to Nairobi, Kenya, on behalf of the group. He joined up with Bin Laden's military commander, a man known as Abu Ubaidah. You will hear about some of the secret things that Wadih El Hage, Abu Ubaidah and others did for Bin Laden while in Nairobi, Kenya. You will hear that they established businesses and that they passed messages back and forth to the group. You will hear about one message in particular that Wadih El Hage brought back in 1997. It was a message to the secret group in Africa known as a cell, that it should prepare itself for military work. This is the same East Africa cell that would blow up the embassies a year later.

I want to say one thing. When I use the term military work, I am using the group's term, not mine. Killing innocent men, women and children in acts of terror is not military work. It is the group that liked to justify their actions by calling it military.

The last defendant before you is Mohamed Odeh. Mohamed Odeh was another key member of the Bin Laden's group in East Africa. Odeh joined Bin Laden's group in the early 1990's, and he was trained in camps in Afghanistan in the tools of terrorism. He was trained in assassinations and explosives. He was even trained as to how much explosives were needed to blow up will specific types of buildings.

After his training, Mohamed Odeh was sent to Somalia, a country located just northeast of Kenya.

Some of you may recall that back in 1993 the United States and the United Nations sent military troops to Somalia. Bin Laden and his group violently objected to this, so Bin Laden sent members of the group down to Somalia to help train the Somalis how to fight. One of those trainers was Mohamed Odeh.

After he was done in Somalia, Odeh was sent to Kenya by the group, where he settled on the coast of Kenya in an area called Mombasa. He was given a boat by the group to set up a fishing business, and the proceeds of that business were to be used to support members of the cell living on the coast of Kenya. But Odeh would meet up with this explosives trainer from

Afghanistan again. It would be August 1998, the week of the bombing. Odeh would travel from his home on the coast of Kenya and come to Nairobi. He would stay the week before the bombing in the very hotel in Nairobi where the masterminds of this bomb plot stayed, including the bomb builders themselves.

You will learn that Odeh would leave Kenya on August 6, 1998, the night before the bombing, using a false passport. And where was he going? Straight back to Afghanistan to meet with Usama Bin Laden.

Ladies and gentlemen, as you know from earlier this morning, I am Assistant United States Attorney Paul Butler. With me are Assistant United States Attorneys Ken Karas and Pat Fitzgerald. Together, it is our privilege to present this case to you on behalf of the United States government. As you know from this morning also, with us at counsel table are paralegals Lillie Grant, Naomi Maeyama, and Gerard Francisco, who together with many others will be helping us throughout this trial.

I would like to take some time to outline for you the crimes that the government will prove were committed by these defendants, and to describe briefly for you how the government intends to prove these crimes. But as Judge Sand told you, what I am about to tell you is not evidence. The witnesses will tell you what the evidence is. The opening statement is not a time for me to try to imprint on your memory every important fact. Rather it is just a time for the government to offer you a preview or an outline of what the government believes the evidence will show at this trial. It is like giving someone directions for a trip they haven't taken before, to try to provide them with landmarks or orient them with certain terms on the road, so that when they actually take the trip the directions will become more familiar. So please, don't be overwhelmed by the number of unfamiliar names, dates, foreign places you are going to hear about. It is our job throughout the trial to make that clear to you, and by the end of the trial, what may seem unfamiliar to you now will be very familiar to you by then.

In order to understand what led to these bombings on August 7, 1998, we have to learn a little bit more about this terrorist group formed by Usama Bin Laden. As I told you, the name of that group is Al Qaeda, which is an Arabic term, and it means the base. Bin Laden formed Al Qaeda back in the 1980's in Afghanistan.

Some of you may recall, at that time the Afghan people, who were mostly Muslims, were at war with the former Soviet Union. Many, including the United States, thought that the cause of the Afghan people was a just cause, and Muslims from throughout the world came to fight on behalf of the Afghans. One of those persons was Usama Bin Laden, the son of an extremely wealthy Saudi Arabian businessman.

Eventually, the Soviet Union withdrew its troops from Afghanistan, and Bin Laden saw this as an opportunity. He saw this as an opportunity to use these well-trained fighters to overthrow governments that he did not like, that is, governments that did not share his extremist beliefs. So he founded Al Qaeda, the base, as a base of military operations. It was a base not only for the members of his own group but for a network of other groups and people who shared his extremist philosophy.

In the early 1990's, Bin Laden moved the headquarters of Al Qaeda from Afghanistan to the Sudan in Africa. He worked closely with the Sudanese government in establishing various businesses, and you will hear how the defendant Wadih El Hage assisted Bin Laden and did various things for him in his businesses while in the Sudan.

It was around this time in 1991 when the United States became involved in the Persian Gulf war against Iraq. As I am sure many of you will recall, the United States sent troops to the country of Saudi Arabia during that war. Bin Laden and his group finally objected to this as well. You see, Saudi Arabia contains two sites that are very important to the religion of Islam, known as the two holy mosques. So Bin Laden and his group objected to US troops being in Saudi Arabia

for that reason. They began issuing statements amongst themselves in the Sudan, calling the Americans infidels and calling for them to be driven from the land of the two holy mosques. But, ladies and gentlemen, it was not just words. You will hear that Bin Laden and his group began taking actions to prepare to do battle with his enemies, particularly the United States.

As I mentioned before, in 1993 the United States and the United Nations became involved in Operation Restore Hope, a peacekeeping mission to restore order in war-torn Somalia. Again, Bin Laden and his followers did not see it that way. They saw this as a chance by America to gain a foothold in Africa, in order to invade Muslim countries. So the group began issuing more statements amongst themselves, saying that the Americans in Somalia ought to be killed and calling for the Americans to be driven from Somalia and from Saudi Arabia. But once again, it wasn't just words. You will hear that Bin Laden and his group took actions. Bin Laden sent members of his group down to Somalia to train fighters how to fight. And one of those trainers was the defendant Mohamed Odeh.

You see, Bin Laden knew that he could not fight an open, all-out war against the United States in Somalia the way he had done so against the Soviet Union in Afghanistan. So he sent people to train the Somalis how to fight. That way he could preserve the members of his own group.

It was during this effort in Somalia that Bin Laden established his network of operations in Nairobi, Kenya. You see, the plan was to have Bin Laden's fighters and members of his group travel to Kenya and slip across the border to Somalia. So he had to set up a base of operations. He sent various people there to establish fake businesses, cover businesses that would help fighters infiltrate through to Somalia.

Even after the events in Somalia were over, Kenya remained an important base of operations for the group. You will learn about what various members of the group did in Nairobi, Kenya, during this time. For example, you will learn that Bin Laden's military commander, the man known as Abu Ubaidah, settled in Nairobi, Kenya. You will learn that in 1994 the defendant Wadih El Hage joined Abu Ubaidah in Kenya. You will learn that after his time in Somalia, Mohamed Odeh returned from Somalia and settled on the coast of Kenya where he began that fishing business, all the while remaining a member of Al Qaeda. Wadih El Hage worked in the city of Nairobi. On the outside, he was an American businessman in Kenya. On the inside, he was doing secret work on behalf of Usama Bin Laden.

In 1996, Bin Laden moved the headquarters of Al Qaeda back from the Sudan to Afghanistan. And it was at this time that Bin Laden became bolder and more brazen about his desire to kill Americans. Previously, the group had just issued statements amongst themselves, but in the summer of 1996 Usama Bin Laden issued a public open declaration of war on the American military.

Again, it was not just talk. You will hear the things that Bin Laden's loyal followers did in order to carry through on this public declaration. For example, you will hear about several trips that the defendant Wadih El Hage took in 1997 to meet with the leadership of Al Qaeda.

You will hear about the one trip where he came back with that important message that the east African cell should prepare itself for military work. You will also hear that upon his return from another of these trips, El Hage's house in Kenya was searched and several important items were recovered, including a computer, about which you will hear more during this trial.

After that search, El Hage and his family decided to return to the United States, and it was at this point that America turned to one of its own citizens, Wadih El Hage, for help in protecting itself from Bin Laden's network. You see, in light of Bin Laden's open declaration of war on the American military, the United States government began an investigation of Bin Laden, began investigating his solicitation of murder and his calls to attack Americans overseas.

So Wadih El Hage was called to testify before a grand jury in this very courthouse. It was September 1997, one year before the bombings. You will learn that Wadih El Hage came into this courthouse and lied repeatedly. He lied about his relationship with Usama Bin Laden. He lied and basically told the grand jury that Bin Laden had no people in Kenya. He even lied about Bin Laden's military commander Abu Ubaidah, who, you will learn, had drowned in a ferry accident in Africa the year before.

You see, El Hage didn't want the grand jury to know the importance of the people that Bin Laden had in Africa. So he said that the person who drowned was merely a Dutch businessman and not Bin Laden's military commander.

One year later, the people that El Hage lied to protect blew up the embassies in Kenya and Tanzania. In addition to being charged with a conspiracy to kill Americans, Wadih El Hage is charged with seven counts of perjury for his testimony before the grand jury that day.

While El Hage was hiding what he knew from the American government, others were preparing to carry through on Bin Laden's public declaration of war. It was around this time that the defendant Mohamed Al-'Owhali, who was originally from Saudi Arabia, was being trained in Bin Laden's camps in Afghanistan. He was being trained in the tools of terrorism, including assassinations, surveillance, and explosives. He fought in a battle. He distinguished himself so well that he actually had the opportunity to have a meeting with Usama Bin Laden. And it was at that meeting that he asked Bin Laden for a mission.

(Continued on next page)

And that mission turned out to be the bombing of the American embassy in Kenya. It was also roughly at this time that the defendant Khalfan Mohamed who had also been trained in camps in Afghanistan went to Somalia with some members of the very plot he would conspire with to build up the American embassy in Tanzania.

Now, I should note one thing. Neither Mohamed Al-'Owhali nor Khalfan Mohamed were formal members of Bin Laden's group al Qaeda, but as I told you before, the al Qaeda group was just a base of operations for a network of people and groups that shared this extremist beliefs. One does not have to be a formal member of al Qaeda to carry out important tasks for the group. Al-'Owhali and Khalfan Mohamed are excellent examples of that. Al Qaeda turned to them to actually execute the bombings.

Now, another group that Bin Laden joined up with is the group known as Egyptian Islamic Jihad and it's radically opposed to the present government in Egypt. I should tell you that the term jihad is another Arabic term that you'll be hearing about, and it can mean many things. But to al Qaeda and Egyptian Islamic Jihad it meant one thing and one thing only, a holy war against governments that did not share its extremist beliefs, particularly the United States of America.

Now, in early 1998 Bin Laden issued his most chilling public statement yet. Previously his call to murder had been limited to members of the American military, but in early 1998 Bin Laden called on his devoted followers to kill Americans, civilian or military, anywhere in the world they could be found. This statement was joined by Egyptian Islamic Jihad. And you will learn once again, ladies and gentlemen, that these were not just words.

You will learn how from early 1998 until August 7, 1998, the defendants, al-'Owhali, Khalfan Mohamed and Odeh along with Wadih El Hage's former roommate and close associate, a man named Harun, did various tasks to fulfill Bin Laden's command. For example, Mohamed Al-'Owhali received further training in the camps in Afghanistan for his mission. He traveled from Afghanistan to Kenya in the days before the bombing using a false passport from the government of Yemen. He joined up with various members of the plot, including Harun. He also met up with his former comrade from Afghanistan a Saudi man named Azzam.

Al-'Owhali traveled in the bomb truck that day to Nairobi, Kenya, and Azzam was the driver. The plan was for al-'Owhali to get out of the bomb truck and to throw home made grenades

at unarmed security guards to scare them away so that Azzam could drive the truck closer to the embassy in order to inflict maximum damage and to kill the most Americans. And you will hear that Azzam blew himself up in that truck, and that al-'Owhali ran away at the last minute leaving those 213 men, women and children slaughtered behind him.

You will also hear how the defendant Khalfan Mohamed worked to further the plot in Tanzania. You will hear how he rented a house where the bomb was built, and how he lived in that house with another key member of the group. You will learn how he bought a car that was later used to ferry bomb materials back and forth to that house. And you will learn how he worked with others to actually grind the TNT that was used to make that bomb and then load that TNT on to the back of the bomb truck.

You will also hear that Khalfan Mohamed stayed behind after the bombings. He stayed behind to help the driver, the suicide driver of that Tanzania truck, and to clean out the house after the bombings were over to help the group avoid detection.

Now, you will also hear how Mohamed Odeh received an emergency order on the coast of Kenya that all members of al Qaeda had to leave Africa by August 6, 1998. You will hear that on August 3 he traveled overnight by bus leaving his home and family on the coast. You will hear that Mohamed Odeh spent August 4th, August 5th and August 6th in a hotel in Nairobi with several key members of al Qaeda, including the masterminds of these bombings and the bomb builders themselves.

You will hear that Mohamed Odeh left Kenya on August 6, 1998 with another member of the plot using a false passport and having shaved his beard to change his appearance.

Now, ladies and gentlemen, that's an outline of what the government expects the evidence will show. I should talk for a minute with you about the burden of proof. As Judge Sand mentioned to you, in this case, as in all criminal cases, the government has the burden to prove each of these defendants' guilt beyond a reasonable doubt, and we welcome that burden. The government commits to you that by the end of this trial you will find that each of these defendants were guilty beyond a reasonable doubt of entering into an illegal agreement to work with Usama Bin Laden and others to kill Americans anywhere in the world they can be found.

Now you may ask yourself: How is the government to prove this? For example, how is the government going to prove to you what I just told you about al Qaeda? Well, ladies and gentlemen, when the evidence begins you will have the extraordinary opportunity to hear from a witness who is a sworn member of the al Qaeda group itself and who had actual conversations with Usama Bin Laden. He will tell you what al Qaeda is, how it was formed, and how it worked. He will tell you what he did for the group and what others did for the group.

He will also tell you that he left the group two years before the bombings, so he's going to merely set the stage for those bombings. He's going to tell you about the organization that was responsible for those bombings. He's not going to be the only witness by any means.

You're going to hear from many, many more witnesses like law enforcement witnesses who responded to the scene of the bombings or who participated in the investigation of the overarching conspiracy to kill Americans. You will hear from eye witnesses to certain events in Africa, and you will hear from the victims of these horrible crimes.

But the witness I just told you about is a good example of how you should view certain types of witnesses. Listen to what he says, listen to what he says about himself and listen to what he says about others. He will also tell you that he stole money from Usama Bin Laden and that he got caught and that he went on the run, and that in an attempt to save himself and his family, he approached the American government and offered to provide information. You will learn that he pled guilty to a crime in connection with his activities for Usama Bin Laden and that he will testify before you pursuant to a cooperation agreement.

Now, I'm not going to argue the credibility of that witness or any other witness right now. To do so would be pointless, because you haven't heard their testimony yet. But I ask you to scrutinize all the witnesses carefully and particularly the ones who are members of the group. Listen to what they have to say about themselves. Listen to what they have to say about others. Listen to how they answer questions when they're put to them by the government and listen to how they answer questions when they're asked by the defense.

Look to see if their testimony is corroborated in any way. Now, corroboration can take many different forms. Sometimes the witness will get up and testify to certain things, and you'll see that a document or documents recovered in a search show that what that witness told you was true. Sometimes a witness can be corroborated by the testimony of another witness or witnesses. For example, you will be hearing from various witnesses who were within or around al Qaeda who will testify to different aspects of the same event or events.

By the end of the trial you'll know more than they will, because you will have heard from all of them, which is to say that watching a trial is a lot like watching a jigsaw puzzle being solved, different pieces come in at different times and things may seem blurry, but at the end the picture will become clear.

Now, you're also going to hear evidence in this case in the form of confessions by some of the defendants. For example, you will learn that the defendant Mohamed Al-'Owhali confessed to his role in the plot to blow up the embassy in Kenya. Ladies and gentlemen, Mohamed Al-'Owhali did not just confess, he bragged and he boasted. He admitted that he excelled in his training in Afghanistan. He boasted about how he requested a meeting with Usama Bin Laden, and then requested from Usama Bin Laden that he be given a mission. He admitted that he traveled from Afghanistan to Nairobi in the days before the bombing using a false passport from the government of Yemen. He admitted that he met up with certain key players of the plot in Nairobi, including Harun, and he bragged about how he road in the bomb truck that day to the embassy in Nairobi, Kenya.

You will also hear that the defendant Khalfan Mohamed confessed. He confessed to his role in the bomb plot in Tanzania. Khalfan Mohamed admitted that he, too, was trained in camps in Afghanistan and that he went to Somalia. He admitted that he helped carry out the plot in Tanzania by renting a house where the bomb was built, and by helping others to grind the TNT that was used to make that bomb. He admitted that he helped load the TNT on the back of the bomb truck and that he stayed behind to help the driver of that truck after everyone else had left Africa. And he admitted that he stayed behind to try to clean out the bomb factory to help the group avoid detection.

You will also hear that Mohamed Odeh confessed. Mohamed Odeh confessed that he was a member of al Qaeda from the early 1990s until August 7, 1998. He also admitted that he was trained in camps in Afghanistan and that he trained others in Somalia. He admitted that he operated a fishing business on behalf of al Qaeda on the coast of Kenya and that the proceeds of that business were used to help support members of the cell that existed on the coast of Kenya.

He admitted that he traveled from the coast to Nairobi on August 3, 1998 and that he spent three days before the bombing in a hotel in Nairobi with various members of the al Qaeda. Among these were the masterminds of the bombing, including the bomb builders themselves. Odeh admitted that he left Kenya the night before the bombings on August 6, 1998 using a false passport and having shaved his beard to change his appearance.

Now, you will also hear that Mohamed Odeh claimed that he did not know these bombings were coming, but, ladies and gentlemen, the evidence will show that Mohamed Odeh is guilty of these bombings.

Now, as Judge Sand mentioned to you, at the end of the trial the lawyers will have an opportunity to get up in summations and make various arguments to you. They will be able to

argue to you about what pieces of the puzzle they think fit in and which did not. Listen to those arguments, but make up your own mind. Use your common sense. That's why you were selected as jurors, to use the common sense that you've attained in your everyday life experience and come here and apply it to the facts and the evidence.

I'd like to say a few words to you about the charges in the indictment. As Judge Sand told you there are 308 counts or charges in the indictment, and I'm not going to go through each one of them because that would just take too long. Suffice it to say that most of the counts are murder counts for the 224 people who were killed in Africa on that August 7, 1998. There are also various conspiracy counts to attack American property abroad. But I'd like to spend a couple of minutes talking to you about Count One, the conspiracy to kill Americans.

All four of these defendants are charged in Count One with this conspiracy. And what this count basically alleges is that each of these defendants entered into an illegal agreement to work with Usama Bin Laden and others to kill Americans anywhere in the world they could be found. Each one agreed to this and each one helped the best way they could.

For example, Wadih El Hage helped carry out the agreement by working in secret to maintain the cell in Nairobi. He worked to maintain contact with Usama Bin Laden and pass messages among the cell, including that important message in 1997 that the East Africa cell should prepare itself for military work. He lied to the grand jury in September, 1997 to protect the cell so that it could go on with its deadly work.

Mohamed Odeh carried out his part of the agreement by training fighters in Somalia and by operating that fishing business on the coast of Kenya and by getting out of Africa the night before the bombing.

Of course Mohamed Al-Owhali actually killed Americans. He drove in the truck that day to the American embassy in Nairobi. He threw those stun grenades at the unarmed guards, and he was responsible for that explosion.

Khalfan Mohamed also helped carry out his part of the bargain by assisting the plot in Tanzania by renting the house, by purchasing the car, by helping to grind the TNT, by loading the TNT onto the truck and by staying on afterwards to help clean out that house to avoid detection.

I'd just like to spend a couple of brief moments talking to you about what's not charged in the indictment.

While Wadih El Hage is charged in the conspiracy to kill Americans, he's not charged with the murder count. As I told you before, Wadih El Hage left Africa in 1997 a year before the bombings. The same year he lied to the grand jury to help the East African cell continue its deadly work. But his lies didn't stop there, ladies and gentlemen.

You will learn that one month after the bombing in September, 1998, Wadih El Hage returned to a grand jury in this courthouse and he lied again. He lied once again to the grand jury investigating those bombings. He lied about his relationship with Usama Bin Laden. He lied about Bin Laden's presence in Africa and he even lied about whether he knew his codefendant Mohamed Odeh.

I'd like you also to bear in mind that the defendant Khalfan Mohamed is only charged with the 11 murders in Tanzania and not the 213 murders in Kenya. Now, it may seem a little strange to you to hear me say that somebody is only charged with 11 murders, but that ought to bring home two points to you. First, the scope of the mass murder involved in this case, and, second, the important fact that each one of these defendants is on trial before you separately.

Now, as I mentioned before, you are also going to be hearing some proof about events that took place in Somalia. But the indictment does not charge, and the proof will not show that any one of these defendants or any other member of al Qaeda actually shot a gun, killed an American soldier or shot down a helicopter in Somalia. Rather, the proof about Somalia is offered to show

you how al Qaeda developed, what its motivations were, and particularly, how the network of operations developed in Nairobi, Kenya.

Let me make one final point about the charges in the case. The story that's about to unfold before you is long, complicated and chilling. The indictment is long and it contains many counts and violations of many different statutes, but at the core the charges are simple. They are that all four of these defendants entered into an illegal agreement to work with Usama Bin Laden and others to kill Americans anywhere in the world they could be found.

I'd like to just talk to you very briefly about the process that you're about to go through. At the outset I'd like to make one thing crystal clear. While these defendants chose to hate and kill people based on their nationality and their religious beliefs, the government asks you to render a verdict based on the law, the evidence and the facts.

You will be hearing some testimony about how Usama Bin Laden and various members of al Qaeda interpreted the religion of Islam. That proof is offered to you to understand what al Qaeda's motivations were, why it did certain things. No comment about how the rest of the Muslims in this world practice their faith. Nobody is on trial here for their religion.

Secondly, as I said to you before, you're going to hear a lot of unfamiliar names, a lot of dates, facts, things that happened in foreign countries. Don't be overly concerned about that now. As I told you, it's our job to make that all clear to you, and at the end of the trial the attorneys will have the chance to get up in summations and tell you about what they think is important. Be assured the important things you will remember.

Now, in closing, let me say this. The government commits to you that if you work hard at paying attention, if you're patient with yourself when you hear a lot of dates and names, and if you keep an open mind and you apply your common sense to the evidence, that the government has proved at the end of this trial that each of these defendants, Mohamed Odeh, Mohamed Al-'Owhali, Khalfan Mohamed, and Wadih El Hage, are guilty beyond a reasonable doubt of entering into an illegal agreement with Usama Bin Laden to kill Americans anywhere in the world they could be found. They each helped the best way they could, and in the end 224 men, women and children from Kenya, from Tanzania and from America lost their lives and Kenya, Tanzania and America would never be the same. For that this trial seeks justice. Thank you.

THE COURT: Thank you, Mr. Butler. Do you wish to proceed or do you want to take a recess?

MR. SCHMIDT: Your Honor, I would ask for a brief recess.

THE COURT: Ladies and gentlemen, we'll take a brief recess.

(Recess)

(Continued on next page)

(In open court; jury not present)

THE COURT: The juror who wants to take his wife to the hospital on February 14th is trying to make arrangements and on Friday evening if he is able to do that, he thinks that he would be available around 9:30. On that day we may start a little late, but we should be able to sit that day. Let's bring in the jurors, please.

Exhibit D on January 1 which was the blank questionnaire was sealed and is unsealed now, so blank copies of the jury questionnaire are available if anyone wants them. The completed questionnaires we'll keep sealed at least for the present because they contain material which might disclose the identity of the juror.

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(Jury present)

THE COURT: Mr. Schmidt.

MR. SCHMIDT: Good morning. May it please the Court, Mr. El Hage, ladies and gentlemen, ladies and gentlemen of the jury.

I am somewhat humbled to be here as a representative of Wadih El Hage, a forty-year old nationalized American citizen, father of seven American children. We view this case as of great importance to our country, to our system of justice and of course to Wadih El Hage and his family. The loss of lives and the destruction at the embassy, the great tragedy shared by us all is shared by Mr. El Hage and his family as well.

This is a rare opportunity that we have to show the world that a crime of this magnitude will not interfere with our great system of justice; that we will show the world how our system really works; how it protects each individual, citizens or not citizens, from the power of the government. They are the ones who have brought this case against Mr. El Hage.

This case is perhaps of historical importance, the incredible scope of the charges of a conspiracy that the government alleges that lasted ten years throughout the world, the resources that the government has put into this case and the nature of the charges themselves. And I understand the difficulty that one must think that how can ultimately 12 normal Americans like you make such a historic decision. That is the beauty of our system that it is you, not the government, that will make the ultimate decisions in this case.

Now, this case has often been called the embassy bombings, a shorthand term, because the government alleges this conspiracy ended up with the bombing of two embassies. Of course that was a great tragedy, but this case is more than that, because if it was just the embassy bombings I would not be here talking to you this morning, because Mr. El Hage, and the government has conceded, was not involved in either of the embassy bombings. There is no evidence, as you will see, that he was involved in the embassy bombings.

But what the evidence will show is that Wadih El Hage is a devout caring person, a mediator, not a confrontational trouble maker, and that he would never, has never agreed to participate in any criminal conspiracy to kill Americans; has never, would never agree to participate in any criminal conspiracy to kill women and children. Regardless where and when the government says that these acts occurred, whether in Kenya, the Sudan, in the United States, there will be no evidence, no credible, no reliable evidence to show that he agreed to participate in what they call this terror conspiracy.

The government claims that Usama Bin Laden and some associates are involved in this worldwide long-standing conspiracy against the United States. I am not here to represent Mr. Bin Laden. I am here to represent Wadih El Hage. I'm not here to convince you that Mr. Bin Laden is not a danger to America, Americans, Westerners or anybody else.

I am here to represent one man, a man that you'll be looking at across from you for many, many months, but I am your reminder that even though the charges relate to not just criminal conduct against America, but encompasses worldwide politics, worldwide religious beliefs, that worldwide politics and worldwide religious beliefs are not on trial. For me and I ask for you as well, one person on trial, a man, a husband, a father of seven children, a citizen of the United States, that is the man on trial that I ask you to consider.

The government has said that the beginnings of this terror organization were in Afghanistan and has given you a few pieces of what they call the jigsaw puzzle, and has told you by the end of the case that all the pieces will fit in. I submit to you that the evidence will not show all the pieces of the puzzle that the government claims, but will show you a few pieces and the evidence the government will ask you to put number of pieces together against the other pieces.

There will be no credible reliable evidence that Wadih El Hage ever participated in any of the violent acts alleged in the indictment the government says it will prove. We know that he did not participate in the embassy bombings and there is no evidence that he did. The evidence will also fail to show you that he participated in any violent act that relates against the United States of America our citizens or embassies. Oh, yes there may be guesses, there may be assumptions. There may be evidence that the government says, well, he was there, he had to know something.

And the evidence may show that you'll have people getting up here and saying, well, I was told by so and so, who told me that so and so did something else. I ask you to listen carefully to the evidence and note what's not there.

The evidence will show that Wadih El Hage was hired by Bin Laden to work in the Sudan, not only because he was well-educated, a hard worker, honest, responsible and a devout Muslim, but, yes, he was an American free to travel throughout the world on American passport. And that's exactly that reason and the reason of what kind of person Wadih El Hage is and was that he would not enter any conspiracy, or offer to enter any conspiracy to do harm to Americans, his wife born and raised in the United States, and his children, Americans.

And our country, in our system of justice, you do not punish people solely because of their association. Many countries throughout the world do so. Many of the people who fought in Afghanistan came from countries who punished people for their associations. Wadih El Hage chose America exactly for the reason that people do not punish people for their associations and their beliefs.

Yes, the evidence will show that Wadih El Hage traveled to many places on behalf of Usama Bin Laden's businesses. Yes, the evidence will show that Wadih El Hage maintained contact with many of his friends and associates from both Afghanistan and the Sudan after he left the Sudan and moved to Nairobi. But you will see that the evidence will show that those contacts were for business purposes and to assist other Muslims in countries such as Somalia, Northern Kenya, other areas of East Africa, to help them. There will be no evidence that he ever agreed to participate or to assist any group of people who were going to attack Americans.

Now, that does not mean that Mr. El Hage and others that he knew is without opinions as to what was happening to Muslims in the former Soviet Union, what were happening to Muslims in other countries that were war torn like Somalia, and countries that Muslims were not allowed to practice religion, but his beliefs that are shared, and you'll learn Muslims around the world who donate millions of dollars to help other Muslims around the world. In fact, many Americans, Muslims and nonMuslims, donate money around the world to assist the hungry and the poor in Muslim countries around the world.

While the government's case seems to start with Mr. Bin Laden's anger at Americans mainly in Saudi Arabia after the Gulf War, you will learn that that is not an extremist position, it is not a radical position. Many Muslims around the world believe that no armed nonMuslim, no nonMuslim should be in Saudi Arabia because that is a land of the holy places.

So when a Muslim gets up and says: America should not be there, he is not announcing he's a terrorist. He's announcing he's a concerned Muslim. Wadih El Hage is aware of that as well as Muslims around the world.

To base their case on Usama Bin Laden's -- who is a Saudi Arabian -- dislike of America being in Saudi Arabia is to say all Muslims, many Muslims agree with Usama Bin Laden's method. That's where we think the evidence will not show that Wadih El Hage agreed with Usama Bin Laden's methods.

The evidence will not show that he agreed to participate in the conspiracy to kill Americans, to kill women and children.

To understand why he would not do that, it is important for you to learn about Wadih El Hage. Some people who left their homes and went to fight in Afghanistan became soldiers, warriors and remain so. Others left to help, went back to their normal life. Wadih El Hage is that type of person.

You will learn that he was born on July 25, 1960, to Lebanese Christian parents. He suffered a disability at birth that left his right arm withered and weak. At a young age he and his family moved to Kuwait where Mr. El Hage's father worked for the oil companies in Kuwait. And Mr. El Hage was raised in Kuwait among Muslims as well as his Christian family and friends.

Eventually, he turned towards Islam, but because of who Mr. El Hage is, he didn't tell his parents because in Lebanon there is a big gap between Christians and Muslims, and he did not want to hurt his parents.

After he graduated from high school in Kuwait, he came to the United States, University of Southwest Louisiana in Lafayette, Louisiana in August of 1978, barely an 18 year old. There he was able to mingle with Muslim students and outwardly practice his religion, but he was an unusual Lebanese. He was a person who understood both the Christians and the Muslims in Lebanon, and that fit perfectly into who he was. He was a mediator, conciliator, a quiet, pious person.

He worked hard at school towards a degree, but world events interrupted his work and gave him an opportunity both to help his new religion and to help his new country. Russia invaded Afghanistan.

Of course the Americans back in 1980, I believe it was during the cold war, opposed Russian Communist aggression and they supported the insurgents, the Afghans who were fighting the Russians, they supported them with money to Pakistan, moral support and allowing Muslims to come into the United States to raise money from other US Muslims and even to get people to come and help.

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MR. SCHMIDT: (Continuing) Wadih El Hage answered that call. He answered that call not as a fighter, not as a confrontationalist. He answered that call as a relief worker, to help the millions of Afghani refugees who were suffering at the hands of the communist aggression. Wadih El Hage was not solely on the Afghani side. He was on the American side, helping against Russian aggression.

As one of the few nonAfghans and nonPakistanis there who spoke Arabic and English, he naturally ended up staying with a group of Muslims who spoke Arabic, because among the Afghans and Pakistanis, few spoke Arabic. That is where he got to know some of the players that the government says ultimately became part of Bin Laden's group. Some of them were not even there yet when Mr. Hage came to Afghanistan in 1983. Some were there, and he became friends, he became associates with them. He knew them. They respected him for being a 23-year-old coming to Afghanistan to help, a person with a disability and still willing to help his brother Muslims. His reputation as a hard-working, honest, caring person continued.

After about a year and a half he came back to the United States to continue his schooling. He was introduced to and married an American-raised woman, April. April Brightsky Ray. They married. She was also a born Christian converting to Muslim in the United States. They went, he went back to Pakistan, she for the first time, and they continued relief efforts for another year, this time in a different city in Pakistan. He wasn't a fighter, he was a relief worker. When their first child was born in Pakistan, they registered him at the American Embassy. It was important for their child to be an American.

They returned to the United States. They lived in Tucson. He worked for the city of Tucson as a custodian and as a driver. He made one more trip back to Pakistan, this time with his three children and his wife and his mother-in-law and her husband, where she worked as a nurse in Pakistan, and Mr. El Hage continued working there but this time as a journalist. They soon returned and this time set up residence in Arlington, Texas. But even though he had a bachelor's degree in urban planning, it was difficult for him to find a good job commensurate with his education and experience and his intelligence. He ended up brokering cars to the Middle East and making some money to support himself. But he wanted more. He wanted more for him and he wanted more for his family.

Again, world events took over. Usama Bin Laden, who was in Afghanistan and was known throughout the world for his years in Afghanistan as an important part in assisting the Afghani

freedom fighters, the Mujahadeen, with money and leadership, was thrown out of Saudi Arabia, his home, where his family were probably the richest nonroyalty in Saudi Arabia. And he moved to Sudan to start businesses, to become what it appeared to be that his father became in Saudi Arabia. His father came from Yemen, moved to Saudi Arabia, and built up his businesses. Sudan was like Saudi Arabia was 50 years ago, and this was an opportunity for Usama Bin Laden.

You will hear that Usama Bin Laden, like mostly everybody else in Afghanistan, did not express any anti-American words or rhetoric when he was in Afghanistan and Pakistan. So there was no reason to believe, for Mr. El Hage to believe that going to work for Mr. Bin Laden in the Sudan had anything to do with any worldwide terrorist conspiracy, anything that was anti-American at all. But it was a big move. Khartoum, Sudan, is not like Arlington, Texas. It may be hotter, but it is not like Arlington, Texas. So before he decided to move, he went to see what was there, what offered him an opportunity if he left the United States. He was offered an important position for the commercial interests of Mr. Usama Bin Laden, for an approximate salary of \$1,200 a month, which is an excellent salary in the Sudan.

So he moved his family to the Sudan, and you will learn that he was trained when he came to the Sudan by one of the deputy directors, or assistant, one of the companies to buy and sell food and nonfood commodities. They spent two months training him for commercial transactions, not military transactions but commercial transactions.

You will see that he traveled around the world trying to find a market for the agricultural products of the Bin Laden industry -- for corn, hibiscus, sesame. He traveled to buy tractors for the agricultural company, trucks for the construction company, bicycles for the import-export company to resell to the Sudan. He was a busy person and he traveled a lot. But he always came back to his family.

And he worked when he wasn't traveling. If he didn't have other obligations, he worked as a personal secretary for Mr. Bin Laden. That's not a kind of secret, personal kind of confidante. That's, instead of being a pool secretary, that's the personal secretary. He is the one who makes appointments. He is the one who fits in. He is the one who follows up on the business calls. When he wasn't traveling he did that for a while. When he was traveling, somebody else did that. But ultimately, because he proved himself intelligent, hard-working, trustworthy, he was promoted, and he no longer acted as a personal secretary at times for Mr. Bin Laden.

While the evidence will show that he handled money for Mr. Bin Laden and he was trusted, he was never anywhere near an inner circle of confidantes of Mr. Bin Laden, because he was not a military man. He was not a political person. He was not a religious scholar. He was a businessman, and he related to Mr. Bin Laden as the businessman that he was. And you will see no evidence that he related to Mr. Bin Laden in the Sudan as anything other than a businessman.

The Sudan became, was and became even more isolated, and his family was unhappy. Mr. El Hage and his family, tired of the isolation, was given the opportunity to move to what was a much more cosmopolitan city, Nairobi, which is somewhat the capital of East Africa. Generous Muslims in Germany began a relief agency called Help African People, which he agreed to start in Nairobi with help from the German Muslims and help from the Sudanese friends as well.

He moved, as the government said, at the end of 1994 to Nairobi. By early 1994, all Americans were out of Somalia. There was no Americans in Somalia. There was no need for a Nairobi cell, as the government calls it, to deal with Americans in Somalia because there were none. What was left in Somalia were Somalis, and many international organizations trying to help and feed the Somalis. And many warlords who could care less about Islam or the tenets of Islam, and some other leaders who believed in Islam and supported the tenets of Islam.

Because it was difficult to start a relief agency in Nairobi, he needed help to support his family. He started doing more business deals again, semiprecious stones, trying to buy and sell commodities. That's what he was trained in and did for two years in the Sudan. And yes, he was

in contact both with his old friends in the United States to raise money for his relief agency, and to help him make some money in his businesses, and, yes, remained in contact with his friends from the Sudan. He even traveled to Slovakia, the back half of what used to be Czechoslovakia while he was in Kenya on behalf of Bin Laden's enterprises, to buy tractor parts for the tractors in the agricultural business.

You will see no evidence of any agreement, any act, any work, any conversation, any document that says Wadih El Hage participated, wanted to, agreed to, in any criminal conduct against the United States. Yes, the government said he was friends with Haroun, who worked for him at times, a person who apparently, as the government may prove or may not prove, responsible for the bombing in the embassy in Nairobi. And yes, there is correspondence with people affiliated with Usama Bin Laden. And yes, in many ways he was willing to assist and help his old friends.

But even though he was watched by the United States government for a long time, even though hundreds, thousands of documents were seized, you will see that what it shows is that Wadih El Hage was involved in commercial activity and he was also involved in activity for the purpose, lawful activity for the purpose of assisting Muslims in need, in need for food, in need for education, in need to combat the warlords who looked for power at the expenses of their own Somali people.

Yes, you will see a document that the government said that speaks very much for itself from 1997 that calls for military actions, activities. And while the government says that the military activities is a word used by this conspiracy, it is not their word because they don't consider terrorism, the bombing of the embassies as military activity, and neither does Mr. El Hage. What the document says, and you will see, is that in 1997, that some of the old supporters of Bin Laden were going to help the military activity in Somalia.

There were no Americans in Somalia. There were Somalis in Somalia. There were Ethiopians attacking Somalis in the West where the relief agencies were, where Wadih El Hage worked. If this was a military action it was a military action to help the Muslims who believed in Islam, believed in not causing pain and suffering to their people, not starving their people. It had nothing to do with the United States.

If the government wants to call a group of people in Kenya who perhaps secretly had to help the religious Muslims in Somalia a cell, so be it. But you will see that this so-called cell in 1997, in 1996, while Wadih El Hage was in Kenya, had nothing to do with any violent conspiracy or conduct against the United States or United States interests.

There will be no evidence that Wadih El Hage willfully, knowingly combined, conspired, confederated or agreed to kill nationals of the United States.

After 1997, upon his return to Pakistan, his home, before he arrived, was searched by United States agents, and they seized many things. You will see many of the things that they seized. After that, Mr. El Hage decided it was time to go back to the United States with his family, and he and his wife sold whatever they could to raise the airfare to return to the United States. And they did. After an exhausting travel with six children, one infant, his wife, through Saudi Arabia to New York, the government, absolutely aware of his trip, took him from his family at the airport when they were collecting their bags, kept him up late at night. They came and got him the next day and put him into the grand jury, exhausted, knowing that the government said that he was at risk, knowing that many of the people who supported religious Muslims were at risk from their home countries, who do not respect the rights that we do in our country, and grilled him for hours in the grand jury, asked him to remember things that occurred six, seven years ago.

After that, he went home to Arlington, Texas, and this supposed trusted member of Usama Bin Laden's terrorist group, Usama Bin Laden, multi, multi, multimillionaire, was able to convince a friend of his, someone who he knew from before he left Arlington, to allow him to manage a tire

store in Fort Worth for \$400 a week. I say convince him because he had to, because Mr. El Hage's right arm was deformed, and he had to convince him that he could actually change the tires, take the tires down and put them up. And he ran that store with the perseverance, the guts, the hard work that he has shown through all of his life.

He lived quietly with his family, also as a mediator in disputes in the Arlington mosque. He lived peacefully, caring for his family, now having seven children. He left everybody alone.

This time world events not only changed his life, shattered his life. We know, because the government has conceded that Mr. El Hage had nothing to do with those horrific bombings. But he was brought back and asked questions that the government had asked him before, that they knew the answers of, and he was arrested and charged with perjury.

Two and a half years later, he now has his opportunity for you good citizens of our country -- not the prosecutors, not the government -- to make a decision on him. Where is the evidence? We await this opportunity. We will take advantage of this opportunity.

I ask you to do one thing. It is really one thing but it is a very difficult thing, because I sat here when the government gave a powerful opening statement about the horror of the bombings and their effect, and it is even going to be more horrible. You are going to see photographs. You are going to see people. It's going to be terrible. It is a difficult thing. But I ask you to not let that horror, that destruction, steer you away from your job, your job as the people who stand between each and every American and even non-Americans, and the power, the might of the government when they want to do something. Do not lose sight of that, because if you don't lose sight of that, you will see that the evidence will not be there, and the government will not prove that Mr. El Hage conspired, agreed, committed, participated in any violent act against his new country, the country of his seven children, of his wife, and her family.

And yes, be patient. Listen carefully. It is going to be a very long trial. Don't tune out. Don't pay attention to that whistle. Concentrate, and do what Americans do best, use their common sense. And hold the government to their burden. If you do so, then this long for Wadiah El Hage will be worthwhile.

Thank you very much.

THE COURT: Thank you, Mr. Schmidt. Mr. Ricco.

MR. BAUGH: Your Honor, may we take a short break?

THE COURT: Ladies and gentlemen, we will have to take another recess.

(Jury excused)

THE COURT: Is the government going to furnish the jury with pads to take notes?

MR. FITZGERALD: Yes.

THE COURT: You will have that tomorrow morning?

MR. FITZGERALD: Yes.

(Recess)

THE COURT: We will hear one more opening and then we will break for lunch. Bring the jury in, please.

(Jury present)

THE COURT: Mr. Ricco.

MR. RICCO: Good morning, everyone. It would be an understatement to say that I thought a long time about what I would say to you this morning, because I have. I was thinking about it during jury selection. I was thinking about it doing my 5:00 runs in Central Park. I was thinking about it as I sat at home yesterday. And I thought about all of the corny things that lawyers often say to jurors that I try not to say, and I was trying to find a place to start with you all in this trial. I really couldn't come up with a very good place to start, because where could I start?

I stop and I listen to wind. Hear the whistling? People hear different things, they do things differently. Many of you who have been in the court never have heard that wind like that. The wind is here today. Many people say the voices are in the wind, raging in the wind.

There was a lot of suffering in this case, lot of pain in this case. To avoid it is to avoid the reality that the night follows day. And to me, you can hear it in the wind today as we start this trial. It's a reminder. It's a call, a reality check. If you listen, you hear those voices. People lost, people suffering. It says different things to different people. Suffering has always said different things to different people. To those who are inflicting the pain, they don't hear it. To the people who receive it, they cry out.

This case is about that, because I know, and looking in the faces of all of you, that it is going to be extremely difficult to overcome the reality that so many people died here, so many young people died here, so many people were injured here, almost to the point where you would sit back and say, what you talking about. Trial. I'm ready to jump over this bar right now and end this. Trial for who? For them?

And then there is a side of me that understands pain. And the people who suffer from pain always ask for what? Revenge? Retribution? No. They always ask that justice is done. Don't they? I don't care if you talking about black South Africans, Native Americans, African-Americans living here in this country who have suffered, people who are in the Islamic world who have suffered, people in the Hindu world who have suffered, people in the Hebrew world who have suffered. What do they ask for? That justice is served. It's our hope that we have selected at least 12 people who can be a part of the process to see that that is done.

So with that, your Honor, thank you very much. Government. Again I remind you that Mr. Odeh is represented by Miss Babcock, Mr. Herman, and Mr. Wilford. And it is almost -- I've almost said enough. It's time to sit down and let the trial start, and I am very close to doing it.

There are some things that you have to know about this case as you begin this process. It's going to be a long trial, and I guarantee that there are going to be mornings when you walk through that door, you're not going to want to see a face over here. You're going to be angry, you're going to be bitter, because you're going to have reacted as human beings to things that you have seen and heard in this courtroom. What I will be asking you to do now, and as you see any one of the lawyers rise during the trial we are going to be asking you to overcome that anger and overcome that bitterness, to keep your minds open to what, the concept of fairness.

I am not going to ask you to do what most Americans do most of the time and that is prejudice, make their mind up, and don't want to listen to nobody about nothing. I'm going to ask you to do what few Americans do, the real people do, and that is, no matter how hard they get hit, they can listen.

This is going to be a marathon, and in a marathon you got a lot of people who take off from the gate running and then you have other people who sit and understand it's a long process.

This is going to be a long process. I'm convinced I can say nothing to you today that you will remember at the end of this trial or halfway through this trial, other than this: When you come here each day, see that justice is served.

Now, the government opened, Mr. Butler opened. It was a powerful opening. And he set forth what the government intended to prove. What he said was that Mohamed Odeh, came over and pointed to him, he said Mohamed agreed to join an organization whose goals was to kill Americans. And he said, to prove that, you would have to keep your eye on three things. One was that he trained people in Somalia. Two was that he was running a fishing business, right? Right? And the third thing that proved he joined an organization that was intent on killing Americans is that he left town when somebody told him to. Right?

Obviously there must be something more to the story than that, because those three things don't prove a darn thing. What you were told was, the evidence will show what he intended to do. So what I ask you to do is pay attention to the evidence.

What you're going to find from this case straight off is that Mohamed Odeh is an extremely devoted religious man. You're going to find out that Mohamed Odeh is a soldier. He's a soldier. You see it right there. In our country as civilians, we very rarely meet a man like Mohamed Odeh. When you meet him, it's on a battlefield, or at his carpentry shop, or at his fishing business. He has never been to America, though he speaks English -- a little bit.

You're going to find that his participation as a soldier is based on one thing, his love of Islam, his complete faith in the Koran, the sharia. You are looking at a person who believes in it with every fiber of his being, and everyone that comes in contact with him comes in contact with Mohamed Odeh's belief and his religion.

So you say Mr. Ricco, that is very interesting to know, but what does that have to do with this case? It has everything to do with this case, because Mohamed Odeh's reasons for joining Al Qaeda, his reasons for being in Kenya, his reasons for being in Somalia, and his reasons for leaving Kenya when he was told to do so are all based on his religious beliefs.

The government will tell you through its witnesses that Mohamed Odeh joined Al Qaeda but not when he was first approached with it. He joined, but there was a caveat to Mohamed Odeh joining Al Qaeda. See, before he joined he studied it, checked it out. He wanted to know what he was getting into. Some people say he's difficult. He's just different. And when he joined Al Qaeda, he did not join to kill Americans. He joined Al Qaeda, and he agreed to follow Bin Laden, but only to the extent that Bin Laden would engage in acts that were Islamically correct.

To us who live in this culture, that's a difference without a distinction, it's meaningless. The difficulty that you have in this case is that you as jurors have to try to understand actions and the associations of a person who is not a part of our culture. The nuances of his culture that are important to him, that help guide him in his decisions are something that's a little foreign to us. Some of us, you're either with it or not. Take it or leave it Sam. He doesn't live in that type of culture.

Mohamed did not come to Islam that way initially. You will find, for example, that his parents, his father was a teacher and his parents sent him off to college when he was a little older than most of us when we go to college. And he went to school to study engineering.

While he was in college, like many of us who go to college, he was exposed to ideas. Some of the ideas that Mohamed was exposed to was the Islamic revolution that was taking place in the world at that time. Some of us when we go to school, all we worry about is getting our degree so we can get out here, get a good job and make as much money as we can for as long as we can. Well, he's not like that. He was called into the religious faith, and eventually he left the Far East University and he traveled to Afghanistan.

And why did he go to Afghanistan? He went to Afghanistan for the same reason that tens of thousands of other Muslims all around the world and non-Muslims went to Afghanistan. He went there because he was fighting -- he went there to support the fight to take the yoke of the Russian government off the backs of Muslim people. He didn't go there to sell shoes. He went there as a soldier, and he is proud of that. Let me say that again. He's proud of that. He's a straight-up person.

In Afghanistan, he wasn't trained in terrorism. That's a perspective. He was trained in how to fight in a battlefield. He was a college student one week and he became involved in a battlefield the next. Somebody had to teach him how to do that, and he was taught those skills, and he was taught them well, because he's still here.

In Afghanistan, he had an opportunity to meet others, and one of those others were people associated with Usama Bin Laden.

Now, I'm going to tell you something. Mohamed Odeh does not distance himself from Usama Bin Laden, because as a Muslim, he doesn't believe that that's his right or his responsibilities. He is not Usama Bin Laden, and, contrary to our perception of people in the Islamic world, that they are sort of the horde of unthinking people who just act as robots, just like other stereotypes that people have in this culture, it is so far from the truth that it's choking. Mohamed participated in Afghanistan, joined Al Qaeda, and when time came for him to leave Afghanistan, he left there with a valid Jordanian passport.

That becomes important. It becomes important because to me it is important for you to understand a couple of things. One, who is Mohamed Odeh? Two, what is Al Qaeda? Three, what did he have to do with it? Four, how come he was in Kenya? Five, why he left? And six, with all that training and what not, how come he spoke to the American government when they asked him to?

These are important points. These are points that you need to focus in on if you're interested in giving Mohamed a fair trial, in addition to the points that the government wants you to listen to. I am not talking to the exclusion of the government.

You got to understand what he was doing in Kenya, why he left, and how he left. What the facts are going to show is that Mohamed came to Kenya lawfully with his Jordanian passport. He lived in Kenya. Mohamed fell in love in Kenya. Yes, Muslims fall in love, just like everybody else. And you're going to find that he met a Kenyan woman, and that they have children, one of which he has never seen. What you are going to find is that he had a home for himself in Kenya. I like to say that he was living in less than modest accommodations. He reminds me that they are very less than modest.

What the evidence is going to show is that Mohamed Odeh lived in a little town called Witu. Witu is a little place barely on the map. It's less than 5,000 people. They have no running water. At times he drinks rainwater, like everybody else who lives in Witu. There is no postal service in Witu. They have two telephones in the entire town. He lived there in a mud-thatched hut with his wife. To live like that, you got to be in love, in today's world. And he was in love, and he still is. Witu is a completely isolated town. Mohamed chose Kenya because of the involvement in Somalia, its proximity, but he chose the countryside of Kenya because it gave him solitude and a chance to think.

It becomes important for you to understand this because the government puts into compartments the facts of his life, and they say to you these three oblique facts, the reason why he left Kenya, the fishing business, and his work in Somalia proves he intended to kill Americans.

Several months before this event happened, people who participated in the bombing started to come to Kenya. One of those people spoke to Mohamed. They told Mohamed, you going to have to leave Kenya several months from now. So get ready. So what did Mohamed do? He applied for his passport. Several months went by and he saw another visitor. We're going to have to leave soon. Mohamed was not ready to leave. Mohamed had a family, he had a business, he had some responsibilities.

As the day became closer to the time of August 7, people began to get impatient with Mohamed. Now, it becomes important, and Mohamed leaving Kenya is important, because Mohamed knows everybody, even though he's living in Witu. Why? Because he's trained with some of the people, he's fought with them.

When he is approached, the attitude at first several months ago was sort of soft. Now the attitude was more urgent. What he was ultimately told was, you have to leave now, you got to go. And Mohamed, who was not prepared to go, ran into one of the persons on the street, and in the middle of the street there was a shouting match between Mohamed and one of the individuals. And they wanted him to leave. He didn't have the travel papers to leave, so they offered to give him the travel papers to leave. Mohamed would have preferred to travel on his own passport, and

he did not. He took the advice of another, and he traveled with that passport. And he didn't shave his beard to hide his identity. He's going to Afghanistan where people know him. He shaved his beard because the passport that they gave him had a picture with a guy with a beard on it. So the notion was, I'm going to say well, that's me without the beard.

Now, what you going to find, which is important, is that after the bombing all of the people scattered. Some went to Karachi, some went to Pakistan. Some made their way back to Afghanistan. Mohamed was asked to leave Kenya, because Mohamed was a link.

See, the one thing you want to understand about Islam is that there are a lot of people in Islam who are really true believers, and in Islam, the concept of committing suicide is fundamental, of killing oneself is not permissible. The concept of killing children is not permissible. The concept of blowing innocent people up is not permissible.

I submit to you that when this plan was hatched, the last person that anybody wanted to tell what was happening was Mohamed Odeh, because Mohamed Odeh did not and would not participate in any act that is contrary to his fundamental religious beliefs, and those acts were. And we believe the evidence in this case is going to show that without a doubt.

So it was important for him to leave. He was moving too slow, but he had to go. When he was told you have to get to Afghanistan, he had to go.

What you are going to find is that when he was traveling with this passport that was given to him, when he got to Karachi, everybody got through except for who? The guy with the phony passport. In a lot of ways Mohamed, when he got stopped at the airport, created a diversion that allowed the other people to slide away. The evidence is going to show that in that case.

Some of you may say, why did they ask Mohamed to leave? Because they recognized that if you ask Mohamed a question you're going to get an answer. And Mohamed did exactly what I submit to you people feel he would do, because he was brought back to Kenya and he was questioned by US officials and Kenyan officials. And what did Mohamed say when he was questioned? There was some talk about him getting a lawyer and efforts were made to accomplish that, but ultimately there was no lawyer available for him, and the conversation went back and forth, and Mohamed said I want to speak to the Americans alone, I'd like to speak to the Americans about the questioning. He did that for a reason. And ultimately what was accommodated was that he was questioned by the Americans with the Kenyans present. And Mohamed spoke about his involvement in Al Qaeda, his reasons for joining Al Qaeda, his life in Kenya.

Mohamed Odeh had no reason to kill Kenyans. He is married to a Kenyan. His children are Kenyan. His neighbors are Kenyan. So he spoke to them about his involvement. And when he was asked questions he answered them. That might be a little difficult for some people but that's what happened. He was shown pictures, he responded. So, they say, why did this hardcore person who is trained in terrorism, etc., etc., why did he speak? He spoke because he had nothing to hide.

During the trial, you will have the opportunity to read his statements. You will find that the atmosphere that Mr. Odeh was questioned in was calm, it was cordial. He had an opportunity to speak and to be heard. Questions were asked. He was given breaks. But you also are going to hear there was a little stuff in the game, and the part of the game was that he was held incommunicado there for about 13 days, unable to contact his wife, unable to contact his family, and subject to questioning over that time period. And throughout that time period he was asked many questions over around again, from different angles back and forth, and then when they finally stopped asking him questions, they started asking hypothetical questions. So in the statement you will see him responding to hypothetical questions, what if, what if this and what if that.

I mention that to you because it is going to be important when you listen to the facts, and when you see us during the trial, when you see Mr. Wilford, when you see Mr. Herman, when you see Miss Babcock talking to witnesses, asking them questions, the questions we ask them are going to tie into those points that we think are important to his defense and deal with the issues raised by the government in its opening.

During the preliminary charges to you, the judge talked about inferences, rainy days, seeing people in raincoats. I am going to submit to you this, that one of the things I want you to keep in mind during the trial is not so much whether or not an inference is reasonable, but I want you to ask yourselves whether or not the inferences that people are asking you to draw are accurate, whether they are accurate.

I have said probably most of what I want to say at this point. A lot of what I am talking about is difficult for you to focus on now. That's because Mr. Butler was right. There are so many names, there are so many events that it is very difficult to understand how these things connect now. But as the trial progresses, you will become more familiar with the names, more familiar with the places, and you will begin to make the connections.

My concern is that you don't rush to judgment before the end process and that you resist the great urge to make up one's mind and to look down at these men and say uh uh, not me, I'm not hearing it. That is going to be our greatest struggle. The government has said, they have talked about his association, I want you to look at his association and to see whether or not the inference that the government wants you to draw is an accurate one.

In a lot of ways this case is about many, many different things, too many to cover in an opening statement. It's important for you to understand that Al Qaeda is a very broad concept. The concept of Al Qaeda and what made it attractive to so many young men, and not so young men, from around the world was not that it stood for fighting but the concept of Al Qaeda stood for helping people that were poor and down, helping them financially, helping them spiritually. And in some instances it also meant fighting.

But it is important for you to recognize, not to get caught up in what I call demagoguery. It's done in our culture. If you are a member of the Nation of Islam you're this, if you're a member of that you're this. And people in our culture make associations based on what people wear and how they talk and they're often wrong.

It's very difficult to understand a concept like Al Qaeda because we don't have one in our culture. So you're going to have to try to deal with what that concept means, and what it meant to Mohamed Odeh. Because, see, Mohamed Odeh is a person who thinks. He's a man. He has a right to say no, I don't want to be a part of that. And Al Qaeda does not require his blind allegiance. He has a right to think and to make an assessment. And he is very dogmatic about that. Right?

That's about all I have to say. During jury selection we spent a lot of time talking about the death penalty, could you do this and could you do that. Mohamed Odeh is not faced with the death penalty in this case. Your decision on his case is guilt or innocence. It's the enormity of the loss of life that makes it very, very difficult in this case.

I am a person, very difficult for me to listen to people that talk at me. As jurors y'all are about halfway through a day of having lawyers talk at you. It's very difficult to do it. All of the lawyers have so much to say, both the government and the defense, so much to bring to your attention.

You got to fight off the weakening, you got to hang in there, because if you don't, you're going to miss it. And in a case like this where so much is involved, it's apparent from all the people who are here today, and the time and the care that we took in selecting you as jurors, how important this case is.

In the end, when it is all said and done, we have to accept your judgment. We believed that we picked people who can exercise sound judgment, and we hope and pray that we were correct. If we were not correct, then this exercise is a waste of time for everyone involved.

So with that, ladies and gentlemen, that's all I have to say this morning, and let's see what the trial brings on.

Thank you very much. Thank you, your Honor.

THE COURT: Thank you, Mr. Ricco. We will take our luncheon recess and we are adjourned until 2:15.

(Luncheon recess)

{BOn}AFTERNOON SESSION{BOff}

2:15 p.m.

(In open court; jury not present)

THE COURT: Good afternoon. You may be seated. A couple of logistical items. Just let me caution you again about the fact that there is a speaker that takes everything down to room 7 for the overflow. It picks up various things. Mr. Cohn, you're talking to somebody.

MR. COHN: I know. We're concerned about it. We don't know what to do about it.

THE COURT: Well, just be aware of it, that it is a problem.

MR. COHN: I'm trying to cut out the speaker here and we can't.

THE COURT: With respect to Thursday where the jury is not coming in, but we're conferencing at 2:30, the interpreters service asked whether interpreters will be needed on Thursday. That's a question of whether counsel wish to have their clients present. My understanding is it is primarily discovery and CIPA matters.

MR. COHN: That's what it is primarily.

THE COURT: It's got to be a yes or a no.

MR. RUHNKE: No.

THE COURT: No, we do not need interpreters.

MR. RUHNKE: We are checking, but it's our feeling we probably won't.

THE COURT: Please let me know definitively first thing tomorrow because feelings don't translate into instructions.

I have a recollection of having received a letter which I cannot locate -- which isn't surprising because I'm still working out the logistics of functioning in the two courthouses -- dealing with the testimony of the next witness and hearsay. Did somebody send me a letter?

MR. DRATEL: Yes, your Honor.

THE COURT: Do you have another copy of that letter?

MR. DRATEL: Yes.

THE COURT: My thought would be, unless anyone has any strong objection, that we end early today. The weather is pretty bad. I'm sure the jurors will appreciate it. And that we use the time after the jury leaves to deal with problems, if there are any, relating to the next witness. Is that agreeable with everybody?

MR. COHN: Yes, your Honor, as far as I'm concerned I think I'll be 15 or 20 minutes, and I don't know how long Mr. Schneider has, but I can't imagine we're going to fill out the day.

THE COURT: All right. This morning when I made available the blank questionnaire I was unaware of the fact that I received a letter from Cable News Network asking to see the blank questionnaires. That we've given them. Their other request is the completed juror questionnaires of the 18 chosen members of the jury.

What I would ask is that the government and defense designate some paralegal to carefully edit a set of those questionnaires so that we are confident that there is nothing contained in the questionnaire which can lead to establishing the identity of the juror. Some of these questionnaires it does not take very skilled investigator to ascertain who the person is. So if in

doubt the matter should be deleted. Obviously, gender, age, general statement as to occupation, things of that sort are all right. Can we have that by Wednesday morning?

Our agenda for Thursday is El Hage discovery and CIPA. Now, I received letters saying that the defense were going to file letters with respect to CIPA on Friday. Obviously, it would be much more helpful if we could have those letters before the Thursday.

MR. SCHMIDT: I don't think it was concerning Mr. El Hage, your Honor.

THE COURT: I think it was maybe Mr. Cohn.

MR. COHN: We have a more important problem, your Honor. I just have to advise the Court that my client has instructed me not to open, and I don't know if I am going to obey that, but I'm putting it on the record that he has made that instruction.

THE COURT: Well, that's a decision for you to make in the first instance, Mr. Cohn.

MR. COHN: I know, but I think that given everything if he gives me such an instruction, the record ought to reflect it.

THE COURT: The record now reflects it. Whether you open or not is something I think you ought to advise us as to what you are going to do before the moment arrives and the jury is here.

MR. COHN: Counsel having conferred, we're not going to open.

THE COURT: No opening, all right. That will make an even shorter afternoon.

All right. I take it there will be an opening on behalf of KK Mohamed?

MR. SCHNEIDER: Yes, your Honor.

THE COURT: Very well. Mr. Cohn, will you rise and say that you waive opening?

MR. COHN: Yes, your Honor.

THE COURT: Now I prepared the jury for that in my preliminary remarks saying --

MR. COHN: I would appreciate it.

THE COURT: Who would be next?

MR. SCHNEIDER: Mr. Schneider, your Honor.

THE COURT: Mr. Csakany, I take it transportation will be available for the jurors as soon as they're finished?

MR. CSAKANY: That's right, your Honor.

(Continued on next page)

(Jury present)

THE COURT: Ladies and gentlemen, I think we're going to have a relatively short afternoon. We began a little early and we're going to end a little early. I can't guarantee that that will happen regularly, but we can do it today and since the weather is very bad out there, I'm sure you'll appreciate being able to get home early.

Please, tomorrow morning, allow for the weather conditions so that we can begin promptly tomorrow. I fully anticipate we'll have a full day tomorrow.

I believe the next order of business is an opening statement on behalf of the defendant KK Mohamed. Mr. Schneider.

MR. SCHNEIDER: Thank you, your Honor.

Good afternoon. Now this morning Mr. Butler got up to you and he spoke and he had very powerful images that he gave you in his opening statement.

THE COURT: You are going to have to use that microphone.

MR. SCHNEIDER: Whether I like it or not.

THE COURT: Only if you want to be heard.

(Laughter)

MR. SCHNEIDER: As long as the jurors can hear me, your Honor. Now, when those compelling images that he conjured up that you were thinking about the feelings that you had, the thoughts that you went through he spoke about the Kenyan embassy, the bombing of the United

States embassy in Kenya, excuse me. And at that point he was talking about it and you pictured people coming to work, just living their lives the regular way and then all of a sudden, boom, the world changes.

Then he began to speak to you and he said: Well, these two bombings were part of a worldwide plot, and he kept discussing everything. And I like jerked up, and I had to listen and I had to say to myself: Did I miss something? Did I miss the whole point of his opening? Because all he spoke to you about in the beginning was the bombing in Nairobi.

He completely forgot in the beginning of his opening, before he said to you these two bombings are part of a worldwide conspiracy, he didn't say word one about the bombing in Tanzania. And I have to tell you it concerns me that the government in their opening, the first few minutes when they're talking to you about very powerful moving images forgets about the Tanzania bombing especially when my client KK Mohamed is involved only in that in their charges, in their allegations.

So I have to remember to try to speak to you now, so you won't forget things, so you won't combine things, so you won't confuse things. And what's important about that is that you have to know facts, you have to know names, you have to know dates, and places. And Mr. Butler is correct, it's important to give just a road map, because there is years and years and hundreds of miles and so many names, foreign and nonforeign names, that will be difficult for you to remember.

So I'm going to try to make your life a little bit easier if I can. I'm going to try to make what really matters in this case regarding my client, Khalfan Khamis Mohamed, who I am going to refer to KK, so that there will be no confusion, because you're going to hear so many names over the months that may overlap that are initially unfamiliar to you. So there is no one else that's going to refer to anybody except KK. So that's what I'm going to talk to you about. I'm going to make it clear for you. I'm going to make it easier for you.

The government's evidence is going to show you that in the months preceding the August 7, 1998 bombing they are going to show you that he knowingly participated in the making of a bomb. They are going to show you -- this is what the evidence is going to show -- they are going to show you that the bomb that he knowingly participated in was later used to bomb the American embassy in Tanzania. And he's going to show you, the government's going to show you, that as a result of that one bomb 11 Tanzanians were killed, dozens were hurt.

Ladies and gentlemen, we are not running away from the evidence. We are not running away from the truth. We are here confronting it, telling you the parts that refer to him and reminding you of the parts that do not refer to him.

When you're asked to judge someone or asked to judge someone's conduct, it's important for you to know who that person is, who he's not, what that person actually did and what he didn't do; why he did certain things; what he knew and what he didn't know. And that's how you can first analyze and judge someone, someone's actions, someone's conduct, when you know all of those things.

Now, let's look, if we can, at what he did not do, what he didn't know about, because this will take those issues off the table and make your life, I hope, easier and clearer and more confined, discrete and finite. Because I am speaking to you no matter how many times I may get up and laugh and joke with the other members of the defense team for all these defendants, I represent one defendant here, Khalfan Khamis Mohamed. We're friendly. We get along, everybody, that's it. But, remember, I'm speaking to you on his behalf and his behalf only.

So let's look at what he didn't do. He never had anything to do with the Kenyan bombing. Did you hear that? He never had anything to do with the Kenyan bombing. I'm not just saying that as a lawyer. I'm telling you that because he is not charged with it. He never knew about it until he

heard about it in the news. He never talked to anybody about it. He had no knowledge about it. He never discussed it. He never planned it. He had nothing to do with the Kenyan bombing.

Usama Bin Laden, number one guy, worldwide terrorist. Remember during jury selection how many of you when you were asked what you heard about this, what you read about, not one of you, not one of you knew any of the names of the people here. You did, some of you, knew Bin Laden: Bin Laden's this, Bin Laden's that; Bin Laden did this; he did that. That's about Bin Laden.

What I'm telling you, ladies and gentlemen, see that guy sitting right there, okay? He never met Mr. Bin Laden. He never talked to Mr. Bin Laden. He never heard him speak. He never heard him speak at a rally. He never heard him speak on the radio. He never heard him speak on the TV set. He never heard him speak on any kind that have been distributed world wide to his so-called followers. He was, if he bumped into him on the street and saw him somewhere in Tanzania, he wouldn't know who the man was back in 1998.

Not only did he have nothing to do with Mr. Bin Laden himself, he had nothing to do with any organization remotely connected to Mr. Bin Laden. He nothing to do with any businesses remotely connected to Mr. Bin Laden, and he had nothing to do with any group remotely connected to Mr. Bin Laden. That now takes that issue off the table for you. It's uncontroverted, and you can't forget it. You have to remember what they charged, what he did and what he didn't do.

Al Qaeda. He is not today, nor was he in '98 or 93, '94, in any year, he was not, nor was he ever a member of this thing called al Qaeda. Never. Never signed his name to membership. Never swore any kind of oath. Bayat, B-A-Y-A-T, that's a sworn oath to become a member of al Qaeda. If this thing exists the government will tell you about that. And I'm telling you there is no evidence in the world that you will hear from the witness presented by the government that he ever swore to any oath to al Qaeda.

He never discussed with anybody who he may have talked about anything about al Qaeda. He never heard of the group. He never heard of the organization. Nothing whatsoever to do with that. Now, so that's off the table. Remember him and the evidence. A fatwa, one of these statements, F-A-T-W-A, a statement that was supposedly issued by Mr. Bin Laden. He, KK Mohamed, never heard any statements issued by Mr. Bin Laden to kill anybody, Americans, military, civilians, nothing whatsoever.

These are things you can't ignore. These are things you can't forget. These are things you must always focus on when you're asked to evaluate the evidence against someone who is facing the death penalty.

(Pause)

Well, let's look at again when what else KK didn't do or didn't know in evaluating this case. Let's look at who else is more -- let's look at who else was more involved. Let's look at who else was more necessary for the successful completion of any operation. Let's look at who else was irreplaceable in this organization or in this plan. Let's look at who else is more culpable, more guilty, more involved than KK Mohamed, because that's something that you can't just ignore when you are deciding someone's fate.

You know whenever you have an organization or a group or a plan there is usually an organization hierarchy somehow somewhere, and what happens is people that do the theory they discuss, they plan the theory, the ideology. They're the thinkers. Well, he clearly was not part of that. That was not his job or his role. He was not part of the ideology in terms of making up how he followed what he should be doing.

He is not the source of any money. You need money to run these organizations, to run these plans, these conspiracies, these plots. He was never the source of any money.

He was never the source of any supply of anything that was needed to be made or to be done. He never supplied those necessary items. He was not a planner of any of these next steps. He didn't give orders.

He was not a leader. He was not someone who said okay, now you must do this; now you must make arrangements to do that. That was not his role. He was not a recruiter to go and find other people to help in this plan.

He was not an expert. An expert is someone who you need to carry out a mission. Nobody needed him for anything. He was not an expert. There are experts in military, in tactics, in escape, in making bombs, in engineering, in mechanics, in travel, anything of that. He was not a necessary element in any aspect of any mission whatsoever. He was not a technician. He didn't even know how to put one thing together with something else.

What was he? He was a gofer. That's it. Do this. Okay. Get that. Okay. We need this. Okay. I'll obey. I'll listen. I'll do whatever you need me to do.

He was used by the higherups, by the leaders, by the people who make the ultimate decisions in these kind of things out in the world. Not him.

He was a fungible worker, someone who can easily be exchanged, interchanged with anybody else. When you hear about what he did, when the government presents the evidence to you about what he did, you can just pick him up, you can just take him out, you can move him away, and you can put anybody else in the world in his spot and that person will fill his role just like that.

And that means a lot in a case like this. That means a lot when you are discussing or evaluating the relative responsibilities of people involved in a mission, or when you're asked to evaluate in a death penalty case the relative culpability of people involved in a mission.

THE COURT: Ladies and gentlemen, I want to remind you of what I said earlier, and what I said with respect to the death penalty, and that is that punishment and the death penalty is not an issue with respect to the determination whether the government has proved beyond a reasonable doubt the guilt of the defendant.

When you hear arguments with respect to death penalty and relative culpability and so on, understand that punishment is not at all a consideration with respect to the question of whether or not at the end of this proceeding the government will have proven the defendant guilty beyond a reasonable doubt.

MR. SCHNEIDER: Thank you, your Honor.

Now, when you are evaluating the evidence in this proceeding and listening to who did what and the evidence against KK Mohamed, you'll hear what he did, and what others did. That is an appropriate thing for you to consider at the first proceeding, as the Judge just told you.

So he is someone who had no special knowledge. He had no unique talents. He had nothing that he brought to the table that was all of his own. He was a pawn and he was a pawn that was used by people who are not here before you now.

Now, I told you a little bit about what he didn't do and what he wasn't involved in. And I also spoke to you about Mr. Butler's compelling powerful opening. And he himself said that the words do not or cannot convey to you the devastation, the feeling, the damage that went on there back in August of 1998, and he's right.

But I'm telling you now, ladies and gentlemen, you're going to see photographs, you're going to see videos, you're going to hear, you're going to see images that could very well stay with you forever, and you're going to react in your hearts, in your stomach, and in your head, and you're going to hear people, victims talking to you about what it was like. You're going to hear it, and you're going to react in your heart, in your stomachs and in your head.

And you're also going to hear some of the words, some of the words, some of the biting, the terrible words that the government says KK Mohamed used when he was questioned after he was arrested.

And you're going to react. You're going to react when you hear the words, see the pictures and hear the phrases that were used. And you know what you may do? You may gasp. You may turn away. You may get sick to your stomach. You may get scared, and you may get angry, and when Mr. Ricco spoke to you earlier before lunch and he said: Trial? Trial? You may hear some things and you may want to jump right over this rail and get to us right now. And I'm telling you that's going to happen.

You're going to feel that way. You're going to have a normal reaction to seeing and hearing the most horrible devastation that happened in August of 1998. But I need -- you're allowed to react, you know. No one can tell you how to feel. No one can tell you what to think about. But we can ask you just to withhold your judgment. We can ask you to remember that it is not just how you feel in February, but it's going to be February, March all the way until the end, until the case is through, you have to withhold your judgment in this case. You're going to see and hear things that are going to make you shiver.

You know, I'm telling you and I want to remember, this moment now, okay, when you get that reaction, I want you to remember to say to myself: Oh, I have to remember to just back up, just to withhold. Just remember what we're dealing with here, because you're going to hear the government is going to present witnesses that are going to say that that guy sitting right there, KK, wished Americans had been killed, instead of Tanzanians. You're going to hear the government say that.

You're going to hear the government witness get up and testify that he said: I'm not sorry for it. You're going to hear them get up and say: I would consider doing it again. That's going to make you at that point, you want to jump up, get over and say: How could you say that? How could you do that? How could you sit here and ask me to just not throw my hands up and say, forget about it?

Well, as of October 5th of 1999, from that point on that's when, October 5th to October 7th, that's when Mr. Mohamed was arrested and he was questioned. Withhold your judgment.

But you know what you can do when you hear all these terrible things, when you hear what he said, when you hear what his reaction was, when you hear what he felt? You need to ask yourselves why? Why? Because why people do certain things matters. Why they act a certain way matters and a number of you even spoke about it during the voir dire portion of the trial.

I'm telling you, ladies and gentlemen, KK Mohamed acted purely out of principle. He acted purely out of deep, deep religious beliefs, out of deep philosophical convictions out of his understanding of the Koran, out of the fact that his interpretation of the Koran and of Islam may be extreme, but it's his. He believes it. And let me tell you something else: It is also a belief held by millions of other people around this world.

That's what he did, act. That's why he said those things because of what he believed, what he felt, what he thought what he learned about and what he knew. Why didn't he act? In other words, why didn't he do this bomb? He didn't act out of greed. He didn't act to make any money. He didn't act out of lust, out of personal ambition, out of personal gain, out of any attempt for him to gain power in the world organization, for him to move up within any kind of an organization. He didn't do that. He didn't in any way act out of a sense to move up the ladder of the organization or do anything for purely personal gain.

Now, I think there is a hierarchy of evil in this world, you know, and people who act out of principle, out of religious convictions or religious beliefs, should they be judged the same way as someone who is completely acting out of greed or money or power? Is there a hierarchy of evil? Is there a way that you judge people and acts differently depending on why one does something?

Now, let's be very clear. Let's move the mic here so you can be very clear. I am not telling you I agree with what he did. I am not telling you that I agree with his beliefs or his understanding or his interpretation of Islam. I am not telling you that I am trying to justify what he did. I am not trying to excuse what he did. I am not.

I am only, only trying to explain. I, David Stern and David Ruhnke, we are three lawyers representing KK Mohamed. No one sitting at that table is agreeing, is justifying, is excusing what happened.

When I talk to you about a hierarchy of evil or deep philosophical beliefs, I'm just trying to explain it. I'm trying to clarify it, and I'm trying to just ask you to individualize the evidence and the conduct against individual people who are charged with very specific crime. So if you believe that someone acts out of principle or deeply held religious or political beliefs, then it shouldn't surprise you if they don't feel sorry for what they did. It shouldn't --

THE COURT: Again, I remind the jury that some of the issues which you are hearing, which may be very pertinent if and when the question of punishment comes before you, are not pertinent with respect to whether or not the evidence in this case will prove beyond a reasonable doubt what a particular defendant did, providing you find that he did it intentionally, voluntarily, willfully, and it's a distinction which should not be confused.

Please proceed.

MR. SCHNEIDER: Thank you, your Honor.

THE COURT: Please proceed in accordance with the statements that I've just made.

MR. SCHNEIDER: Always, your Honor.

The reason I'm telling you this, the reason I'm talking about hierarchy of evil, and what you have to be concerned about, is because during the guilt phase, during the first phase that the Judge is talking about, you're going to hear witnesses talk about statements that were made by Mr. Mohamed, and that's going to be in the guilt phase, in the guilt first portion of this case. So it's relevant for you now to know what his motivations were, because you're going to hear about it in the guilt phase of the case, and you're going to know about it.

So it may be relevant later for the penalty phase, but you're going to hear about it in the guilt phase, from the government's own witnesses, and don't forget about it. So that's why I need to tell you about it now, because, remember, I'm asking you, okay, you can react when you hear things that you don't like or see things you don't like, but withhold judgment. That's why it's relevant for the guilt phase of this case against that man right there.

On October 5th when KK was taken into custody in South Africa, which you'll hear a little bit about, he was questioned for a few days, the 5th, the 6th, the 7th, portions of those days, and when he was questioned really the only promise that was made by the agents was that the Judge and the prosecutors would be informed of any cooperation, any information he may give to them. Those are the only deals that were made. There was really no other deals or promises made to him. And he spoke to them from the 5th, the 6th, the 7th, broken down over a few periods of during those times.

Now, I do need to talk to you a little bit about the historical background or perspective of the case and where KK fits in, because you know this indictment talks about years and years of activity. This indictment talks about hundreds and hundreds of miles of different places all over the world. So you have to know -- I suggest you should know where he fits into the world and what make him who he was back years and years ago.

He's 27 years old now. He was born in 1973 in a tiny island called Pemba. It's right off Tanzania. Now it's so tiny that this morning when Mr. Butler had the map flashed on your screens of Tanzania, of Kenya, of Africa, and you all were able to see it, it's not even there. That's how tiny. It doesn't even exist on that particular map that the government showed you. That's where he was born.

He'd never been to this country until the agents brought him here. His father passed away when he was a very young boy. He has three brothers, three sisters. He is one of a twin, he has a twin sister, and he has a number of half brothers and sisters as well.

Now, that's 1973 in this very tiny island of Pemba. A number of years later, 1978, the communists took over Afghanistan, okay. He's five years old at the time. The communists take over Afghanistan by force. They become the ruling party in Afghanistan.

Sometimes in 1979 freedom fighters called Afghan muja hadin or resistance fighters they declare jihad, a word that you heard about on Mr. Butler's opening, they declared jihad against the Communist government in Afghanistan.

In the end of 1979, the Russians, the communist government of the Soviet Union invaded Afghanistan and the mujadin declared war against the Russians.

Now, you know, ten to 3. You've been here since a quarter to 10. It's hot, or at least I'm hot, it's -- worried about the snow. We heard a lot of lawyers talking. You heard a lot of information. I'm sure you tried hard, and I hope you are trying now to listen to all of it, but I know it's hard. I know you want to get out of here. I know a lot of what I'm saying is going like, you know, kind of going away.

And I know that because I know what it's like to sit and listen as Mr. Ricco said, to lawyers talking at you. I'm trying not to talk at you. I'm trying to tell you what it's about when someone charged right there and how he fits into the world, because the government brought these charges of a worldwide conspiracy, so I need to try to put him in a perspective of the worldwide events that molded him, that affected him, that will affect you in deciding this case, the guilt part of this case.

So he goes to school in Pemba, enters primary school when he's 7 years old. Now, this is a relatively significant time. 1984 when he's 11 years old, thousands and thousands of young Arab men flock to Afghanistan. They can't wait to get there. They can't wait to get there to be trained. They can't wait there to fight. They can't -- it's like kind of like a rite of passage for a young Arab Muslim man to go to Afghanistan during this period, because they want to go to fight to help their brothers and sisters who are being oppressed under the Communist regime.

And the USSR, the Soviet Union, backed that Communist government. And you know what? You know who backed the Arab freedom fighters? United States. United States. We supported the Arab resistance in 1984 in Afghanistan. We, the United States, supported the training in Afghanistan. We, United States, supported the fighting in Afghanistan. We didn't just support it by having some politicians getting up there and say, we think it's a good thing. We gave them guns. We, you, them, everybody gave them guns to fight there in Afghanistan, these training camps that the government has talked to you about.

Sometime in '89 or '90 a number of years later, KK attends secondary school in the island where he lived. And during that same year that's when the Soviet Union, they got beat, they're out, they're gone. Later the next year, KK moves to Dar-es-Salaam, that little tiny island off Pemba, with his family moves to Dar-es-Salaam, which is a bigger city in Tanzania, and he lives with his brother and his family and he works in his brother's shop.

His brother owns a little store, a little store in Sar-es-Salaam and KK works there in 1990. 1991, the very beginning, that's when the Gulf War. Mr. Butler spoke to you about the Gulf War. Iraq had invaded. They were defeated, and then the US, we went into Saudi Arabia.

That's when everything began to churn, and gets involved with Saudi Arabia being the holy place and two holy sites and things of that nature.

Well, in the early '90s there was tribal warfare in Somalia and hundreds of thousands of people died because of famine, because of the tribal wars in the early '90s. This is the context. This is the world under which he is growing up, someone who is a Muslim, someone who is learning about his life, his world, and the world around him.

So you have the issues in Bosnia in 1991 and 1992 in the end of '92 the US sends, I think they were called a humanitarian mission to Somalia. '93, that's when the US planes bombed Somalia, and that's when you had some issues regarding other people going there to fight.

Now, that's kind of all kind of a background to what led KK to certain activities in 1994. It gives you the context of who he is in the world. In 1994 he decides to exercise his rite of passage as someone who studies Islam, someone who was brought up in a Muslim world, and he decides to go to Afghanistan and he goes to Afghanistan to learn to help others; to see what he can do to help his Muslim brothers and sisters around the world, and, if necessary, use armed struggle.

Make no mistake about it. I am not saying he's just out there as some preacher preaching the good of the rest of the world. He went there to see whatever he could do, armed struggle if necessary. And he was trained for a number of months, about nine or ten months, in some light weapons there. And he also studied. He had religious studies in this Afghanistan training camp that the government talked about. He had religious studies. You know what else did there? He played volleyball. He played soccer.

And there were thousands of others that were trained over the years during the time he was there and times he was not there. In fact, this camp is not just like a very discrete camp that they have very specific training for a specific mission, they go out and they commit all these crimes. There is sometimes that there was -- you know why there was no training going on during the camp when he was there? Because they didn't even have any facilities. They didn't have the weapons. They didn't have what was necessary for training to be done.

So at this time during his training in 1994 in these Afghanistan camps he never even heard of Usama Bin Laden, he never heard of him, never new of him, didn't know anything about him. He heard of other people talking about him.

In 1995 he left the camp and he went back to live in Dar-es-Salaam. Now, this is interesting. When he left the camp he was told to leave a contact number in case we need you for something, if it is necessary for you to become a soldier in the war against whoever. Leave a number we could reach you. Okay?

He did. He left a number and address where he could be reached. He was never called. Never a letter. Never a communication. No one ever said: We need you for '94, '95, '96 and '97. There was no such contact at all. Don't call us, we will call you. They never called him. They never needed him. He was never part of any plan.

In 1995 when he went back to Dar-es-Salaam. He lived there with his brother and he continued to live with his brother, his brother's family and he worked there with him. '96, his brother lost the shop, but he still continued to live with his brother. '97, he still lived with his brother and the family but when his brother had to move to London for whatever reason, for business reasons, so he began to live with other members of his family.

For '95, '96 and '97 he just went about his life. There was no contact with anyone, no bombs, no discussions, no Bin Laden, no al Qaeda. There was nothing, no training, nobody contacted him, nothing. He was working. He was studying. He was living with his family. And that's what he did.

In 1997 he took a trip to Mombasa, a city in Kenya, not Nairobi. Mombasa is a different city. He went there. He traveled. He met some people. He discussed Islam with other people, and he prayed at different locations. He had no discussions no nothing, no meetings with Bin Laden, nothing to do with al Qaeda, no bombing. That's '97.

He goes again sometime in '97 because he goes to Mombasa. He's only in Mombasa for a couple of weeks. He comes back to Mombasa. When he comes back from Mombasa, again, he just travels. He met some people. He met some friends. He was there and he discussed Islam with others. He was there for maybe a month or two. No Bin Laden, no al Qaeda, no bombings, nothing.

'97, he goes to Somalia. Now, these are all, you know, you'll see them from the map in terms of the trips that he makes, goes to Somalia, and the first time he went there to see if he could help anybody in Somalia because there was a terrible, terrible situation there. He was told that there were tribal wars going on there, that he went to see if he could help.

When he was there he showed others about the little bit he had learned running light weapons at the training camp in Afghanistan in 1994. There was no fighting of any kind in Somalia in '97 that he was involved in. Nothing whatsoever. He went back to Dar-es-Salaam to live there.

He went back to Somalia a second time in '97, again, to try to help. Not only was there no fighting there. There was no training in Somalia during this time, no Bin Laden, no al Qaeda, nothing. He went to Mombasa in '98 for a third time and again he stayed there for a while, and then went back to Dar-es-Salaam.

Now, in the very beginning of '98 he made efforts to try to get a passport so he can go visit his brother in London. And he made those efforts, and he used a fake or tried to use fake information, fake identification. And this is before he was ever contacted by anybody for any bomb, for any plan, any mission, anything like that. He did that because in order to get the necessary documents you needed other proof that he didn't have. So he did that, again, using his own initiative to try to go and get the information that he needed.

Now, finally, in March or April of 1998, years after he was trained in Afghanistan, years after studying Islam, and years after discussing what his life was going to be about in the world of Islamic religion, something specific happened. Somebody came to him, a friend came to him and said: You want to get involved in a jihad job? And right away KK said: Yes. The person never said: We want you to do a bomb. The person never said what it is we want you to do, where we want you to do it, when we want you to do it, why you should do it. Nothing, not even, and as Mr. Butler said, jihad has many different meetings, some illegal, some not illegal some extremist, some not extremist.

So someone asked him do you want to do a jihad job. He said yes without knowing anything more about what it entailed, didn't ask why, nothing at all. In April of '98 he is told to rent a little apartment in an area of Tanzania. He obeys that directive. He is given money to pay for it. Not his own. He pays with someone else's money. He uses his own name to rent that apartment, to rent that place.

Now is that the work of a clever terrorist? Is that the work of someone who is trying to hide what he's doing because he knows what he's doing is illegal and improper? And is that the work of someone who is sophisticated? Or is that the work of someone who just obeys when he's told to do something, and is at the lowest very rung of the totem pole or the ladder?

That's how someone acts when he rents the apartment with someone else's money and uses his own name. For that month, April and May, he and this other person and their family move into this place together.

Now, I'm going to try not to use names. I'm just going to try to refer to people as what their roles were, so I hope it will make more sense for you, and you won't just be looking out there like all these different names that are unfamiliar to you.

Sometime in June he is told to buy a truck. Mr. Butler's right. He was told to buy a particular kind of truck. He was never told why to buy the truck. He never asked: Why do you want the truck? He's told to buy a truck. What does he do? He obeys. He buys the truck. With his money? No. Somebody, the person who told him to buy the truck gave him the money to buy the truck.

Again, he uses his own name and the government has the receipt. The government is going to show you the evidence. He has the receipt that he signed his own name for that truck.

Sometime later in June, this is when it begins to get a little hairy. Others, two others begin to bring TNT dynamite bomb stuff into the place and they begin to store it there.

To show how you knowledgeable he is and how much training he received when he was in Afghanistan in the camps he said: What is that? What is that? He was told. So he knew. I'm not saying he didn't know. I'm not saying he was an unwitting participant. I'm saying he was only told whatever he needed to be told at the very last minute because he had no say in what was going to happen in terms of future steps.

So he didn't know where the TNT came from. He didn't know who bought it. He just knows that these two people bought it. And he began to store it. And then he is no dummy. He may be used by the higher up, but he's not a dumb young man. He knew sounds like we're probably making a bomb here. He knew it. We're not backing away from the evidence. We're not backing away from the truth now. But he didn't know the location. He didn't know the time. He didn't know the purpose at any point in June of '98.

Let's move on a little bit, June-July of '98. We're getting now about a month or two before the bombing. He's told to rent a different house because the first house wasn't good. He obeys. He goes with the leader, the person who is kind of describing things, instructing him, giving him the money, and he goes, and this other person is the one who begins to negotiate with the owner of the apartment or the house for the rent. The other person does the negotiating. The other person actually physically gives KK the money and tells KK: Hand it to him. So KK is the one who physically hands the money. And you know what KK does? He signs the document himself with his own name.

Well, what does the leader do? The person who gives him the money, the person who tells him what he's supposed to do, the person who tells him that we need a different house the person who negotiates, he witnesses the transfer; and he signs a name, not his own name, he signs an alias, a fake name.

So this guy the guy who pays the money, the guy who gives it, who transfers it, signs his own name and the guy who is the leader, the guy who is the organizer, the one who directly is in charge of what has to be done, he's there, he negotiates and he signs an alias, at that time, at that place.

So all he does is obey what he's told to do and this truck that he bought was used to carry bomb materials back and forth. Make no mistake about it, it was used. He knew it. He saw it. He knew what was going on. He knew where it came from. He never knew who paid for it or how it was paid for, but he did see it at that time.

And at some point about a week or so before the bombing, another individual comes and delivers a truck to the place and leaves the truck there. That truck had already been altered. It had been made specially so that the bomb materials can be used around the truck. So it was altered even before it got to the house. So somebody else must have altered it. It was driven by somebody else, never by him, the Subaru Suzuki truck he bought. He doesn't even know how to drive. He's never driven that car or truck. He doesn't know how to drive. There is this expert, someone who you really need to do all of this work in Tanzania.

So the truck is delivered already altered. And, by the way, the truck has a padlock on the back. He never had a key to that padlock. He never had access to it, unless somebody else opened it and directed him to go in and bring this or bring things out.

Also, a week before the bombing, the technical expert comes. We'll call him the bomb maker, the engineer, the organizer, the one who knew how to make the bomb, the one who knew how to set the bomb, the one who organized it, the one who knew how to grind the TNT. Mr. Butler says that KK Mohamed grinded TNT. Yes, he did, he's right. But he did it after the bomb maker told him, grind the TNT. This is how you do it. This is what you should do.

The bomb maker oversaw all of the people who worked on this and told them what had to be done, and how to do it. And the bomb maker was so expert in this he knew exactly what he had to do. He never used a map. He never used a book. He never used a diagram. He just did it because he is the expert.

And at that point KK still doesn't know the target of the bomb. He don't know when, he doesn't know where, he doesn't know why. This is a week before the bomb. Also, a week before the bomb, he goes and he gets a visa to go to Yemen.

Now, sometime after the bomb maker, the expert, comes, someone else is brought to the house. Let's call him the suicide truck driver, because he's the one that's going to be his job to drive the bomb laden truck into the embassy, push a button when it gets there and have it blow up.

He helps the bomb maker. He helps, he -- this is the person who does the truck driving, the suicide driver. He helps the bomb maker. They work closely together. It take days and days for them to complete making the bomb, putting wires together, detonators, distributors. In fact, at this point when they bring the cylinders, what does KK say with all of his training and experience in Afghanistan? What are those? What is that? And someone has to tell him those are the cylinders for the bomb.

Let's be clear, I am not saying he didn't grind. I am not saying he didn't help carry in the bomb-making materials into the truck. He obeyed his orders. He obeyed his directions. He did what was told. Anybody, anybody could have done what he did then.

At that point, even as he's carrying the stuff into the bomb laden truck, as he's bringing them in, he still doesn't know the target. He still doesn't know when. He still doesn't know why. And he's acting because this is what he's told to do.

Now, a few days before the bomb goes off, the leader, the money man, the guy who gave him more money to always buy things and rent things, the planner, he leaves. He gets out. The bomb isn't even finished yet and the leader is gone. He high tails it out into the wings, and he gives money to KK and said, when it's time for you to leave, here's the money for you.

He doesn't even have his money to go and, by the way, the organization never even gave him any kind of a fake passport. They had the ability to make fake identification make fake passports. They had part of the organization that was their expertise. Nobody in this organization, in this cell, in this group, in this mission, no one gave him any kind of identification or passport to leave to use or gave him any kind of a safe route, a safe trip or anything like that. Whatever he did, he did on his own after they all left and left him there on his own to fend for himself.

Some of the other people began to leave a couple of days before. Then the bomb expert leaves as well. So who's left? Three days, three days, the bomb is now complete. The bomb maker's going, everybody gone, only people left KK and the suicide driver.

Now, Mr. Butler said that you know he stayed there because he was going to help the driver and help, you know, and clean up afterwards. Well, he was there because he was the only one who spoke Swahili in that land of Tanzania. Swahili was the dominant language that was spoken by the people, so if anybody came to the house the truck driver, who was there alone, who didn't speak the language, couldn't have dealt with anything, couldn't have said anything, couldn't have sent people away, couldn't have deflected the suspicion from the house. He's got to be there because he is the only one who spoke Swahili, and he was the only one, beside the suicide driver, who was expendable, who was replaceable, who was not necessary for the operation. The operation was about to be completed. It didn't matter if they left him there to do what he had to do.

Now, this is kind of like almost a Keystone Kops routine what happens next. A couple of days before the bomb goes off, the truck, because it's so heavy with the bomb, sinks. It just kind of like goes down in the sand. And the driver comes out and sees it, and he says: Whoa, what's this? What's going to be now? We have a truck, a bomb, a bomb a giant bomb that's going to be there, and the truck just kind of goes down.

They don't know what to do this. This guy he's not the planner. He's not the leader. He doesn't know what to do. He doesn't have the money. He has no idea what to do. He sits there. What do they do? They try to dig it out. They're not successful. They leave it there and do nothing.

You have a bomb truck sitting in a, near a red near a house, sunk in the sand. They do nothing about it because he has no idea what to do. He doesn't even know where it's supposed to go, when it's supposed to go, how it's to be. He don't know. He's a nobody. He's a nothing. So they just sit there and let the truck sit in the sunken sand.

A day or so later, suicide driver gets a phone call on a cell phone and it turns out -- I'm sorry -- gets a phone call on a cell phone, excuse me, pardon me.

(Pause)

And he's no dummy, the driver. The driver says to the people who are talking to him: Er, by the way, truck is stuck in the sand and I need a little help here. And at that point people on the phone say to him: You know what? Go get a second truck and that second truck can be used to pull the other truck out of the sand if necessary.

Now, he didn't think of that. He didn't take any action for the two or three days or two days that the truck was sitting in the sand. He did nothing. He had no idea what to do. He had no resources to do anything. He had no initiative. Had he no ideas, no plans, no ability to do anything. So they sat there and they waited and luckily, lucky for them, unlucky for the rest of the world, that somebody called up and said: Get a second truck.

By the way, this cell phone that was used he never even had access to the cell phone. One of the people had access to the cell phone. When he left, he gave it to the suicide driver that he used. He wasn't allowed to use it. He made one phone call one time in the time he was there on that cell phone to call his family to tell his nephew to come to the house, to tell his sister to tell his nephew to come to the house to get something.

Now, August 7, 1998, the day that brought us here. He gets a bus ticket. He's told that's the time it's supposed to happen. He goes. He rents a truck with the money that had been given to him by the leader. And he gets a driver of the other truck, because he didn't drive it, he doesn't know how to drive a truck of any kind.

At that point, sometime in the morning, the suicide driver gets in the truck, the bomb-laden truck, and tests it, see if it could work, and they get it out. At that point KK gets in the truck with the suicide bomber in the passengers seat. Driving a little bit fast, goes with him a little bit past the house to a place called Urur Road. There is an intersection there. You'll see it on some maps or evidence during the government's presentation.

KK gets out. Before this particular run, before this drive on August 7th, there had been no dry run so to speak. There had been discussions as to what route should be taken with KK. There was no discussion as to where we should drive, when we should drive, how fast, what route to take, who's going to do it. There were no discussions at all ever by him on that day regarding the route or the truck was going to happen.

So he gets out, and at that point the reason he gets out because he's of no use to the driver. You know why? He doesn't even know where the embassy is. He had never been to the embassy in his life. He had never seen the embassy before. He had no special knowledge of the embassy or the roads or the routes or the best way to go.

He just was there to make sure the truck was there with the driver, and that he spoke Swahili. That was it. He gets out of the truck. He doesn't drive it part of the way to make sure the guy goes down. He gets out in the very beginning and miles away, is when the truck goes to the embassy. He pays the rental driver and that guy goes on his way. And then he sits in the house.

He never hears the blast. He never hears the explosion. He learns about it on the radio. And at some point he calls his nephew. Now, this is the kind of guy you're talking about, okay?

This is just a world terrorist bomb crazy person. He calls his nephew and tells his nephew, I need you to come to the house and in case you rent the house you should give to my mother and I have some items that I want to give to you and to give to my sister. What are those items? A mattress, some kitchen items, curtains, a child's toilet seat, and carpets.

And I won't forget, a grinding thing, the thing that was used for grinding the TNT. So when the government says that he was there to clean up afterwards, that he was there to get rid of the evidence, no, no. He was there just to finish up and he gave the grinding to his family to give to his mother with the children's toilet seat and the carpets. That's the kind of simplistic man he is. That's the kind of that's where he comes from, island of Pemba. He's in this world of Islamic resistance, so what he thinks about the bomb is giving some of these pieces of property to his family.

(Continued on next page)

MR. SCHNEIDER: (Continued) Now, the day after the bombing he does use in fact false identification that he had to leave, and he takes a bus or train, he does leave, and he goes away. He travels to South Africa. When he traveled to South Africa, he traveled alone. He did not use any of the identification, passport or visa or anything supplied by any organization.

He arrived in Capetown a couple of days later and he got a job -- as a trainer? No. Did he get a job in an Islamic mission to do any kind of jihad? No. He got a job at Burger World. Burger World, flipping burgers. In 1998, September of 1998. That's how he spent his life. He went to work every day. He studied his religion. In fact, after about a month or so he moved into his boss's house with his boss's family. That's where he lived. That's the kind of life he lived after this happened.

This is the kind of guy you're talking about, this expendable, nonessential, unnecessary pawn in this whole event.

When he lived there, he just went to work every day. He studied. In fact, he even tutored his boss's wife and his boss's son in the Koran. He never had any meetings, he never got any letters, he didn't get any calls. He had nothing connected to any of these past activities or anticipated future activities.

This is interesting. Before he left Tanzania, he was given three phone numbers by one of the other members there that were with him, who said in case he needed help he should use one of these three numbers to call. Almost a year later, in June 1999, he makes a phone call, somebody answers, and -- this highly organized mission, this extremely intelligent, financially secure terrorist organization. He makes a phone call and then when the guy answers, the phone call is cut off. The guy answered the phone, the 20 rands on the phone card run out, that's it, never calls back, person doesn't call him back, that's the end of that. He says OK, let me try the second number, not because he needed help, just to see. He calls a second number, the machine answers, wrong number. OK, let me try the third number. He tried the third number. It never worked. He is left out in the cold, fend for yourself. The three numbers he was given, nobody there for him at any point in time.

When he is in South Africa, he applies for political asylum under false identification. October 5 he is arrested and questioned by agents. He speaks to them the 5th, the 6th, and the 7th.

This Tanzanian bombing, it required concerted, concentrated, coordinated effort by a number of different, specialized people. The government has shown you, they showed you in their opening and they will show you during their presentation of evidence the role that K.K. Mohamed played. They will show you that the role that he played was purely, merely a pawn in this much greater, larger, this much more devious, worldwide, chess-game conspiracy. But all they will show you is that he was a willing participant, someone who was willing to do what he was told to do. The leaders, the higher ups, the policy makers, people like that in these kinds of organizations,

they manage to insulate themselves, they manage to protect themselves, and they manage to expose, to sacrifice and to just leave out in the cold the people at the bottom, the workers, the ones who don't matter.

When I spoke to you earlier about a hierarchy of evil and I talked to you about different motives in that hierarchy of evil? Well, what about evil people versus evil deeds? I need you to look over at K.K. Mohamed, OK. He is not, he is not, the government will not be able to prove that he is an evil person. They will prove, I suggest to you, that he participated in an evil act, just because the higher ups are prepared to sacrifice this pawn. We are asking you after the government's evidence not to sacrifice this pawn. He is not an evil person, recognizing evil as evil. Thank you.

THE COURT: Thank you. Mr. Cohn on behalf of Al-'Owhali.

MR. COHN: Your Honor, at this time Mr. Al-'Owhali relies on the right to put the government to its proof and waives opening.

THE COURT: Very well. Al-'Owhali waives opening. Ladies and gentlemen, you recall I told you that was a right and an option available to a defendant.

Ladies and gentlemen, we are going to call it a day. Couple of things.

There is certainly going to be a lot of press tomorrow or this evening about the opening of this trial. Please remember what I said about discipline, and please don't read it, don't watch it.

Please allow time so that you are not delayed by the weather tomorrow morning, and follow the same timetable with the marshals that you followed today.

Have a good evening, and we will see you tomorrow.

(Jury excused)

THE COURT: We will take a 10-minute recess, and then I will see counsel and the reporter in the robing room to take up the matters that we discussed earlier, and we are adjourned for that purpose.

MR. WILFORD: Excuse me, your Honor. There is something that I would also like to take up in the robing room.

MR. RUHNKE: Your Honor, you do not require our clients any longer?

THE COURT: I do not need the clients. I understand we will be taking up legal issues. The clients may be there but are not required.

(Recess)

(Pages 129 through 157 sealed)

(Proceedings adjourned until Tuesday, 10:00 a.m., February, 6, 2001)