

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al., .  
 Plaintiffs, . CA No. 04-1166 (RJL)  
 v. .  
 GEORGE W. BUSH, et al., . Washington, D.C.  
 Defendants. . Wednesday, November 12, 2008  
 . 2:12 p.m.  
 .

TRANSCRIPT OF CLOSED HABEAS HEARING  
BEFORE THE HONORABLE RICHARD J. LEON  
UNITED STATES DISTRICT JUDGE  
DAY 5 - P.M. SESSION

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## P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Calling civil case 04-1166, Mustafa  
3 Ait Idir and versus George W. Bush, et al. Will counsel please  
4 stand and identify yourselves for the record.

5 MR. OLDHAM: Nick Oldham on behalf of the  
6 United States. With me is Dave Blake, Fred Young, Chris Hardy,  
7 and Adriana Veccio.

8 THE COURT: Welcome back.

9 MR. KIRSCH: Good afternoon, Your Honor. Rob Kirsch  
10 for the petitioners, and with me in the room is Steve Oleskey  
11 and Robert McKeehan, and our litigation support Cynthia Garron.  
12 And with us at Guantanamo are Douglas Curtis and Paul Winke and  
13 our translator.

14 THE COURT: Welcome back, everyone. All right. If  
15 counsel in the room in Guantanamo would identify themselves for  
16 the record, please.

17 MR. SMITH: Corey Smith from the Department of  
18 Justice, and we do have a Guantanamo videographer here as well.

19 THE COURT: All right.

20 MR. CURTIS: And on behalf of Mustafa Ait Idir and the  
21 other petitioners, it's Douglas Curtis and Paul Winke from the  
22 Wilmer Hale firm and our translator Felice Bezri.

23 THE COURT: Very good. Thank you very much.

24 All right. I think, Mr. Curtis, it might just make sense  
25 to start at the beginning. We really didn't get that far. And

1 I hate to make you do it a second time, but I think it's  
2 probably just simpler to start from the beginning. So go ahead,  
3 please.

4 MR. CURTIS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. CURTIS:

7 Q. We'll restart, Mr. Ait Idir, just by having you introduce  
8 yourself to the judge? Can you state your full name for the  
9 judge, please?

10 A. My name is Mustafa Ait Idir.

11 Q. And where were you born?

12 A. I was born in Algeria.

13 Q. And what is your birthday?

14 A. It's 9 July 1970.

15 Q. July 9, 1970; is that correct?

16 A. Yes.

17 Q. So you are 38 years old?

18 A. Yes, I am.

19 Q. And what city in Algeria did you live in?

20 A. In capital of Algeria.

21 Q. The name of was?

22 A. Sidi-Hamed.

23 Q. Did you live in Sidi-Hamed throughout your childhood?

24 A. Yes.

25 Q. Who did you live with there?

1 A. I lived with my father and mother, brothers and sisters.

2 Q. Did you go to school in Algeria?

3 A. Yes, I did.

4 Q. Did you go to high school?

5 A. Yes, and Algerian school.

6 Q. Approximately when did you graduate from high school?

7 A. It was in 1989.

8 Q. Did you finish studies after that?

9 A. Yes, I did.

10 Q. And where did you continue those studies?

11 A. I continued in computer institute.

12 Q. What was the name of that institute?

13 A. Asten.

14 Q. Asten, A-S-T-E-N. Is that correct?

15 A. Yes.

16 Q. Did you get a degree from the Asten Institute?

17 A. Yes, I did.

18 Q. What was the degree in?

19 A. Design.

20 Q. Now, Mr. Ait Idir, did you perform military service for  
21 Algeria?

22 A. No, I didn't.

23 Q. Why did you not?

24 A. Because the time that I should go to military, I was  
25 student and I have to defer my study.

1 Q. You had a deferral for your studies?

2 A. Yes.

3 Q. Was military service otherwise mandatory for young men in  
4 Algeria?

5 A. Yes.

6 Q. How long did you receive your deferral for?

7 A. I don't remember exactly, but I received it a few times.  
8 I remember last time when I left Algeria in 1993, I was deferred.

9 Q. All right. And you never did perform military service for  
10 Algeria?

11 A. I have never.

12 Q. Have you ever performed military service for any other  
13 group or country?

14 A. Never.

15 Q. So you mentioned that you left Algeria in 1993; is that  
16 correct?

17 A. Yes.

18 Q. Why did you leave Algeria?

19 A. I left Algeria because I went to Croatia to work.

20 Q. And why did you leave Algeria at the time?

21 A. To work in Croatia.

22 Q. Why did you not get a job in Algeria?

23 A. I had an offered job which was in Croatia.

24 Q. Okay. What was the job that you were offered in Croatia?

25 A. My job was in charity organization in computer.

1 Q. In computer.

2 A. In computers.

3 Q. How did you come to have a job offered from Croatia?

4 A. I had it through the boss of my sister.

5 Q. What did your sister do?

6 A. My sister, she was working in the company which has her  
7 boss was journalist, offered me that job to work in Croatia.

8 Q. Her boss was a journalist, you're saying?

9 A. Yes, he is.

10 Q. And he knew of a job in Croatia?

11 A. Yes.

12 Q. So what was the nature of the organization that you got a  
13 job offer from?

14 A. The organization works with Bosnian refugees who are in  
15 Croatia.

16 Q. And what was the name of that organization?

17 A. It's International Islamic Relief Organization.

18 Q. IIRO?

19 A. IIRO. Or EGASA.

20 Q. Or EGAS, what do you mean by that? What do you mean by  
21 that?

22 A. EGASA is the translation of IIRO in our language.

23 Q. And what does the IIRO do?

24 A. The IIRO works with the refugees. They offer the food for  
25 the Bosnian refugees, offered for the orphans. They found to

1       them the houses of (unintelligible).

2       Q.    Now, before you went to Croatia for this job, had you  
3       visited Croatia before?

4       A.    I had never.

5       Q.    Did you know much about Croatia before you moved there?

6       A.    I know about Yugoslavia, but Croatia I don't know.  I  
7       remember once I went to get a visa.  I went to Yugoslavia  
8       embassy, and they told me that it's different.  Croatia is  
9       another country.

10      Q.    Another country from?

11      A.    From Yugoslavia.

12      Q.    What city was it that you moved to in Croatia?

13      A.    In Split.

14      Q.    And when you moved to Split, when you first arrived, where  
15      did you live?

16      A.    I lived with some friends who were working with me in the  
17      same organization.

18      Q.    And how long did you spend living with friends from that  
19      organization?

20      A.    Shortly.  It was like two or three months, something like  
21      that.  But this was short time.

22      Q.    All right.  And after you lived there, where did you live?

23      A.    After when I leave there, I lived with one Croatian and his  
24      wife, and I rent a little room like that.

25      Q.    You rented a room?

1 A. Yes, I had a room with them.

2 Q. What was the name of that person?

3 A. His name is Mododin Dogodovitch [phonetic].

4 Q. You started living with him and his wife in 1993 still?

5 A. I was with him from 1993 until summer 1995.

6 Q. All right. So the work that you did for the IIRO, did you  
7 ever become aware that the IIRO had any affiliations with any  
8 terrorists or terrorist organizations?

9 A. Never.

10 Q. Did the IIRO have any other connection to any other  
11 international organizations?

12 A. Yes.

13 Q. What connections were those?

14 A. They have with UNHCR and with ICRC.

15 Q. Now, UNHCR, is that the United Nations High Commission For  
16 Refugees?

17 A. Yes, it is.

18 Q. And you said also with the Red Cross?

19 A. Yes.

20 Q. What was the nature of the cooperation between these  
21 organizations?

22 A. The cooperation with the -- they are doing organization for  
23 sending the food or helping the orphans or moving the food or  
24 taking the food to the Bosnian people who are in Bosnia during  
25 the war, and that job it was like -- coordination between those



1 three organization.

2 Q. All right. I believe you said that you left from Split,  
3 Croatia, in the summer of 1995, correct?

4 A. Yes, I did.

5 Q. And why did you make a decision to leave Croatia at that  
6 time?

7 A. At that time, because the war was almost done in Bosnia and  
8 much of the people, the refugees, Bosnian refugees who were  
9 there in Croatia, they start going back to the Bosnia, or they  
10 went to the European countries or USA or so, many countries.  
11 That means the job in my organization, it was decreasing, and  
12 our organization, it was almost shut down.

13 Q. Is there any other reason you decided to leave Croatia and  
14 go to Bosnia?

15 A. Yes.

16 Q. And what is that?

17 A. Because my wife, she was Bosnian, and she has was refugee  
18 also. She has to move from Croatia to Bosnia also.

19 Q. What is your wife's name?

20 A. Sabiha.

21 Q. When where did you meet Sabiha?

22 A. I met her -- I don't know exactly, but it was 1993, 1994,  
23 when I came to Croatia and she was there.

24 Q. Now, let's go back to the summer of 1993, because there's  
25 some question about when exactly you left Croatia.

1 A. 1995.

2 Q. I'm sorry, I do mean 1995. And you said it was the summer  
3 of 1995?

4 A. Yes.

5 Q. How confident are you in that?

6 A. I'm hundred percent confident.

7 Q. And why is that?

8 A. Because when I moved from Croatia to the Bosnia, Zenica, I  
9 start working at Qatar charity group in summer of 1995.

10 Q. Sorry. The name of the organization was Qatar?

11 A. Qatar Charity Group.

12 Q. And you said you started working there when?

13 A. In summer 1995.

14 Q. Now, if your landlord has said that you had stayed with him  
15 through the end of the war in Bosnia through the signing of the  
16 peace accords, do you know when that would be?

17 A. I'm confident, I'm sure, that I went from Croatia to Bosnia  
18 in summer 1995, but my landlord, maybe he was wrong for date,  
19 but I'm sure. I'm confident that it was the summer.

20 Q. In any event, was the war winding down by the summer of  
21 1995?

22 A. Yes. It was almost done.

23 Q. So you moved to where in Bosnia in the summer of 1995?

24 A. In Zenica.

25 Q. And what were you doing when you went to Zenica?

1 A. I was working as the secretary of the general director of  
2 Qatar Charitable Organization.

3 Q. Now, when did you get married to Sabiha?

4 A. I get married in June 1996.

5 Q. Had you become a citizen of Bosnia prior to moving there?

6 A. I was a citizen of Bosnia in February 1995.

7 Q. And how did that happen?

8 A. When I was in Croatia, the Bosnian government --  
9 (unintelligible) -- and I did that.

10 Q. What was the reason that you chose to apply for Bosnian  
11 citizenship?

12 A. One of the reasons that I had is -- not I had, but I want  
13 to be Bosnian because, first thing, my wife is Bosnian, and  
14 other thing, because I was in Croatia, I had to go to Bosnia to  
15 work because there is not any more job in Croatia. I had to  
16 move to Bosnia.

17 Q. Did you ever engage in any combat in Bosnia?

18 A. Never.

19 Q. So you mentioned that your first job in Bosnia was for  
20 Qatar Charities. How long did you stay there working for Qatar  
21 Charities?

22 A. I stayed there from the summer 1995, I think -- March,  
23 something like that, 1996.

24 Q. And where did you go after that?

25 A. After that, I was sent to work in Tuzla.

1 Q. Still for the Qatar Charities?

2 A. Same organization.

3 Q. What was the work you were doing for Qatar Charities?

4 A. The director of the office.

5 Q. During the time that you worked for Qatar Charities, did  
6 you become aware of Qatar Charities having any affiliations with  
7 terrorist organizations?

8 A. Never.

9 Q. When did you stop working for Qatar Charities?

10 A. Stopped working with them in 1996 or beginning of 1997, but  
11 most likely it was 1996.

12 Q. And why did you stop working for them?

13 A. Because the Qatar Charities office in Tuzla, the work was  
14 decreasing, and we don't have that much job to offer many people  
15 work there. The job that we had, is not hospital, it's  
16 cleaning, which was the minister of health, and our organization  
17 was paying the doctors, the nurses, and we don't need -- also we  
18 have some orphans there. And we don't need all the whole office  
19 to be there just for patient. Then the main office in Sarajevo,  
20 every month it send somebody from the main office to that city,  
21 Tuzla, to pay the doctors, to pay the nurses, or to give the  
22 orphans what they should get.

23 Q. So then what did you do after you stopped working for Qatar  
24 Charities?

25 A. After that I start working with Taibah International.

1 Q. Taibah International?

2 A. Yes.

3 Q. You spell that T-A-I-B-A-H?

4 A. Yes.

5 Q. And what do they do?

6 A. They have to educate. Teach computers and English language.

7 Q. And what was your role with Taibah International?

8 A. My role in Taibah International was fixing computers,  
9 either software or hardware.

10 MR. CURTIS: Your Honor, we've been told that we need  
11 to change the tape. May we pause for a moment?

12 THE COURT: Absolutely. Go right ahead.

13 (Pause)

14 MR. BLAKE: May I address the court when we're back  
15 up?

16 MR. CURTIS: We're back on.

17 THE COURT: Okay. Before you go any further,  
18 Mr. Curtis, the government's counsel says that there's something  
19 they want to note for the record.

20 MR. BLAKE: Thank you, Your Honor. I simply wanted to  
21 request that the translator, when he speaks, because it's not  
22 happening regularly, that everybody in the room down there stop,  
23 that he get as close to the microphone as possible and that he  
24 speak clearly into the record so that we can hear him and when  
25 he speaks so that there's a clear break. That's my only

1 request, Your Honor.

2 THE COURT: All right.

3 MR. BLAKE: Thank you.

4 THE COURT: So, Mr. Interpreter, if you could, please,  
5 whenever you need to jump in to assist the witness with a  
6 translation, please speak clearly and loudly enough into the  
7 microphone so that we can recognize that it's your voice and so  
8 that the recording down there can pick it up clearly.

9 Thank you very much.

10 THE INTERPRETER: Yes, Your Honor.

11 THE COURT: You may continue.

12 BY MR. CURTIS:

13 Q. We were speaking about your work at Taibah International.  
14 To whom did Taibah offer classes?

15 A. Taibah International offered classes to all Bosnians.

16 Q. Not just Muslims?

17 A. Not just Muslims, Catholics, orthodox, man, woman. Even  
18 the minister of the interior, the policemen. There were some  
19 people, for example, from Libyan embassy, Egyptian embassy,  
20 Saudi Arabia embassy. There are some from higher office,  
21 Bosnian government taking classes there, from all different kind  
22 of people in Bosnia.

23 Q. And you worked with computers at Taibah?

24 A. Yes, I did.

25 Q. Was there a lot of work to do with computers at Taibah?

1 A. My job in Taibah is fixing the computers, because the  
2 people sometimes when they come to start the courses, there is  
3 something wrong with the computer. I have to check out the  
4 computers when they start course. And after it get done, I have  
5 to look at them again. The computers, all of them, they should  
6 be ready for working.

7 Q. Are you aware of any affiliations Taibah has ever had with  
8 terrorists or terrorist organizations?

9 A. Never.

10 Q. All right. I want to talk about your family for a moment.  
11 Do you and Sabiha have any children?

12 A. Yes, I do.

13 Q. How old are I they?

14 A. I have three kids. Muhamed was born in 1997. Hamza was  
15 born in 2000, and Abdullah was born in 2000 [sic].

16 Q. 2002, after you were arrested?

17 A. Yes. After I was arrested, like two months, something like  
18 that, but I haven't seen him to now.

19 Q. Now, were there other activities that you pursued when you  
20 lived in Croatia and Bosnia?

21 A. Yes. My other activities is -- I was actually athlete in  
22 karate, and also I was coaching.

23 Q. An athlete and coach in karate?

24 A. Yes.

25 Q. What kinds of activities were you engaging?

1 A. In Croatia I was active in karate of students, and at the  
2 same time I was as coach. My students were all Catholic  
3 orthodox. I was the only Muslim there. The only Muslim. In  
4 Bosnia, in Zenica, I was sent along with my job as organization  
5 I was working as coach in karate in Zenica, in Tuzla also.

6 Q. Did you ever participate in competitions for karate?

7 A. Yes, I did.

8 Q. When was that?

9 A. It was in Croatia, in Algeria also. In Bosnia. Either in  
10 state competitions or national competitions.

11 Q. Were you successful?

12 A. I did.

13 Q. When you were coaching, was that the job that you had that  
14 paid you money?

15 A. It was a job. I paid money, but I was not that much  
16 interested because I had my job. The Bosnian team, they offered  
17 me the money, but it wasn't like monthly salary because I didn't  
18 concern that is my job that I have to get money. I concerned  
19 there that is like -- you call...

20 (Conferring with interpreter.)

21 THE INTERPRETER: He says it was a hobby.

22 THE WITNESS: I do that as a hobby because I start  
23 doing that since I was a kid. And I was successful in the  
24 martial arts, so I start as coach. But I get paid. I get paid,  
25 but it's not monthly salary.



1 BY MR. CURTIS:

2 Q. And let's talk about your time in Bosnia. How much time  
3 did you spend working on karate, on this hobby? Per week.

4 A. In Bosnia? Six days a week.

5 Q. So on top of your full-time job?

6 A. Yes.

7 Q. During the time that you traveled outside of Algeria from  
8 1993 forward, did you keep the Algerian government apprised of  
9 your movements?

10 A. Since 1993 when I hired to Croatia, Split, and --  
11 (unintelligible) -- in 2001, my government and my embassies  
12 knows about me and what I'm doing.

13 Q. How did they know that?

14 A. Because I was registered in Algerian embassy in Hungary,  
15 Budapest, and also my kids was stationed there. And I renew my  
16 passport, the old passport, I renew it in Algerian embassy in  
17 Budapest. My wife -- (unintelligible) -- and all the time I  
18 moved from one place to other place, I have to give them my  
19 number from my address and what I doing, what is my job.

20 Also, I had to go -- I went to Bosnian elections, Algerian  
21 elections and had meetings many times with the Algerian embassy  
22 either in Budapest or Zagreb, Croatia. From 1993 and 2001.

23 Q. That means that they knew about you that entire period?

24 A. Yes.

25 Q. And again, just to make sure we understand, that's because

1 you registered with them, correct?

2 A. Yes.

3 Q. And you registered your family with them?

4 A. Yes.

5 Q. And you participated in elections with them?

6 A. Yes, I did.

7 Q. And you renewed your passport through them?

8 A. Yes.

9 Q. And again, why was it that it was done through the Algerian  
10 embassy in Budapest, Hungary? And I think you said Zagreb,  
11 Croatia. Why not Bosnia?

12 A. Because when I was in Croatia, Algerian who live in  
13 Croatia, because there is not Algerian embassy in Croatia, and  
14 we have to go from Croatia to Budapest, to Hungary. Then,  
15 sometimes the embassy comes to the hotel holiday, and we do our  
16 elections there. And sometimes the Algerian who live in Croatia  
17 to go to Algerian embassy in Budapest to vote.

18 But the Algerian people who live in Bosnia are connected  
19 with the Algerian embassy in Rome, in Italy. And then when I  
20 move from Croatia to Bosnia, I still have my paper in Algerian  
21 embassy in Budapest, and I should to move them to the Rome  
22 because Budapest is close from me to Bosnia, to Budapest and  
23 from Bosnia to Rome. It's very close to -- from Bosnia to  
24 Budapest is like 600 kilometers. And from Bosnia to Rome is  
25 very long distance.

1 Q. I want to ask you one more question about karate and your  
2 activities in Algeria, in Croatia, and Bosnia. Have you ever  
3 heard of the term "white weapons?"

4 A. Yes, I did.

5 Q. Is that a term in Arabic that you know?

6 A. Yes, it's Arabic. It's very common name in Arabic  
7 language.

8 Q. What does it mean?

9 A. The way it weapons, the weapons which doesn't have the  
10 fire.

11 Q. Weapons that do not have fire?

12 A. Yeah.

13 Q. Okay. So a gun, rifle, those are not white weapons?

14 A. No. The white weapons are like the knife, the stick, the  
15 sword. Those are white weapons.

16 Q. Had you heard that term before you left Algeria?

17 A. Yeah, I heard that term before. It's common name.

18 Q. It's a common term?

19 A. Yes.

20 Q. Had you at any time used that term to advocate violence  
21 against any person?

22 A. Never.

23 Q. You submitted a declaration in this court action. It's  
24 Traverse Exhibit 4, or I guess it's Detainee Exhibit 4. And in  
25 that declaration at paragraph 32 you stated that you had were a

1 peaceful man and have never advocated violence towards anyone.

2 Is that correct?

3 A. Yes, it's correct.

4 Q. You also said you never advocated the use of white weapons  
5 for any purpose; is that correct?

6 A. That is correct, yes.

7 Q. Now, you also stated that you never used that term which  
8 you heard "for the first time from my lawyers."

9 A. Yes.

10 Q. What did you understand by that?

11 A. I understand that my lawyer was talking with me about that  
12 term, because I'm doing martial arts and maybe I used that kind  
13 of -- how to explain.

14 (Conferring with the interpreter.)

15 MR. CURTIS: We're going to have a translation now.

16 THE INTERPRETER: I heard that the term from my  
17 attorney when he mentioned white weapons, so I thought at some  
18 point that he is saying that, Mustafa, or people are saying that  
19 Mustafa uses white weapons.

20 MR. CURTIS: Okay. Thank you.

21 BY MR. CURTIS:

22 Q. Let's talk now about your friendships with a few people in  
23 Bosnia starting with Hadj Boudella. When did you meet Hadj  
24 Boudella?

25 A. I met Hadj Boudella in 1996 in Tuzla.

1 Q. How did you meet him?

2 A. I meet him at computer center for orphans, and he asked for  
3 it because he's working with the orphans and they have the  
4 computer center. I meet him in one of the computer center.

5 Q. And did you become friends with Mr. Boudella?

6 A. Yes, I did.

7 Q. Good friends?

8 A. Yes. Very, very good friends.

9 Q. Family friends?

10 A. Yes, family friends.

11 Q. All right. And what about Mohammed Nechle? When did you  
12 meet Mr. Nechle?

13 A. I meet Mr. Nechle in 1995 in Zenica.

14 Q. Was that before he had moved to Bosnia?

15 A. Yeah. He was working in Albania, and he come to Bosnia.  
16 And I help him of translation because he doesn't speak Bosnian,  
17 and I helped him to get citizenship.

18 Q. And when he moved to Bosnia, where did he live?

19 A. I don't know.

20 Q. Was it in the same city --

21 A. No, no. When he came to Bosnia in 1995, he was just -- he  
22 got his citizenship, and he went back to Albania.

23 Q. And then when he later moved to Bosnia --

24 A. Yeah. When he moved again from Bosnia, he lived far from  
25 Sarajevo in Bihac, which is in border of Croatia, about 300

1 kilometers, something like that, a hundred kilometer from  
2 Sarajevo. But it was in border of Croatia. From Bihac to  
3 Croatia is about 10, 15 kilometers.

4 Q. Did you become good friends with Mr. Nechle?

5 A. Yes, I do.

6 Q. Did you see him often?

7 A. Not often. Maybe once a month, something like that. It's  
8 not once a month, 20 days, three weeks, four weeks. When he  
9 comes from Bihac to his main office in Sarajevo, I meet him.

10 Q. And Lakhdar Boumediene, when did you meet Mr. Boumediene?

11 A. Mr. Boumediene, I meet him in approximately 1998, 19 --  
12 something like that, 1998, when he comes from Albania to work in  
13 Red Crescent in Sarajevo.

14 Q. Did he become a good friend?

15 A. Yes, he did.

16 Q. So often -- I think you said you saw Mr. Nechle once a  
17 month, approximately.

18 A. Yeah.

19 Q. How often did you see Mr. Boudella and Mr. Boumediene?

20 A. Mr. Boudella and Mr. Boumediene, I see them almost every  
21 day.

22 Q. Did your families know each other?

23 A. Yes.

24 Q. And you socialized outside of work?

25 A. Yes.

1 Q. What kinds of things did you do?

2 A. Every Sunday we go to play soccer together, and we go to  
3 coffee shop together. Drink coffee, eat restaurants. It's like  
4 family friends, even though we go with our families, our kids.

5 Q. So you knew these men well.

6 A. Yeah.

7 Q. Did you ever see anything that was suspicious about these  
8 three men?

9 A. Never.

10 Q. Did you ever hear them speak about fundamentalist or  
11 radical Muslim ideas?

12 A. Never.

13 Q. Did you ever hear them advocating fighting the  
14 United States?

15 A. Never.

16 Q. Now, did you know Belkacem Bensayah before you were  
17 arrested in October 2001?

18 A. No.

19 Q. You never met him?

20 A. Never.

21 Q. Had you ever heard of him from Mr. Boumediene?

22 A. Never.

23 Q. Did you hear that he had been arrested in early October of  
24 2001?

25 A. Yeah.

1 Q. How did you hear that?

2 A. Through the news.

3 Q. Was it big news there when he was arrested?

4 A. It's not that much news, but it was in news.

5 Q. All right. When you read the news about Mr. Bensayah being  
6 arrested, did you have any reaction to it?

7 A. No. Never. I didn't have any reaction.

8 Q. This was several days before you were arrested, correct?

9 A. About two weeks, something. A week, 10 days, something  
10 like that.

11 Q. Did you know Saber Lahmar before you were arrested in  
12 October 2001?

13 A. Not at all.

14 Q. All right. Now, there did come a time when you were  
15 arrested in Bosnia, correct?

16 A. Yes.

17 Q. Do you remember the date of that?

18 A. Was in 18 of October 2001.

19 Q. October 18, 2001, correct?

20 A. Yes. That's correct.

21 Q. Now, did you understand that the Bosnian government  
22 conducted an investigation after they arrested you?

23 A. Yes.

24 Q. And what was the nature of the investigation they  
25 conducted?



1 A. They checked my computer, my listing phone, about six  
2 months, year before.

3 Q. Your phone records?

4 A. My cell phone, my home phone, and they checked my e-mails  
5 also. They went to my organization where I work, and they  
6 checked everything there, the computers. They make the  
7 interrogation with my friends, my team, my family, my  
8 father-in-law, brother-in-law, all people that I know them.

9 Q. Did you understand that the Bosnian government came to a  
10 conclusion?

11 A. Yes.

12 Q. What was that?

13 A. The conclusion that I read it in the paper the last day  
14 when I was sent home, they told me to go home, I read the  
15 conclusion which says that Mustafa Ait Idir, after the  
16 interrogation, after checking his computers and e-mail and  
17 friends and listing phone, there is nothing to do or there is  
18 nothing have relation with terrorist.

19 Q. All right. Mr. Ait Idir, when did you first hear of  
20 al-Qaeda?

21 A. I hear about al-Qaeda after 11 September.

22 Q. You had never heard of al-Qaeda before that?

23 A. Never.

24 Q. Well, how did you hear about the September 11 attacks?

25 A. Eleven September attacks I remember when I was in my gym

1 doing my training. When I get done with my team, I get out from  
2 my hall, and there is on the gym some TVs. And I saw that on  
3 TV, but it was -- (unintelligible) -- I see on TV. But when I  
4 saw it the first time, I thought that it movie. When I went  
5 home, I turn on my TV on Aljazeera channel. I saw the same  
6 picture that I see in my gym. Then I knew it was -- (inaudible)

7 Q. What was your reaction to the news of the September 11  
8 attacks?

9 A. When I saw that attacks, I did not believe that there is  
10 people who can do the attacks like that, there is people who can  
11 attack with the airplanes, the building and kill the people in  
12 that way.

13 Q. But you understand that that was done in the name of Islam.

14 A. I know, but my belief in Islam, I don't consider that is  
15 kind of Islam, because Islam does not allow to us to do the  
16 things like that. Even the people who did it are Muslims, but  
17 doesn't have nothing to do with Islam. Islam is against those  
18 things.

19 Q. Have you ever been affiliated with al-Qaeda?

20 A. Never.

21 Q. How about the Taliban?

22 A. Never.

23 Q. Were you aware of the U.S. military's plans to strike in  
24 Afghanistan after 9/11?

25 A. Yes.

1 Q. Now, prior to October of 2001, had you had any weapons  
2 training?

3 A. Never.

4 Q. Had you ever engaged in any combat?

5 A. Never.

6 Q. Had you ever held a firearm?

7 A. Never.

8 Q. In October of 2001, did you have any plans to travel to  
9 Afghanistan to fight against U.S. or allied forces?

10 A. Not at all.

11 MR. CURTIS: We have nothing further, Your Honor.

12 THE COURT: Thank you. Cross-exam.

13 MR. BLAKE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BLAKE:

16 Q. Good afternoon. I want to make sure that I get the  
17 pronunciation of your name correct. Is it Ait Idir?

18 A. A-I-T, I-D-I-R.

19 Q. Am I pronouncing it correctly when I say Ait Idir?

20 A. Yes.

21 Q. Okay. I want to make sure I'm doing it properly.

22 A. No, I'm sorry, because the pronunciation in English and  
23 French is completely different. In French we say Ait Idir, but  
24 in English it's a little bit different.

25 Q. Okay. Can you hear me clearly?

1 A. I do.

2 Q. And if I go too fast, I want you to tell me to slow down.

3 A. (Nods)

4 Q. You speak and write Arabic; is that correct?

5 A. Yes.

6 Q. You speak and write French; is that correct?

7 A. Yes.

8 Q. You speak and write Bosnian; is that correct?

9 A. Yes.

10 Q. You speak and write English; is that correct?

11 A. That's correct, but it's not that much.

12 Q. And you were educated in Algeria, correct?

13 A. Yes.

14 Q. On October 19, 2008, you swore out a declaration related to  
15 this matter, correct?

16 A. 19 October?

17 Q. Did you swear out a declaration in this matter?

18 A. With regard to the language?

19 Q. Did you take an oath --

20 MR. BLAKE: Let me back up, Your Honor.

21 BY MR. BLAKE:

22 Q. When Mr. Curtis was speaking with you earlier, he spoke to  
23 you about a writing that you had sworn to related to this  
24 matter.

25 A. I am not sure of what writing you are talking about.

1 Q. You had an opportunity with your counsel to read and review  
2 a multipage document with 45 paragraphs on it.

3 A. I wrote it out myself?

4 Q. No. It is not written in your language or in your hand,  
5 but it is signed by you.

6 A. I'm not sure what you are talking about. I signed -- I  
7 write many paper with my writing hand, but I'm not sure which  
8 paper you are talking about.

9 Q. Okay.

10 MR. BLAKE: Your Honor, may I ask Mr. Curtis -- go  
11 ahead, Mr. Ait Idir.

12 THE WITNESS: Can you be clear exactly which paper you  
13 are talking about? Then I will explain if it's possible.

14 MR. BLAKE: I will try. One moment.

15 Your Honor, may I ask Mr. Curtis if he has a clean copy of  
16 Mr. Ait Idir --

17 MR. CURTIS: I just showed him a declaration copy that  
18 we have here.

19 MR. BLAKE: Okay. And just for the record, it's a  
20 clean copy?

21 MR. CURTIS: Just for the record, it is not a clean  
22 copy.

23 THE COURT: Does your counsel down there by any chance  
24 have a clean copy?

25 MR. SMITH: No, I do not.

1 THE COURT: All right. Then why don't you -- even  
2 though it's not clean, at least show him the front page and his  
3 signature and see if he recognizes the document, but don't leave  
4 it in front of him.

5 MR. CURTIS: I actually do not have a signed version  
6 of the document here, Your Honor, but I will show it to him. I  
7 think, as Mr. Smith can attest, it's not clean because we've  
8 written Traverse Exhibit 4 across the top and a small notation  
9 on the fifth page of it, or fourth page of it. So we'll just  
10 not show him that. But it is a copy of what was originally  
11 filed unsigned with the traverse.

12 THE COURT: All right. You may show that to him. Go  
13 right ahead.

14 BY MR. BLAKE:

15 Q. You recognize that document, Mr. Ait Idir?

16 A. Yes, I did.

17 Q. And you signed that document on October 19, correct?

18 A. I signed it, but I don't remember exactly the date when it  
19 was.

20 Q. Okay.

21 MR. BLAKE: For the record, Your Honor, the signature  
22 is October 19.

23 THE COURT: That's fine.

24 BY MR. BLAKE:

25 Q. Do you recall writing at the bottom of it, "I read and

1 understand English"?

2 A. Yes. I read and I understand English, but I'm talking  
3 about my English is not that much English that I understand it.  
4 I understand English, but if you get me, for example, the law  
5 paper, the rules, the stuff like that, I can't understand it  
6 that much.

7 Q. Mr. Ait Idir, I have a document with your signature on it,  
8 and at the bottom of it, it says, "I read and understand  
9 English." And struck through at the bottom is the translator --  
10 the court-certified court translator's signature line. You  
11 executed this document by signing it on October 19, yes?

12 A. Yes, it is.

13 Q. Okay. When you did that, you had access to the translator?

14 A. That day I am not sure, but I believe that that day he was  
15 not present. I am not 100 percent sure.

16 Q. Did you read and understand every paragraph of this  
17 declaration?

18 A. Yes, I did.

19 Q. And you signed it under full understanding --

20 A. Yes.

21 Q. -- of the declaration?

22 A. Yes.

23 Q. And had you not understood it, would you have asked for a  
24 translator?

25 A. Of course.

1 Q. Okay. Thank you. You made no changes to the declaration  
2 when you signed it, correct?

3 A. I do not recall.

4 Q. There are no edits on this document. You just don't  
5 recall? Or the answer is no?

6 A. I do not recall that I made any modifications.

7 Q. Okay. You also drafted a supplemental declaration in this  
8 matter that you wrote out in your own hand, correct?

9 A. If I signed the supplemental, it means that I added  
10 something to the statement, yes.

11 Q. Okay. And it is dated October 5, 2008. Is that consistent  
12 with your recollection?

13 A. I don't remember the date.

14 Q. You remember writing out the document and signing it.

15 A. I don't remember that. I remember that I signed the  
16 document, but where if I add something or not, I don't remember  
17 that.

18 Q. When you signed your name, you understood that you were  
19 taking an oath, correct?

20 A. Yes.

21 Q. And by taking that oath, you swore to all of the  
22 information in both of these declarations.

23 A. Yes.

24 Q. And you made no changes to this document.

25 A. I don't recall that.



1 Q. I just want to be very clear. You signed the document, you  
2 understood the document, and you made no changes to the  
3 document.

4 MR. KIRSCH: Your Honor, may we approach?

5 THE WITNESS: Well, I signed --

6 MR. CURTIS: Is there something going on, or should he  
7 answer?

8 (Bench conference on the record.)

9 MR. KIRSCH: The reason that I think Mr. Ait Idir may  
10 be having a problem understanding this is that the document is  
11 written in my hand. I was present with him on this date without  
12 a translator. So we did go over it, and we discussed it. And  
13 this is probably the final version, but I suspect that there  
14 were several before we got to this. I'm positive that it wasn't  
15 the first one. We've never been able to write one out perfectly  
16 the first time out as we met together.

17 MR. BLAKE: Fine. I'm obviously interested in  
18 ensuring that he understood what he swore to, and there are no  
19 edits to either document in his hand like there are with the  
20 other detainees, and I simply want -- I'm not sure that I've  
21 gotten yet a straight answer that he understood what he was  
22 swearing to when he swore it.

23 MR. KIRSCH: Right. I believe that's because your  
24 question always asks whether he didn't make changes, and in  
25 fact, he did until I wrote the final one, and then he didn't.

1 This is the final version. We didn't have the facilities there  
2 to type it. We simply -- we were handwriting in that kind of a  
3 circumstance. So I think if your question --

4 THE COURT: Does he have a copy of this down there?

5 MR. KIRSCH: I believe he does, Your Honor, but I'm  
6 not positive. I believe he has everything that's in the  
7 traverse.

8 MR. BLAKE: I'll do my best, Your Honor.

9 THE COURT: Put it in front of him and ask him if the  
10 version that's signed is the final version and if he had any  
11 corrections to it.

12 (End of bench conference.)

13 THE COURT: All right. Let's go back on the  
14 wavelength there.

15 MR. BLAKE: Can you hear me, Mr. Ait Idir?

16 THE WITNESS: I hear you, yes.

17 MR. BLAKE: Mr. Curtis, if you could please show him  
18 the document labeled "Affidavit of Mustafa Ait Idir" along with  
19 the supplemental, I would appreciate it.

20 (Counsel complies.)

21 MR. CURTIS: The copy that we have has no signature.

22 MR. BLAKE: That's Okay.

23 BY MR. BLAKE:

24 Q. Mr. Ait Idir, is this the document that you did sign, and  
25 is this the complete document?

1 A. The document is this, yes.

2 Q. I'm sorry. I don't think we could understand that.

3 A. The document that I signed is this. Both of them.

4 Q. You signed and understood both of those documents.

5 A. Yes.

6 Q. Okay. You had an opportunity to consult with your  
7 attorneys prior to signing your declarations as well, correct?

8 A. Yes.

9 Q. They drafted the declarations for you, correct?

10 (No response)

11 MR. BLAKE: I'll repeat, Your Honor.

12 BY MR. BLAKE:

13 Q. Your attorneys drafted this declaration for you, correct?

14 A. Yes.

15 Q. You're from Algiers.

16 A. I'm from Algeria.

17 Q. And you lived there until you were 23?

18 A. Yes.

19 Q. And then you went to Split, Croatia, correct?

20 A. Yes.

21 Q. And what month and year was that?

22 A. Which month? Moving from Algeria to Croatia?

23 Q. Yes, sir.

24 A. I don't recollect exactly, but I think the beginning of  
25 1993.

1 Q. You don't recall the month?

2 A. I don't recall exactly.

3 Q. Prior to your departure, were you employed?

4 A. No, I was not.

5 Q. How long were you unemployed? Was it about 10 months?

6 A. When I said that I was not employed, it means that I didn't  
7 have an official job in one specific place. I was doing small  
8 jobs here and there.

9 Q. You weren't in school either, correct?

10 A. Yes.

11 MR. CURTIS: I'm told we have three minutes left on  
12 tape.

13 BY MR. BLAKE:

14 Q. I'm sorry. You said you were in school, or you were not?

15 A. Prior to my traveling?

16 Q. Yes.

17 A. No, I was not.

18 MR. SMITH: If we could take a quick break, we need to  
19 change the tape.

20 THE COURT: That's fine.

21 (Pause)

22 MR. SMITH: We're ready.

23 THE COURT: All right. You may proceed.

24 BY MR. BLAKE:

25 Q. In your declaration, you indicated that working for the

1 IIRO was an important mission to you, correct?

2 A. Yes.

3 Q. Did you consider it your duty?

4 A. It was a job. At the same time, I was assisting people.

5 Q. The mission was to support orphans and refugees from the  
6 Bosnian conflict?

7 A. Yes.

8 Q. And that's why it was important to travel to Croatia,  
9 correct?

10 A. I have to travel to Croatia because the job was there.

11 Q. When you were talking with Mr. Curtis, you said you had  
12 never heard of al-Qaeda, correct?

13 A. I didn't say that. I say I have never heard al-Qaeda  
14 before 11 September.

15 Q. Okay. Prior to September 11, you had never heard of  
16 al-Qaeda. Had you heard -- so then you had not heard of Osama  
17 bin Laden either?

18 THE COURT: Could you repeat that? I didn't hear you.

19 THE WITNESS: I heard about Osama bin Laden.

20 BY MR. BLAKE:

21 Q. I'm sorry. I'm not sure we understood it up here.

22 A. I had heard the name of Osama bin Laden before, yes.

23 Q. So you had heard of Osama bin Laden prior to September 11  
24 but not of al-Qaeda.

25 A. Yes.

1 Q. How did you hear of Osama bin Laden?

2 A. Through the news.

3 Q. And in what context?

4 A. I heard about him like I heard all the news on television.

5 Q. What was the news reporting about him?

6 A. If I were interested in the matter, I would have known  
7 about the news.

8 Q. But you recall hearing his name prior to 9/11.

9 A. I had heard his name, I had heard the name of the president  
10 of America, I had heard the names of athletes, I had heard many  
11 other names, but that doesn't mean that I knew what every one of  
12 them was saying.

13 Q. I was just asking how you heard his name.

14 A. And this is what I had to say as a response.

15 Q. In paragraph 32 of your declaration, you said that you had  
16 never used the term "white weapons," but you had clarified that  
17 with Mr. Curtis; is that correct?

18 A. Yes.

19 Q. But you read and understood and swore to this document  
20 before today.

21 A. Yes.

22 Q. In paragraph 42 of your declaration -- I'll just read it to  
23 you -- you swear: "I have never had, managed, or had any  
24 involvement with any bank account that I know of or believe to  
25 have been used for any purpose harmful to the United States or

1 its allies."

2 MR. CURTIS: Would you like me to put that in front of  
3 him?

4 MR. BLAKE: Sure.

5 (Counsel complies.)

6 THE WITNESS: Yes.

7 BY MR. BLAKE:

8 Q. And that is still accurate?

9 A. Yes.

10 Q. In paragraph 15 of your declaration -- Doug, if you could  
11 please show him that -- you describe an instance where you used  
12 your bank account to receive a wire transfer of tens of  
13 thousands of Bosnian marks.

14 A. Yes.

15 Q. That is still accurate also?

16 A. I would like to clarify something. The amount of money  
17 that was wired, it was wired to Taibah, and it was not wired to  
18 me.

19 Q. But it was wired to your account.

20 A. Yes.

21 Q. And you withdrew it on behalf of your boss.

22 A. To my boss. Along with my boss.

23 Q. What was your boss's name?

24 A. It's Ahmad Farraj.

25 Q. And you say in this paragraph you do not know why and did

1 not ask him his purpose.

2 A. I did not know why, and I did not ask him, but I know he  
3 will use it for the computers for the organization.

4 Q. So you do know why.

5 A. I did not know exactly why, but I know he's working  
6 director of organization. I believe that he will use it for  
7 that purpose.

8 Q. But that's not in your declaration, is it?

9 A. I am saying that this is what I believe. It's not in the  
10 paper.

11 Q. And just to clarify the record, your boss's name was Ahmad  
12 Farraj. That's A-H-M-A-D, last name F-A-R-R-A-J?

13 A. Don't know exactly in English.

14 Q. That was yes?

15 A. I don't know how it's spelling in English.

16 Q. In your supplemental declaration in paragraph 1, what was  
17 the name of the Egyptian citizen that you described in that  
18 paragraph?

19 MR. CURTIS: Should I show it to him?

20 MR. BLAKE: Sure.

21 (Witness reviewing document.)

22 THE WITNESS: That is I call him Dr. Ashraf, because  
23 he is a doctor. His name is Ashraf.

24 BY MR. BLAKE:

25 Q. Can you spell that for the record?



1 A. A-S-H-R-A-F.

2 Q. And this was another instance where you accepted money for  
3 somebody else?

4 A. That is completely different.

5 Q. You did not accept money for somebody else here?

6 A. You mean (unintelligible) to person?

7 MR. BLAKE: Doug, the declaration is in front of him?

8 MR. CURTIS: Do you want him to read the whole thing?

9 MR. BLAKE: I'm just going to read it to him. It  
10 says, "In some instances, the surgeon, who's name I do not  
11 recall" but he now knows "wired money to a bank in Bosnia into  
12 an account of that organization that operated the kindergarten.  
13 On several occasions, I withdrew the money and delivered it to  
14 the kindergarten." Is that accurate?

15 THE WITNESS: Yes.

16 BY MR. BLAKE:

17 Q. Do you know Jamal Amrani?

18 A. Yes, I do.

19 Q. And how would you describe your relationship with him?

20 A. It's very good relationship.

21 Q. And you do not know Ali Hamad?

22 A. Never.

23 Q. So you have no reason to believe Mr. Hamad would have  
24 anything against you, correct?

25 A. I don't know him, and I don't think that he had something

1 against me.

2 MR. BLAKE: Nothing further, Your Honor.

3 THE COURT: Very good. Mr. Curtis, you can do some  
4 redirect limited to what was on cross-exam if you like, or you  
5 can pass.

6 MR. CURTIS: I'll do a very brief cross-examination,  
7 Your Honor.

8 THE COURT: Redirect.

9 MR. CURTIS: I'm sorry, redirect.

10 THE COURT: Hold on a second, Mr. Curtis. Mr. Blake  
11 has an issue. Go ahead, Mr. Blake.

12 MR. BLAKE: I just want to make sure that when there  
13 are conversations in the room that they are being heard here in  
14 Washington, and I thought that the translator and the witness  
15 were conferring there.

16 THE COURT: I thought the translator was translating  
17 for the witness what I was saying.

18 MR. SMITH: That is correct, Your Honor. I can  
19 confirm that.

20 MR. BLAKE: And just going back to my earlier point,  
21 the request is simply that one person speak at a time so that we  
22 can hear it up here in Washington.

23 THE COURT: That's fine.

24 MR. BLAKE: Thank you.

25 THE COURT: Very good.

1 Mr. Curtis, redirect limited to cross-exam. You may  
2 proceed.

3 MR. CURTIS: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. CURTIS:

6 Q. First, I would just like to discuss with you very briefly  
7 the process by which you signed declarations. You were asked by  
8 Mr. Blake whether or not you made any changes to these documents  
9 and whether they were drafted by your lawyers. Do you recall  
10 that?

11 MR. CURTIS: I need to repeat that question for the  
12 interpreter.

13 BY MR. CURTIS:

14 Q. Mr. Blake asked you whether your attorneys had drafted your  
15 declarations and whether you made changes to it. Do you recall  
16 that discussion?

17 A. I did not understand.

18 Q. Okay. Let me restate that. Mr. Blake asked you whether  
19 your attorneys drafted your declaration. Do you remember that?

20 A. They did write this declaration, these papers.

21 Q. Did your lawyers ever provide you with a written paper for  
22 you to sign with information that you had not previously  
23 provided to them?

24 A. No.

25 Q. And during the process of drafting your affidavit, did it

1 go through multiple drafts?

2 A. Yes.

3 Q. And did you make corrections and additions to those drafts?

4 A. Yes.

5 Q. And is that what created the declaration and the  
6 supplemental declaration? Is that the process?

7 A. Yes.

8 Q. Whether or not you had ever had bank accounts that you  
9 believed were for any purpose -- that were used for any purpose  
10 against the United States?

11 A. I had accounts, but no one used them against the  
12 United States.

13 Q. You were also asked about Osama bin Laden. You said you  
14 had heard of him, correct?

15 A. Yes.

16 Q. Did you understand what Osama bin Laden's mission was?

17 A. In fact, he claims fatwah, a decree against America.

18 Q. Did you ever follow that fatwah?

19 A. I have never followed that fatwah, and my opening for bin  
20 Laden, bin Laden is the person who cannot confer to Muslims --  
21 is not scholar.

22 Q. Is fatwah, in your understanding, consistent with true  
23 Islam?

24 A. I don't believe that. I remember in 11 September, after  
25 the attack, it was he had -- they had a consensus, and also they

1 declared a fatwah that what happened in September has nothing do  
2 with Islam.

3 Q. Did you agree with that?

4 A. I agree with him.

5 MR. CURTIS: Nothing further.

6 THE WITNESS: And those are from all the world, the  
7 countries, European countries, correct his name and down at the  
8 bottom was his signature.

9 MR. CURTIS: Thank you, Mr. Ait Idir.

10 MR. BLAKE: Nothing further.

11 THE COURT: All right. No further questions from the  
12 government. Mr. Ait Idir, that brings to a conclusion your  
13 testimony. Thank you, sir.

14 We are now going to take a 15-minute recess to get set up  
15 for the next witness who will be testifying before the court.  
16 So, we'll stand in recess for about 15 minutes.

17 (Recess from 3:28 p.m. to 3:54 p.m.)

18 THE COURT: All right. Mr. Curtis, ready to proceed  
19 with your next examination?

20 MR. CURTIS: Yes, Your Honor. Our next witness will  
21 be petitioner Hadj Boudella. Mr. Boudella will rely more  
22 heavily on the interpreter throughout this, so again, if there's  
23 anything in the way we're proceeding that makes it difficult for  
24 to you hear us and understand us, please tell us.

25 THE COURT: Very good. If you could please tell the

1 translator that he needs to wait to translate after the speaker  
2 is through speaking. Did the translator hear that?

3 MR. CURTIS: He heard it, and he started to translate  
4 it.

5 THE INTERPRETER: Yes, Your Honor.

6 THE COURT: All right. Mr. Boudella, you can stand  
7 and be sworn.

8 **HADJ BOUDELLA, WITNESS FOR THE PETITIONERS, SWORN**

9 MR. BLAKE: Your Honor, may I address the court?

10 THE COURT: Hold on a second. Mr. Blake has an issue  
11 he needs to raise. Go ahead, Mr. Blake.

12 MR. BLAKE: We simply could not hear the translator  
13 translating the oath, and I only say that because we just  
14 couldn't hear. So I'm worried that we won't be able to hear it  
15 going forward when Mr. Curtis begins his direct examination.

16 THE COURT: If the translator could, would you please  
17 speak into the microphone down there when you're doing your  
18 translations so that it's captured by the tape recording device.

19 MR. BLAKE: Thank you, Your Honor.

20 THE INTERPRETER: Yes, Your Honor.

21 THE COURT: Very good.

22 Mr. Curtis, if you're ready, you may proceed.

23 MR. CURTIS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. CURTIS:

- 1 Q. Good afternoon, Mr. Boudella.
- 2 A. Good afternoon to you.
- 3 Q. Could you please state your full name for the court, please.
- 4 A. Boudella Al-Hadj. B-O-U-D-A-L-A, E-L-H-A-D-J.
- 5 Q. And where were you born, Mr. Boudella?
- 6 A. Al-Aghouat.
- 7 Q. And what country is that in?
- 8 A. In Algeria.
- 9 Q. And what is your birthdate?
- 10 A. April 18, 1965.
- 11 Q. So you are 43 years old; is that correct?
- 12 A. Yes.
- 13 Q. And did you live in Al-Aghouat, Algeria, throughout your
- 14 childhood?
- 15 A. Yes.
- 16 Q. And did you pursue studies there?
- 17 A. Yes.
- 18 Q. Did you graduate from high school there?
- 19 A. Yes.
- 20 Q. And when did you graduate from high school?
- 21 A. In 1985.
- 22 Q. And what did you do after that?
- 23 A. I worked.
- 24 Q. And what was your work?
- 25 A. I was a social assistant.

1 Q. Social assistant. What does that mean? What did you do?

2 A. I was a supervising students in a middle school.

3 Q. All right. So you were working for a school?

4 A. Yes.

5 Q. How long did you hold that position?

6 A. Until 1987.

7 Q. Then what did you do in 1987?

8 A. I joined the Algerian army.

9 Q. Now, is the Algerian army mandatory for you?

10 A. Yes.

11 Q. Did you receive any training in the Algerian army?

12 A. Yes.

13 Q. And what training was that?

14 A. Forty-five day training, regular training for all those who  
15 join the army.

16 Q. Did you receive any training beyond this 45-day basic  
17 training?

18 A. No.

19 Q. What did you do in the Algerian army after this short  
20 training career?

21 A. I worked as a mailman.

22 Q. Was that for the entire period of time, then, that you were  
23 in the army?

24 A. Yes.

25 Q. Did you ever engage in any combat while you were in the



1 Algerian army?

2 A. No.

3 Q. All right. So when did you finish your military service in  
4 the Algerian --

5 A. '89.

6 Q. And what did you do after that?

7 A. I went back to my job.

8 Q. And again, that was a job in the school?

9 A. Yes.

10 Q. And how long did you stay there?

11 A. Until 1990.

12 Q. Did you leave Algeria after that?

13 A. Yes. I left.

14 Q. And why did you decide to leave?

15 A. For studying purposes.

16 Q. So you were planning to pursue further study?

17 A. Yes.

18 Q. Did you have an idea where you wanted to pursue the  
19 studies?

20 A. Yes.

21 Q. Where was that?

22 A. In Pakistan.

23 Q. And why Pakistan over Algeria?

24 A. Because it was more convenient to pursue studies there.

25 Q. And why was that?

1 A. Because of Islamic Sharia. There was a college there that  
2 specialized in Islamic Sharia.

3 Q. So you left Algeria, then, in 1990 and went to Pakistan,  
4 correct?

5 A. Yes.

6 Q. What was your experience like in Pakistan?

7 A. As far as what?

8 Q. Well, your studies.

9 A. I applied to enroll at the university, but it was difficult  
10 for me to enroll at the university in Islamabad, so I changed  
11 directions.

12 Q. What was the reason that it was difficult for you to enroll  
13 in the university in Islamabad?

14 A. I thought I was going to be granted a scholarship, and I  
15 was not granted a scholarship.

16 Q. So what did you do after that?

17 A. I headed to a city close to Islamabad called Peshawar.

18 Q. And how did you choose to go to Peshawar?

19 A. Because there were work opportunities there.

20 Q. And how did you hear about these work opportunities?

21 A. I learned that there were some Arabic Islamic relief  
22 organizations there.

23 Q. Were you able to find work in Peshawar?

24 A. Yes.

25 Q. And what was that?

1 A. There was work in the Islamic Benevolence Committee For  
2 Orphans, El-Barrislamiya

3 Q. Is that an organization that sometimes referred to as LBI?

4 A. Yes.

5 Q. And what does LBI do?

6 A. It's a relief organization that helped orphans and also  
7 refugees.

8 Q. What does it do for orphans and refugees?

9 A. They follow up with them at social, academic, and economic  
10 levels.

11 Q. Providing assistance on all those levels?

12 A. Certainly.

13 Q. And what was the nature of your job at LBI?

14 A. It was mainly administrative work.

15 Q. And what kind of work did you do in that administrative  
16 role?

17 A. I used to draft reports about these orphans, about their  
18 social status, about their medical status, about their financial  
19 status, about many things.

20 Q. Was this a full-time job?

21 A. Yes. Eight hours.

22 Q. How many days a week?

23 A. Except Fridays.

24 Q. Now, what about studies? Did you pursue any studies while  
25 you were in Peshawar?

1 A. Yes. I pursued my studies.

2 Q. On top of the full-time job?

3 A. Yes.

4 Q. And did you end up receiving any certificate or degree from  
5 those studies?

6 A. Yes. I obtained a degree.

7 Q. And when did you obtain that?

8 A. In '92.

9 Q. And you worked for LBI during that entire time?

10 A. Yes.

11 Q. Now, does LBI have any affiliations that you ever became  
12 aware of with terrorists or terrorist organizations?

13 A. No.

14 Q. When did you stop working for LBI?

15 A. In '92.

16 Q. Then what did you do after that?

17 A. I was offered a job in Bosnia.

18 Q. Was this still with LBI?

19 A. Yes.

20 Q. So why did you accept the transfer to Bosnia?

21 A. Because the salary was better and the position was better,  
22 so I thought.

23 Q. In Bosnia in 1992, there were hostilities going on then.  
24 Did you know that?

25 A. Yes. I was aware that there were hostilities back then,

1 but not to the degree that I found when I got there. I didn't  
2 know it was that major.

3 Q. Did you go to Bosnia to fight in those hostilities?

4 A. No.

5 Q. At any point did you engage in combat in Bosnia?

6 A. No.

7 Q. All right. So when you went to Bosnia, what cities did you  
8 go to?

9 A. I headed to Zenica.

10 Q. And did LBI have an office in Zenica?

11 A. They didn't really have an official office, but we founded  
12 an office later.

13 Q. When did you found an office?

14 A. In '93.

15 Q. What was your job with LBI once you arrived in Bosnia?

16 A. With orphans.

17 Q. And what work did you do with orphans?

18 A. It was all administrative.

19 Q. And administrative is part of what efforts?

20 A. Preparing reports about orphans and also following up with  
21 their medical, with their social, with their economic status,  
22 everything.

23 Q. And again, was this a full-time job?

24 A. Yes.

25 Q. So did your job at LBI come to an end at some point?

1 A. Yes. It did in '94.

2 Q. And why? Why did you leave LBI?

3 A. I was promised another job in a similar organization for a  
4 better salary and a better type of work, so I gave my  
5 resignation at LBI.

6 Q. You say a different organization. Which organization was  
7 that?

8 A. It's the high Saudi committee.

9 Q. The Saudi High Commission?

10 A. Yes. It is called the High Saudi Commission.

11 Q. Who was the person who offered you a job?

12 A. It was a staff member there, a Saudi who worked at the High  
13 Saudi Commission.

14 Q. And how did you meet him?

15 A. I was heading to the pilgrimage. And the organization was  
16 organized by Saudis, and he said to me, When you return from the  
17 pilgrimage, what do you think about working with us?

18 Q. When you refer to a pilgrimage, you're talking about a trip  
19 to Mecca?

20 A. Yes. It's a trip to Holy Mecca.

21 Q. In Saudi Arabia, correct?

22 A. Yes.

23 Q. So what happened to the job offer that you had from the  
24 high commission?

25 A. When I returned from the pilgrimage, I went to their

1 office, I asked again about this job offer, but they told me  
2 that they were sorry because at that moment the budget was very  
3 weak and that they didn't have any possibility to offer jobs.

4 Q. So what did you do after that?

5 A. I joined the Bosnian army.

6 Q. And in what role did you join the Bosnian army?

7 A. I started teaching.

8 Q. Did you ever engage in any combat as part of the Bosnian  
9 army?

10 A. No.

11 Q. Did you ever have any weapons training or experience with  
12 the Bosnian army?

13 A. No.

14 Q. So you worked as an instructor, correct?

15 A. Yes.

16 Q. And what was the nature of the subject?

17 A. I taught Arabic language. I taught Koran.

18 Q. And how long did that job last?

19 A. Until end of '95.

20 Q. Which is when the Bosnian war was over?

21 A. That was at the end of the war with the Dayton Agreement.

22 Q. What did you do after that?

23 A. I went to the city of Tuzla.

24 Q. In Bosnia still, yes?

25 A. Yes. Yes.

1 Q. And why did you go to Tuzla?

2 A. Because I went there and founded a cultural center.

3 Q. What did the cultural center do?

4 A. Teaching computer skills and English language and Arabic  
5 language.

6 Q. And you created this center?

7 A. Yes.

8 Q. How was the center funded?

9 A. It was funded by a commission there. In addition to this,  
10 those who attended the center were paid like symbolic tuitions.

11 Q. Symbolic tuitions, meaning lower than the full cost of  
12 providing it?

13 A. Yes.

14 Q. And you said a commission had financed it. Where was that  
15 commission from?

16 A. It was a Kuwaiti committee or commission.

17 Q. Did you have any sense that the Kuwaiti commission was  
18 involved in funding terrorism in any way?

19 A. No.

20 Q. How did you come to receive funding from this Kuwaiti  
21 commission?

22 A. I had prepared a project plan, and then I submitted this  
23 plan to them. And in return, I was asking for funding.

24 Q. And you were awarded funding based on this plan?

25 A. Yes.



1 Q. So with the funding that you received, were you able to  
2 hire additional instructors?

3 A. Yes, those who were already there.

4 Q. How many people were there working on this project,  
5 cultural center?

6 A. There were instructors for English language, computer  
7 skills, and I was myself teaching Arabic.

8 Q. So three instructors.

9 A. Yes. An instruction, that there were three instructors.

10 Q. So how long did the cultural center operate?

11 A. I left the center in '96.

12 Q. So how long did you spend at the center?

13 A. I would say from the end of '95 until -- I would say less  
14 than a year.

15 Q. All right. What did you do then after you left the  
16 cultural center?

17 A. I headed to Sarajevo, and I established a small business.

18 Q. I should ask you, why did you decide to leave the cultural  
19 center?

20 A. Because it was no longer able to provide the needs of the  
21 staff that was working there.

22 Q. When you say the needs, do you mean the financial needs?

23 A. Yes. That's what I meant.

24 Q. All right. So you moved to Sarajevo. Why did you move to  
25 Sarajevo?

1 A. So I could work, so I could provide money for myself and  
2 for my children, so I could live.

3 Q. Now, why did you believe that Sarajevo would give you a  
4 greater opportunity than Tuzla?

5 A. Because there was a larger number of population. There  
6 were more people, and therefore, I was able to found some kind  
7 of business where I could make more money than in Tuzla.

8 Q. So what was the business that you operated in Sarajevo?

9 A. Like household equipment, electronic equipment. Like  
10 freezers, like tape recorders, like washers, things like this.

11 Q. And how did that business do?

12 A. Modest, I would say. Not good.

13 Q. How long did you stay with that business?

14 A. Until the end of '97.

15 Q. Did you get another job after ending this business?

16 A. Yes, I did.

17 Q. What was that job?

18 A. It was again supervising orphans. It was called the  
19 Charitable Action Committee. It's called in English Human  
20 Appeal International.

21 Q. Do you know where that organization was sponsored from?

22 A. Yes. Their office was in the United Arab Emirates.

23 Q. And how many people were working for Human Appeal  
24 International in Bosnia?

25 A. In the Sarajevo office, there were about five of them, and

1 those who were working with me with the orphans, I would say  
2 there were over 20 in Bosnia. So all over Bosnia.

3 Q. Was there a supervisor for all these 20?

4 A. Yes. All were women. They were all female supervisors,  
5 yes.

6 Q. Female supervisors?

7 A. Yes. They were female supervisors on orphans.

8 Q. I see. So they were working with the orphans directly.

9 A. Yes, directly.

10 Q. And again, what kind of work at Human Appeal International  
11 were the individuals performing? What kind of work were they  
12 performing for the orphans?

13 A. Financial, medical, academic assistance. Even, I would  
14 say, social assistance.

15 Q. And again, this was still in the aftermath of the Bosnian  
16 war?

17 A. Yes.

18 Q. There was great need for this sort of assistance, wasn't  
19 there?

20 A. Yes. A lot, certainly.

21 Q. Now, how long, then, did you work at Human Appeal  
22 International? You began, you said, in 1997?

23 A. Until I was imprisoned.

24 Q. So until October of 2001?

25 A. Yes.

1 Q. Was it a good job?

2 A. Yes, certainly. Of course, there was not much money in  
3 this job, but at least I was offering human assistance to  
4 people.

5 Q. All right. I want to talk to you for a moment about your  
6 family, your friendships. Did you get married in Bosnia?

7 A. Yes.

8 Q. And when was that?

9 A. '93.

10 Q. 1993?

11 A. Yes.

12 Q. And your wife's name is what?

13 A. Plania Amina.

14 Q. And where was Amina from?

15 A. She was in Zenica, but in fact, she was an immigrant there.

16 Q. Where did she come from?

17 A. She was from the city of Rogadica.

18 Q. Is that in Bosnia?

19 A. Yes.

20 Q. Do you have children with Amina?

21 A. Yes. I had four children, two boys and two girls. One of  
22 the girls passed away because there was no money for her  
23 surgery, and it happened when I was in prison here. And also I  
24 had a child that I never saw.

25 Q. And your oldest son?

1 A. Abdul Rahman, and he was born in '94, A-B-D-U-L,  
2 R-A-H-M-A-N.

3 Q. And the daughter who passed away, how old was she when she  
4 passed away?

5 A. I would say seven years old. She was born in '99.

6 Q. So she passed away in 2006; is that correct?

7 A. Yes.

8 Q. Now, did you marry a second time?

9 A. Yes.

10 Q. And what's the name of your second wife?

11 A. That's Nadja Dizdarevic. N-A-D-J-A, D-I-Z-D-A-R-E-V-I-C.

12 Q. Do you have children with Nadja as well?

13 A. Yes. I have three children from her, and in fact, there's  
14 another daughter that was born that I never saw also.

15 Q. Mr. Boudella, during the time after you left Algeria and  
16 traveled to Pakistan into Bosnia, did you keep the Algerian  
17 government aware of your movements?

18 A. Yes.

19 Q. What steps did you take to do that?

20 A. When I went to Pakistan, I went to the Algerian embassy in  
21 order for me to inform them that I was there, that I was a  
22 student, and that I was studying there. I received from them a  
23 registration card also from the embassy.

24 Q. All right. Did you keep them apprised of when you moved  
25 away from Pakistan to Bosnia?

1 A. Naturally, I had the registration papers where I would go  
2 again, and the next place I would live and register myself there.

3 Q. When you moved to Bosnia, where was it that you went to do  
4 that?

5 A. I didn't go in fact, but I called by phone. It was not an  
6 embassy, but it was an office that was in charge of the affairs  
7 of the Algerians.

8 Q. The government office that was in charge of those affairs?

9 A. No. It belonged to the embassy.

10 Q. Oh, okay. Did you make attempts to register your children  
11 at the Algerian government as well?

12 A. Yes, yes. I sent them birth certificates and all the  
13 necessary documents, all the documents that they requested.

14 Q. What happened? Did that registration happen?

15 A. In fact, yes. But the thing is that every time that they  
16 were changing the venue of the office in charge of the  
17 Algerians, at some point they would say, no, it's not -- at some  
18 point, they said it's Rome, and it was moving, but I was  
19 following up.

20 Q. Did you ever meet with an official from the Algerian  
21 embassy in Vienna?

22 A. He came to Sarajevo, yes.

23 Q. And what did he do in Sarajevo?

24 A. I talked to him about the registration and all that stuff,  
25 and he said, no problem. I told him that I was married in

1 Bosnia, that I had children, and that I was interested in  
2 registering my children at the embassy, and he said that there  
3 would be no problem; I could do that.

4 Q. Now, did you understand that he had come to meet with other  
5 Algerians?

6 A. I believe so.

7 Q. Did you stay for a group meeting with him?

8 A. No, no, no. In fact, I went to meet with him, but I had to  
9 return because I had a break during work.

10 Q. This was during the workday?

11 A. Yes.

12 Q. Do you recall when this meeting took place?

13 A. I don't know the year, but I believe it was around '99.

14 Q. And again, at every stage, you were keeping the Algerian  
15 government aware of where you were and where your family was?

16 A. Yes.

17 MR. CURTIS: Your Honor, may we pause for a moment?  
18 We've been told we need to change the tape.

19 THE COURT: That's fine.

20 (Pause)

21 MR. CURTIS: All right. May we resume, Your Honor?

22 THE COURT: You may.

23 BY MR. CURTIS:

24 Q. Mr. Boudella, let's talk about some of your friends. I  
25 want to start with Mustafa Ait Idir. When did you meet Mr. Ait

1 Idir?

2 A. I met him in Tuzla in '96.

3 Q. And how did you meet him?

4 A. He was visiting the cultural center, and naturally he  
5 wanted to be introduced to the people in charge of the center.  
6 So this is how I was introduced to him. And I learned that he  
7 was Algerian, that he worked in computers and stuff like this.  
8 So I told him that we also deal with computers, that if he would  
9 come to fix our computers when it was needed, and he said that I  
10 would be delighted to do so.

11 Q. Did you become friends with Mr. Ait Idir?

12 A. After a period of time, yes, we became friends.

13 Q. How about Lakhdar Boumediene? When did you meet him?

14 A. I met him in '97, naturally through work.

15 Q. You say "naturally through work." Why do you say that?

16 A. Because his commission works with orphans, my commission  
17 works with orphans as well, and this is how we became acquainted.

18 Q. When you say "commission," you're referring to the Red  
19 Crescent Society?

20 A. Yes.

21 Q. Did you consider Mr. Boumediene a friend before 2001?

22 A. Yes.

23 Q. Next I'd like to ask you about Mohammed Nechle. When did  
24 you meet him?

25 A. Same thing, in '97, in Bosnia, Sarajevo.



1 Q. How did you come to meet him?

2 A. The same way, because of the fact that he worked for the  
3 Red Crescent, and I worked in a charitable organization. It was  
4 through work again.

5 Q. Did you know Mr. Nechle previously in Algeria?

6 A. No.

7 Q. Now, you did come from the same city there, did you not?

8 A. Yes. When we introduced ourselves to each other, I learned  
9 that we came from the same city, correct.

10 Q. Did you become friendly with Mr. Nechle?

11 A. Yes.

12 Q. How often did you see these three men, Mr. Nechle, Mr. Ait  
13 Idir, and Mr. Boumediene?

14 A. With Mustafa and Lakhdar, it was approximately on a daily  
15 basis. With Mohammed, I would say probably once a month.

16 Q. And you socialized with each other, not just work related?

17 A. Yes. I socialized with Lakhdar and Mustafa. However, with  
18 Mohammed, not really, because he was far away from me, about  
19 over 500 kilometers, 300 kilometers.

20 Q. Do your families know each other?

21 A. Yes.

22 Q. During the time that you knew these three men, did you ever  
23 see anything that you thought was suspicious about them?

24 A. No.

25 Q. Did you ever see any indication that any of them followed

1 fundamentalists or radical Islamic ideas?

2 A. Not at all.

3 Q. Did you ever hear them advocate or support violence?

4 A. No.

5 Q. Did you ever advocate or support violence?

6 A. No.

7 Q. What kind of men are they?

8 A. They are social, they are quiet people, open. They like  
9 everything that is civilized. They deal in a humane and kind  
10 way with everybody, and they like to help everybody. And they  
11 have very good social relationships with all the people that  
12 they know. I would say that's it.

13 Q. Mr. Boudella, were you ever a Mujahideen in Bosnia or  
14 anywhere else?

15 A. No.

16 Q. Were any of your three friends that we've just been  
17 discussing the Mujahideen in Bosnia or elsewhere?

18 A. No.

19 Q. Let me change subjects for just a quick moment and ask you  
20 whether or not you ever knew Belkacem Bensayah before your  
21 arrest in October 2001.

22 A. No.

23 Q. Did you know Saber Lahmar before you were arrested in  
24 October 2001?

25 A. No.

1 Q. When did you first hear of al-Qaeda?

2 A. After the painful 9/11 events.

3 Q. You say painful. What was your reaction to the 9/11  
4 events?

5 A. The truth is that, in the beginning, I just did not believe  
6 it. I could not believe that something like this was happening  
7 but that it was a very painful -- really, it was a disaster.  
8 Any human being that has a heart or has mercy would feel pain  
9 with this.

10 Q. Have you ever been affiliated with al-Qaeda?

11 A. No.

12 Q. Have you ever provided support for al-Qaeda?

13 A. No.

14 Q. What about the Taliban? Have you ever been affiliated with  
15 the Taliban?

16 A. No.

17 Q. Have you ever provided any support to the Taliban?

18 A. No.

19 Q. Were you aware that the U.S. military was planning to  
20 strike Afghanistan in order to strike at the Taliban because of  
21 its support for al-Qaeda?

22 A. When I was in prison, I became aware of this, yes.

23 Q. You were not aware of planned attacks by the Americans  
24 before you were arrested?

25 A. No.

1 Q. Had you thought of traveling to Afghanistan in 2001 at any  
2 time?

3 A. Not to plan this at all, no. No, I never thought about  
4 this. How can I think about something like this, given the fact  
5 that I have a big family, I have a large number of children, and  
6 I have also a daughter that was suffering from a heart problem?  
7 Where would I leave these people? How could I think about going  
8 to Afghanistan in this situation?

9 In fact, I was depriving my kids sometimes from necessary  
10 things in order for me to save money and have my daughter  
11 undergo her heart surgery. How can I think of going to  
12 Afghanistan? I deprived them from many things all kids love to  
13 have in order for me to save the money for my daughter's  
14 surgery. How can someone have these problems and think about  
15 going to Afghanistan?

16 Q. Did you support any efforts to fight Americans either in  
17 Afghanistan or elsewhere?

18 A. No, not at all.

19 Q. A slightly separate question: Have you ever been a member  
20 or been affiliated with the Algerian Armed Islamic Group, or the  
21 GIA?

22 A. Not at all. In fact, I left Algeria before any of these  
23 things were founded. When I left Algerian, there was nothing  
24 that similar in Algeria.

25 Q. All right. The last subject I'd like to question you

1 about, Mr. Boudella, are the events of October 2001. This was  
2 the month after the September 11 attacks of the United States.  
3 In the first part of that month, do you recall hearing news that  
4 Belkacem Bensayah had been arrested?

5 A. Yes. I read the newspaper, and I was not that really  
6 interested, nor closely nor remotely.

7 Q. You did not know Mr. Bensayah at the time, correct?

8 A. Yes. Not at all. I didn't know him.

9 Q. But you did understand that the arrest was made.

10 A. Yes.

11 Q. Did you do anything in reaction to hearing about the arrest  
12 of Bensayah?

13 A. No, because I was not interested either closely nor  
14 remotely.

15 Q. Now let's move later in the month. Did you become aware  
16 that around October 18 that your three friends were arrested?

17 A. Yes.

18 Q. Mr. Boumediene, Mr. Ait Idir, and Mr. Nechle.

19 A. Yes.

20 Q. How did you become aware of that?

21 A. Certainly through the newspapers. In the morning when I  
22 was in the commission's office and I was reading the newspaper,  
23 I was stunned when I read this news. But I thought it is just  
24 an ordinary thing that was happening, that they were just going  
25 to simply be questioned and then released. I didn't give it too

1 much importance.

2 Q. Did you have any sense that they were responsible for any  
3 acts of violence or plans against the United States?

4 A. Not at all.

5 Q. Did you have an opportunity to leave the country after you  
6 heard this news?

7 A. Certainly, and very easily.

8 Q. Why do you say that?

9 A. Because I had my money; I had my passport. I could have  
10 left the country, but why would I leave the country?

11 Q. Did you make any effort to leave the country?

12 A. Not at all.

13 Q. In fact, what did you do on October 21?

14 A. In the morning of October 21, I woke up and I was having  
15 breakfast with my children. I was having my morning breakfast.  
16 It was a day off, of course, and usually I spend the day off at  
17 home. So the police contacted me, and they said that could you  
18 please come to our office for some business? There's something  
19 simple to discuss.

20 Q. And I'm sorry, how did they contact you?

21 A. They contacted me through the telephone.

22 Q. They called you at your home?

23 A. Yes.

24 Q. And they asked you to come down to ask you some questions?

25 A. Yes.

1 Q. Now, you knew that your three friends were imprisoned this  
2 time, correct?

3 A. Yes, certainly.

4 Q. When you were called by the police, did you consider  
5 leaving?

6 A. No, not at all.

7 Q. What did do you?

8 A. I went directly to the police station.

9 Q. Did you drive yourself there?

10 A. No. I took a cab.

11 Q. You paid for a taxi to go to the police station?

12 A. Yes.

13 Q. And what happened after that?

14 A. They greeted me there. They said please have a seat; we're  
15 going to be with you in a few minutes. And then two individuals  
16 showed up and asked me several questions.

17 Q. And what happened after that?

18 A. After that, they said, we go in to see the supervisor and  
19 you will be able to leave soon to go home, but wait a little  
20 bit. After that, they talked to the supervisor, they came back  
21 to me, and they said, no, you're going to have to go to the  
22 court.

23 Q. What happened then?

24 A. So we went to the investigative judge, and he asked me some  
25 questions, among these, questions of do you know such-and-such,

1 do you know such-and-such. He was asking me about the guys that  
2 you asked me about previously, Mohammed and the others, and he  
3 said, now since you know each other, you are going to be under  
4 investigation for a period of one month.

5 Q. Did they conduct their investigation?

6 A. Yes.

7 Q. How long did that investigation last?

8 A. The first month, and then they added two more months. It  
9 was three months.

10 Q. Did you have an understanding of what the outcome of the  
11 investigation was by Bosnian authorities?

12 A. Yes, because in fact, after that, they searched my house  
13 and they searched my office, and then the attorney told me they  
14 didn't find anything.

15 Q. You were first arrested on October 21, 2001, correct?

16 A. Yes. That was the day I headed to the police station and  
17 never returned home.

18 MR. CURTIS: No further questions.

19 THE COURT: Mr. Blake?

20 MR. BLAKE: Thank you, Your Honor. I think we're  
21 going to be going past five o'clock. I have to assume that  
22 Your Honor wants to get this done tonight.

23 THE COURT: We're probably going to 7:00 or 8:00  
24 tonight.

25 MR. BLAKE: We'll be going here for a while longer.



1 That is your preference?

2 THE COURT: We're going to finish this witness, and  
3 then we're going to start having other hearings in a different  
4 place. Let's finish this witness.

5 CROSS-EXAMINATION

6 BY MR. BLAKE:

7 Q. Good evening, Mr. Boudella. How are you?

8 A. You are welcome. Good evening to you.

9 Q. You can hear me clearly?

10 A. Yes.

11 Q. And if I speak too fast, I would like you to ask me to slow  
12 down.

13 A. Yes.

14 Q. On October 3 of this year, you signed a declaration in this  
15 matter; is that correct?

16 A. Yes.

17 MR. BLAKE: And, Doug, if I could ask you to give a  
18 copy of the declaration to Mr. Bezri so he can read anything to  
19 Mr. Boudella, I would appreciate it.

20 BY MR. BLAKE:

21 Q. Mr. Boudella, you initialed at the bottom of each page HB;  
22 is that correct?

23 A. Yes.

24 Q. And so in signing each page, you understood everything that  
25 appeared, all of the information that appeared on that page.

1 A. Yes.

2 Q. Mr. Bezri went through this document with you. There's no  
3 questions about what was in it, correct?

4 MR. CURTIS: I'm going to object to that on the  
5 grounds it's a compound question.

6 THE COURT: You can rephrase the question.

7 BY MR. BLAKE:

8 Q. You reviewed this document with Mr. Bezri?

9 A. Yes.

10 Q. You understood the information in it?

11 A. Yes.

12 Q. And you understand the oath that you took when you signed  
13 it?

14 A. Yes.

15 Q. And you told the truth in the document.

16 A. Yes.

17 Q. I'm going to direct Mr. Bezri, and ask him and Mr. Boudella  
18 to paragraph 10 of your declaration. I'll read it into the  
19 record. "In 1990, I traveled to Islamabad, Pakistan, with a  
20 view to enrolling in the university there."

21 A. Yes.

22 Q. That is still accurate.

23 A. Yes.

24 Q. Paragraph 11, I'm just going to read it into the record.

25 "When I arrived, I realized I could not afford to enroll at the

1 university in Islamabad. I then traveled to Peshawar, Pakistan,  
2 where I lived between 1990 and 1992. I entered [sic] my degree  
3 by taking correspondence courses and examinations without  
4 attending classes, which was a less expensive way of earning a  
5 degree."

6 THE INTERPRETER: It was "earned." Is that correct?

7 MR. BLAKE: You're correct.

8 (Interpreter translating.)

9 THE WITNESS: Yes.

10 BY MR. BLAKE:

11 Q. This is still accurate?

12 A. Yes.

13 Q. Which university in Islamabad did you travel to attend?

14 A. The Islamic University in Islamabad.

15 Q. Is that its formal name?

16 A. Yes. It is known by this name.

17 Q. Were there any other universities that you considered in  
18 Islamabad?

19 A. No.

20 Q. That specific university is not in your declaration,  
21 correct?

22 A. I said the Islamic University.

23 Q. But that is not in your declaration, correct?

24 A. Probably.

25 Q. I'll ask it a yes-or-no question, which is, did you

1 reference the Islamic University in your declaration?

2 A. I do not recall exactly what I said in the statement, but I  
3 said I went to enroll in the university. I do not recall  
4 whether I was specific and said the Islamic University or not.

5 Q. Were there any other universities in Islamabad?

6 A. Certainly there were other universities, but that was the  
7 only university I intended to go to, the Islamic University in  
8 Islamabad.

9 Q. Had you applied to that university prior to your trip to  
10 Pakistan?

11 A. No, no. I knew that it was easy to go and enroll there.  
12 I did not apply to enroll there.

13 Q. What was the difficulty in actually enrolling, then?

14 A. Money, it was mainly, because I thought that I would be  
15 able to be granted a scholarship, and I was not.

16 Q. This was not something that you had confirmed prior to  
17 leaving Algeria?

18 A. No. In fact, I was able to confirm that they were granting  
19 scholarships to everybody. But it seems to me that in that year  
20 they had a surplus of applicants, and this is why they were not  
21 giving scholarships anymore.

22 Q. How much did it cost you to travel from Algeria to  
23 Pakistan?

24 A. I would say about \$1100.

25 Q. And how much was it to attend the university?

1 A. The cost of the university included the housing, the  
2 living. This is what I meant when I say expensive.

3 Q. And how much was it?

4 A. It would have been about \$500 a month if I was living in  
5 Islamabad, because it's considered expensive.

6 Q. So just to confirm, then, you spent \$1100 to travel without  
7 knowing when you got there that you would have a scholarship.

8 A. I was almost positive I was going to get a scholarship, but  
9 the reality was that I couldn't get the scholarship.

10 Q. You never considered returning to Algeria?

11 A. No. In fact, in the beginning I was hesitant in my  
12 thoughts, but as soon as I realized in another place I would  
13 have been able to find a job and study at the same time, and it  
14 was my choice.

15 Q. But you didn't look for any other universities in  
16 Islamabad.

17 A. No, because I couldn't get a scholarship there, and  
18 therefore I couldn't pursue my studies there. In addition to  
19 this, I was very specific in what kind of subject I wanted to  
20 specialize.

21 Q. And so you went to Peshawar.

22 A. Yes.

23 Q. And you studied there?

24 A. Yes.

25 Q. And I understand it was a correspondence college, is that

1 correct, or a correspondence school?

2 A. Yes.

3 Q. Could you have not done your correspondence studies from  
4 Islamabad?

5 A. It would have been possible, but there was no job for me in  
6 Islamabad.

7 Q. Would it have been possible for you to do your  
8 correspondence studies from Algeria?

9 A. No. It was difficult, because to start with, I was not  
10 aware of the presence of such a university when I was in  
11 Algeria, such a university in Peshawar.

12 Q. You went to Peshawar because you found employment there,  
13 correct?

14 A. Yes.

15 Q. Where is Faisalabad?

16 A. It is in Peshawar. No, no. I don't believe that  
17 Faisalabad is in Peshawar. God knows I believe that Faisalabad,  
18 there is a place in Islamabad that is called Faisalabad.

19 Q. So you left Islamabad to attend a correspondence school  
20 that was located in Islamabad.

21 A. No. I went to Peshawar. I believe that this name, the  
22 name that you mentioned, is in two different locations. It is  
23 in Peshawar, and it's in Islamabad. And if my memory is not  
24 betraying me, this is the name of the street in Peshawar.

25 Q. There was an attachment to your declaration.

1 MR. BLAKE: Doug, do you have that there?

2 MR. CURTIS: Yes.

3 BY MR. BLAKE:

4 Q. There's actually two attachments. One is a certificate in  
5 Arabic and another a translation. You have both of them?

6 A. What we have here is in Bosnian and in English.

7 Q. Okay. What is the address of the school on the  
8 certificate?

9 A. I don't recall the address. I forgot the address, but I  
10 believe it was Faisalabad because I went there only once for  
11 enrollment and a second time for the exams.

12 MR. CURTIS: I'm sorry. There's a lack of clarity  
13 here about which document you're talking about. I'm not sure  
14 that there was an attachment to the declaration; there were just  
15 traverse exhibits.

16 MR. BLAKE: Doug, I have to clarify for the court.  
17 You're correct. There is an attachment to the declaration, but  
18 I was actually referring to Detainees Exhibit 56. So my  
19 apologies to the witness, the court.

20 MR. CURTIS: Okay. I think we have that in front of  
21 him. We're being told we need to switch the tape.

22 MR. BLAKE: Your Honor, I'm observing the note that  
23 Your Honor just received and is reading.

24 THE COURT: I received a note from Mr. Oleskey  
25 indicating that Mr. Boudella has a bad back, but I can't read

1 the rest of it.

2 MR. OLESKEY: My lifelong curse. It's a request that  
3 he be allowed to stand up and stretch his back for a second.

4 THE COURT: Okay. Now I can read it.

5 MR. OLESKEY: It's not even in Arabic.

6 THE COURT: Stand up because I believe he's in pain.

7 MR. OLESKEY: He's been talking to Mr. Curtis about it  
8 during the week. If he could stretch.

9 THE WITNESS: I can continue while I'm sitting. It's  
10 okay.

11 MR. SMITH: Your Honor, can we end communication on  
12 the record so we can switch the tape?

13 THE COURT: We're going to take a 10-minute recess and  
14 give the court reporter and the translator a much deserved  
15 break, and Mr. Boudella can also stand, of course, and stretch  
16 and do whatever he needs to do. We'll reconvene in about 10  
17 minutes, and you can change the tape in the meantime.

18 How's that?

19 THE WITNESS: Thank you.

20 MR. CURTIS: Thank you, Your Honor.

21 THE COURT: See you in 10 minutes.

22 (Recess from 5:13 p.m. to 5:31 p.m.)

23 THE COURT: All right. Mr. Blake, you ready to  
24 proceed?

25 MR. BLAKE: I am, Your Honor. I just want to clarify



1 where we were. When I ended, I had made a mistake.

2 THE COURT: All right.

3 MR. BLAKE: Again, I apologize for that to my  
4 colleagues on the video screen and the court.

5 THE COURT: All right. Let's move forward.

6 MR. BLAKE: Doug, you confirmed that you had Exhibit  
7 56?

8 MR. CURTIS: Yes. I believe that's what we put in  
9 front of him.

10 MR. BLAKE: If you could show that to Mr. Boudella.

11 THE WITNESS: Yes.

12 BY MR. BLAKE:

13 Q. This school is located in or near Islamabad, correct?

14 A. No. This is in Peshawar.

15 Q. So Faisalabad is in Peshawar?

16 A. God knows, yes, there is a Faisalabad in Peshawar; there's  
17 also a Faisalabad in Islamabad. There are probably more than  
18 one Faisalabad.

19 Q. Where is this school located?

20 A. In Peshawar.

21 Q. You did not have a job when you left -- you did not have a  
22 job in Peshawar when you left Islamabad, correct?

23 A. Yes.

24 Q. There were many extremist groups in Peshawar in 1990,  
25 correct?

1 A. I'm sorry. I didn't hear what he said. I need him to ask  
2 it again. I don't have any connection with this matter, and  
3 therefore, I am not really interested in issues such as this.

4 Q. I'll ask the question again. There were many Islamic  
5 extremists in Peshawar in 1990, correct?

6 A. To my knowledge, I don't know.

7 Q. Were you concerned about your decision to live in Peshawar  
8 and how the Algerian government would view your decision?

9 A. In fact, it was not a problem at all living in Peshawar for  
10 me, because I went and registered myself at the Algerian  
11 embassy. It was just a natural thing to do.

12 Q. So to your knowledge, the Algerian government did not  
13 prevent Algerians to return after visiting Pakistan.

14 A. Certainly not.

15 Q. Then also, based on your testimony, you did not know that  
16 Osama bin Laden was in Peshawar from 1990 to 1992.

17 A. No.

18 Q. Did you know who Osama bin Laden was prior to September 11?

19 A. No.

20 Q. Did you know who he was after September 11?

21 A. Through the media, yes.

22 Q. So the only way that you learned of Osama bin Laden or  
23 al-Qaeda was from the events of September 11.

24 A. Yes.

25 Q. Did you observe any Islamic extremism during your time in

1 Bosnia?

2 A. I did not observe anything such as this.

3 Q. I'd like to direct the witness's attention to paragraph 34  
4 of his declaration. For the record, it reads, "Later, in 1994,  
5 I found work providing religious instruction to soldiers in the  
6 Bosnian army in" I'll defer to Mr. Bezri, a town, and I'll let  
7 Mr. Bezri translate it. "I also taught religious classes to  
8 children at a local mosque."

9 THE INTERPRETER: I believe it's Tesanj, but I don't  
10 speak Bosnia.

11 THE WITNESS: Yes.

12 BY MR. BLAKE:

13 Q. That is still accurate.

14 A. Yes.

15 Q. What assistance did you provide the army? What did you do  
16 there?

17 A. I taught.

18 Q. What did you teach?

19 A. I thought Arabic language and --

20 Q. I'm sorry, and what?

21 A. Koran.

22 Q. Next I'd like to move to paragraph 37 of your declaration  
23 to read into the record: "After the war ended, a friend in the  
24 army offered to procure a certificate for me stating that I was  
25 a member of the Bosnian army since my arrival in Bosnia.

1 Although I was not a soldier, the army was willing to issue the  
2 certificate because of the assistance I had provided to the  
3 Bosnian people between 1992 and 1995."

4 A. Yes. Correct.

5 Q. And that is still accurate?

6 A. Yes.

7 Q. Next I'd like to direct your attention to paragraph 39:

8 "The certificate states that I was a member of the Bosnian  
9 army from September 1, 1992, to December 22, 1995. The date  
10 September 1 is a clerical error as I had not yet arrived in  
11 Bosnia on September 1. The clerk wrote the date as 01 instead  
12 of 10. I pointed out to the clerk that it should read September  
13 10 and not September 1, 1992, but the clerk refused to change  
14 it, stating that it was a minor error."

15 A. Yes.

16 Q. And that is still accurate.

17 A. Yes, accurate.

18 Q. You did not attempt to make any other corrections to the  
19 certificate.

20 A. I had tried later with the clerk, but then I was told that  
21 this was an actual mistake, that that's no problem with such a  
22 mistake.

23 Q. The mistake you're referring to is the date.

24 A. Yes.

25 Q. The certificate is attached to your declaration. It states

1 that you were --

2 MR. CURTIS: Wait one second, would you please,  
3 Mr. Blake?

4 MR. BLAKE: Sure.

5 (Pause)

6 MR. CURTIS: I have what is Traverse Exhibit 57. Is  
7 that the same?

8 MR. BLAKE: According to petitioners' counsel, it is,  
9 so that would work also, Doug.

10 MR. CURTIS: All right.

11 THE COURT: You may proceed.

12 MR. BLAKE: Thank you, Your Honor.

13 MR. CURTIS: I think we're ready to go.

14 BY MR. BLAKE:

15 Q. The mistake that you had referred to is the date, September  
16 10, September 1 here in this document.

17 A. Yes.

18 Q. The certificate says that you were in the unit of the  
19 Bosnian army from 1992 to 1995.

20 A. Yes.

21 Q. You noticed the clerical error about the date but chose not  
22 to correct this part of the certificate.

23 A. No. I went and I wanted to have it corrected, but the  
24 clerk said that it's just a mistake, no worries.

25 Q. The mistake that you clarified on the record was as to the

1 date, September 1 versus September 10.

2 A. Yes.

3 Q. I'm referring to what the certificate says, which is that  
4 you were a member of the Republic of Bosnia and Herzegovina army  
5 from 1992 to 1995.

6 MR. OLESKEY: Object. It's not what it says.

7 THE COURT: Hold on. State your objection,  
8 Mr. Oleskey.

9 MR. OLESKEY: My objection is counsel has not  
10 correctly read what I have in front of me. Maybe he has some  
11 other document in front of him.

12 THE COURT: The document that I have in front of me  
13 which is attached in the exhibits as A to Detainee Exhibit 6,  
14 which I believe is the same as Detainee Exhibit 57, says that he  
15 worked in an educational center, training of soldiers in a place  
16 called -- I can't really say it too well, Jablanica, something  
17 like that?

18 So it doesn't -- the one I'm looking at doesn't mention  
19 anything about military units that I think you're referring to.  
20 I don't know. You're looking at a different document, or you're  
21 looking at the same document? There's a seal in the lower left  
22 corner which says Jasminka or something like that.

23 MR. BLAKE: Maybe we can clarify it, Your Honor.

24 (Government counsel conferring.)

25 MR. BLAKE: You're correct, Your Honor.

1 THE COURT: I would just state the obvious. Anything  
2 he has sworn to under oath he's committed to.

3 MR. BLAKE: Maybe I've just muddled the record, and  
4 for that I apologize. So I would like to take one more stab at  
5 it.

6 THE COURT: We want to move on now, so let's keep  
7 going.

8 BY MR. BLAKE:

9 Q. Is the date September -- you did not attempt to change the  
10 1992 part of the date.

11 A. No.

12 MR. BLAKE: Thank you, Your Honor.

13 THE COURT: All right. Okay. Any redirect,  
14 Mr. Curtis, relating -- any redirect relating to the cross?

15 MR. CURTIS: The only thing is I saw a gesture from  
16 Mr. Oleskey. Was that to us or to someone else in the courtroom?

17 MR. OLESKEY: Whatever it was, it was inadvertent,  
18 Your Honor. Probably reflecting the fact that I'm tired.

19 (Laughter)

20 THE COURT: I think that's a confirmation that it was  
21 nothing.

22 MR. CURTIS: Nothing further, Your Honor.

23 THE COURT: Okay. Very good. Thank you for your  
24 testimony, Mr. Boudella, and that will bring this proceeding to  
25 an end. We will adjourn this part of today's hearing so that we

1 can move on to the next part of today's hearing. So I would ask  
2 our technical people to turn off the connection to Guantanamo.  
3 We don't need it any further. Thank you very much everyone down  
4 in Guantanamo. Thank you.

5 (Videoconferencing connection terminated.)

6 All right. We're going to take a brief recess and  
7 reconvene in a different location. Now, that continuation will  
8 be limited to the court and the appropriately cleared government  
9 counsel and staff for the court to have a discussion with the  
10 government on the record, yet ex parte, regarding the documents  
11 that they would like to use tomorrow morning.

12 Obviously, we're not going to be doing the rebuttal case  
13 tonight. I don't know how long this next phase of today's  
14 hearing will go, probably half hour or something, maybe an hour.  
15 I can't imagine it would go longer than that. But it just  
16 doesn't make sense -- it's 10 of 6:00 or five of 6:00 -- for us  
17 to start the government's rebuttal case at this time of the  
18 evening.

19 So I need to have this get-together with the government  
20 counsel and the representatives from their agencies in order to  
21 assess the various factors that I previously indicated on the  
22 record that I feel a duty-bound obligation to do. Of course, it  
23 will be on the record, and then tomorrow morning we'll reconvene  
24 at ten o'clock to start with the government's rebuttal case.

25 Now, by that point, I will have been in a position to rule



1 as to which, if any, of the exhibits they wish to use, they  
2 will, in the court's judgment, be able to use, if any, without  
3 showing them to detainee's counsel. At this point, there's only  
4 one that really falls into that category strictly because the  
5 other three, as I understand it, they have a substitute for.

6 So what they would be proposing to do is to use the  
7 substitute as opposed to the original document itself. The  
8 question that I have to resolve is whether the substitute is an  
9 adequate substitute under the standards that are set forth in  
10 CIPA under the circumstances. So I'll need to look at it and go  
11 over it with the relevant parties in this next phase of today's  
12 hearing.

13 So, by tomorrow morning, I will have been in a position to  
14 determine these things, and then I will be on the record, of  
15 course, indicating to the government how they may proceed under  
16 the circumstances.

17 So I don't know where this will end today, so I can't tell  
18 you -- it may be we'll have to start tomorrow morning with a  
19 brief portion that continues tonight's highly classified session  
20 that we're going to next so that I can put the rulings on the  
21 record, because I might need to reflect on it overnight; I just  
22 don't know.

23 So to the extent I need to reflect on it overnight, first  
24 thing that we'll do tomorrow morning is for me to put it on  
25 record in a hearing or proceeding that is TSSCI so that I can

1 put those rulings on the record. Then we will reconvene at a  
2 secret level, and I will announce the decisions, although not  
3 the reasoning, not the content of it.

4 To the extent that I can, I will just announce the decision  
5 or decisions that have been made, and then the government has  
6 already provided to detainees' counsel all the other documents  
7 that they have that they want to use in their rebuttal that are  
8 not in any way at such a level of classification that the  
9 detainees's counsel can't know about them. So that's already  
10 been done.

11 So you'll have the evening to review those further and be  
12 prepared to do whatever opposition you have to them, and I would  
13 suggest we do the same presentation as we've done all along.  
14 The government goes first as to its documents it's going to use.  
15 I don't think declarations we need to dwell on them. They speak  
16 for themselves, and those aren't really the evidence in any  
17 event. I think we should be focusing on any new facts that the  
18 government is trying to rely upon.

19 So I've already said that before on the record, and then  
20 tomorrow afternoon we'll do summations.

21 MR. OLESKEY: Just two questions or points. One is I  
22 just want to be clear about the next phase. This is with  
23 Mr. Oldham and members of his team and --

24 THE COURT: Who have the appropriate clearances.  
25 I don't know if everyone has the appropriate clearances, and

1 they have informed me that they will have available to the court  
2 representatives of the relevant agencies whose equities are the  
3 subject of the hearing so that they will be available on the  
4 record to answer questions from the court along the lines of our  
5 earlier discussion today with Mr. -- at the podium earlier today  
6 with counsel.

7 Mr. Kirsch and I talked about the various concerns the  
8 court has to satisfy itself with regard to the nature of the  
9 classification and extent to which it's one of those  
10 extraordinary circumstances that would warrant being able to use  
11 it without revealing it.

12 MR. OLESKEY: We understand your ruling on that.  
13 That's a helpful clarification. The second point I wanted to  
14 make is this. Obviously, the government attaches significant  
15 importance to these documents because they're in rebuttal and  
16 they're all kinds of issues about secrecy surrounding them.

17 We have no way to know as we stand here whether any of them  
18 will get in, and if they do get in, whether we'll think they're  
19 consequential or not. And you'll understand that, because we  
20 haven't seen them, and you haven't seen them.

21 THE COURT: The ones for which they've come up with a  
22 substitute, it's possible -- I stress that word, "possible,"  
23 because I don't know. I haven't had a chance to review it with  
24 their assistance. It's possible later this evening you'd be  
25 provided substitute.

1 MR. OLESKEY: I was getting toward that point.

2 THE COURT: If the court deemed that they were  
3 appropriate, then you could have them tonight as far as I'm  
4 concerned. I don't see any reason why you couldn't, because  
5 you'd have to start preparing to oppose them, to the extent you  
6 want to and to the extent you think you can, for tomorrow  
7 morning.

8 MR. OLESKEY: We understand that, and that was the  
9 point I wanted to make, that we need time to see them  
10 potentially to consult with experts, if we can locate any of our  
11 experts and do that.

12 THE COURT: I think you should have your experts, so  
13 to speak, on the ready. They should be accessible to you all.  
14 They certainly should have been by today, but certainly tomorrow  
15 morning first thing.

16 MR. OLESKEY: One was accessible today, but many of  
17 them teach, and it's a timing issue. The related point is --

18 THE COURT: You mean they're in class?

19 MR. OLESKEY: Teaching.

20 THE COURT: Oh, my goodness.

21 MR. OLESKEY: Mr. Zelikow teaches at the University of  
22 Virginia in Charlottesville, so it's not just next door. The  
23 related point is that we can't prepare our closing until we know  
24 what's coming in their rebuttal, and I can't honestly represent  
25 to you as counsel as I stand here that we'll have our closing

1 ready for, say, two o'clock tomorrow as we had contemplated,  
2 because that's what you've been contemplating if matters come in  
3 in rebuttal that we need to deal with, A, with our experts, and  
4 B, to work into our closing.

5 THE COURT: Yeah, well, my guess is you can -- you've  
6 probably got 95 percent of it done right now, and this is the  
7 last piece of the puzzle. It's still too early for me to  
8 appreciate fully to what extent, if any, this is a major piece  
9 of a puzzle, at least their puzzle.

10 MR. OLESKEY: I agree. All we know is they thought it  
11 was important, and they held it until rebuttal. And it'll be  
12 what it was going to be, but I didn't want to catch them or you  
13 by surprise tomorrow if I had to stand up and say, wait a  
14 minute, there's some issues here we have to deal with. I  
15 honestly don't think we can be ready as counsel at two o'clock  
16 to give a closing. I'm not saying we'll be there. I just  
17 wanted to raise that issue tonight.

18 THE COURT: Well, it's very fact-specific. I think  
19 you're all very seasoned counsel. Unless it's something of  
20 earth-shattering magnitude, which my initial instincts are it  
21 will not be, you should be more than able to go forward. And  
22 remember, you go second.

23 MR. OLESKEY: I recall that.

24 THE COURT: They go first, you go second. They can do  
25 a rebuttal. I'll let them do a brief rebuttal. So as a

1 practical matter, you're not really up at bat till 3:30 in the  
2 afternoon. That's a long time.

3 MR. OLESKEY: All right. We'll see what the morrow  
4 brings.

5 THE COURT: We'll see what the morrow brings, but I  
6 think you won't be able to have any trouble. We can always take  
7 a break for an hour or so to digest it further. You're going to  
8 have a lunch break. That's an hour and a half. That's enough  
9 to digest what they use in the morning. And again, based on my  
10 preliminary assessment, which is very preliminary, it's not  
11 going to be earth-shattering.

12 MR. OLESKEY: All right. Thank you, Your Honor. So  
13 we can leave tonight now, go work on our closing.

14 THE COURT: Yeah, but be available by phone, because  
15 if I conclude after this hearing that these substitutes are  
16 perfectly usable and perfectly appropriate, meet the standards,  
17 then they can take the necessary steps to get you those  
18 substitutes tonight.

19 You'll have a chance to review them and think about them,  
20 and you'll be in a position to mount whatever opposition you  
21 think is appropriate tomorrow morning on those. The one that's  
22 the bigger question is the one where they don't have a  
23 substitute, and their position remains they don't believe  
24 because of its sensitivity to national security that they can  
25 read any of your team members in consistent with their national

1 security responsibilities, and I guess the second half of that  
2 equation is they believe it would be an injustice for them to  
3 not be able to use it.

4 So it's a two-part presentation that I'll be hearing, I'm  
5 sure, as to why they can't read you in, why you don't have a  
6 need to know, and why, in their judgment, it would be an  
7 injustice if they couldn't use it. I don't want to prejudge  
8 what they say. I'll see what they say.

9 Hopefully, I can rule quickly on the substitute issues.  
10 I really would like to get you those tonight. I think the  
11 harder question's likely to be the other one, and I might need  
12 the benefit of the evening to reflect on it, make a decision  
13 first thing in the morning before we get going. As you know by  
14 now, I don't tend to overagonize. I try to make decisions  
15 relatively straightforward and quickly.

16 So you'll have a decision in the morning, and they'll have  
17 a decision in the morning on that, and there's really only two  
18 options that I can see. I mean, in theory there's a third, but  
19 the government's opposing that.

20 And I thought maybe there might be some way to do it, but I  
21 think it seems less likely that they'd be willing to have a  
22 limited read-in where counsel for detainee would only be use it  
23 in the courtroom. Certainly they're opposing that option,  
24 although flexibility is still a hallmark of these proceedings.

25 MR. OLESKEY: Indeed it is.

1 THE COURT: My sense is that's not as likely to be as  
2 workable as I had hoped it might be. We'll see. Again, I don't  
3 want to prejudge where this is going.

4 MR. OLESKEY: And we haven't prejudged that option  
5 either, as I understand it. Not our favorite option.

6 THE COURT: Actually, it's probably a good sign that  
7 neither side likes it. That's probably a sign that it's the  
8 perfect compromise. So I guess in theory I can order the  
9 perfect compromise. It's all going to be reviewed anyway.

10 I think there's probably a greater chance that it'll be one  
11 or the other. It'll be either you get to see it, or they can't  
12 use it. Or they can use it, and you can't see it. It's  
13 probably likely to be one of those two.

14 MR. OLESKEY: Well, I certainly know what I hope it'll  
15 come out. Could we ask Mr. Oldham just to give us a read on the  
16 Arabic translation opening?

17 THE COURT: I don't think he's here. Mr. Young's  
18 here.

19 MR. OLESKEY: Our counsel is still there. They could  
20 actually distribute it to the clients over the next day or so if  
21 it's ready and walk them through it in writing, which will be  
22 helpful.

23 THE COURT: Actually, you're right. I haven't got an  
24 update on that lately. Mr. Young, do you know?

25 MR. YOUNG: I have an update on one matter,



1 Your Honor. Good afternoon. My understanding is that the  
2 Arabic translation of the opening was distributed this morning.

3 THE COURT: Okay.

4 MR. OLESKEY: Terrific. Thank you.

5 THE COURT: So hopefully by this evening they will all  
6 have had a chance to read it.

7 MR. YOUNG: I don't know what the status of the  
8 detainees' review of it is, but it's been made available to  
9 counsel down there.

10 THE COURT: Well, we know two of them didn't have a  
11 lot of time to review it, that's for sure, but if you all could  
12 be in a position first thing tomorrow morning to be able to  
13 report, someone could check in down in Guantanamo between now  
14 and 10:00 tomorrow morning.

15 MR. YOUNG: On the question of whether the detainees  
16 have had access to it?

17 THE COURT: Right. And the question of whether the  
18 six of them have had a chance to review it. Obviously, it's  
19 their choice. I mean, no one's going to force them to review  
20 it, but at least they'll have a choice to review it.

21 If you could give us a report on that, that would be great,  
22 and also want to make sure detainees' counsel have an  
23 opportunity to talk with their clients during the lunch recess  
24 tomorrow in case there's anything they need to talk with them  
25 about before they do the closing arguments.

1           So I'd like the guards in the prison facility to be in a  
2 position to avail detainees of a phone call from their counsel  
3 during the lunch recess just in case there's any last-minute  
4 issue that arises.

5           I know they've been very cooperative in giving them access  
6 throughout this hearing, and I appreciate that very much, and I  
7 know detainees' counsel do, too. But I think before they do  
8 their closing argument, it would be certainly good for them to  
9 have the option to call down and talk to them from the secure  
10 phone downstairs.

11           MR. YOUNG: I'll make sure they work on that, Judge.  
12 I have a couple of other housekeeping matters.

13           THE COURT: Okay.

14           MR. YOUNG: In terms of our timing, Judge, when would  
15 you like to convene the TSSCI discussion --

16           THE COURT: Well, I think it'll probably be 10:00,  
17 because I'd have to do that first. If it's necessary. I mean,  
18 it could end up being moot, but I guess for now we might as well  
19 have a set time. So we'll just say 10:00 and 10:30 -- I can't  
20 imagine it would take a half hour.

21           Say 10:00 and 10 :30, and then we'll start with the  
22 government's rebuttal presentation at 10:30, and that'll give  
23 detainees' counsel that added half hour to keep looking at  
24 whatever it is they've gotten. I will certainly do my best to  
25 try to get you a ruling on the substitutes this evening.

1 MR. YOUNG: Right.

2 THE COURT: I guess if I can't, then first thing in  
3 the morning you'll have it. But based on a very cursory review,  
4 it's not exhaustively long. It's not a lot of paper.

5 MR. YOUNG: One other issue, Judge. I share  
6 Mr. Oleskey's interest in trying to figure out arrangements for  
7 the closing argument and making sure that we get everything done  
8 on schedule. There are now -- and I wanted to inquire whether  
9 the court would have concerns if the closing argument were  
10 divided between counsel.

11 THE COURT: No. But no more than two.

12 MR. YOUNG: No more than two.

13 THE COURT: I think two a side -- I don't normally  
14 allow that, but this is not a normal situation, to say the  
15 least, so I'm willing to give each side. But I'm not kidding  
16 when I say I think an hour and a half is plenty. I don't think  
17 you need it.

18 Frankly, I don't think you need an hour and a half. I  
19 think all the hard work that was done before the hearing started  
20 to narrow the case down to what the real issues are, I think  
21 would probably more than enable each side to make a very  
22 complete and full closing statement with regard to their case as  
23 to the issues that are really before the court. But I'm willing  
24 to budget three hours.

25 So even if we start at 3:00 to accommodate Mr. Oleskey's

1 request, I think by 6:00 -- you know, the break in the middle,  
2 maybe a 15-minute break -- we should be able to be done by six  
3 o'clock tomorrow. I really do. So I think that's a goal. It's  
4 a bit aggressive, but I think it's a worthy goal.

5 MR. YOUNG: Thank you, Your Honor. And one last  
6 issue. You expressed a disinclination to actually have the  
7 declarations in the government's rebuttal case presented  
8 tomorrow.

9 THE COURT: Well, I said that earlier today. It seems  
10 to me those were attached as exhibits to the government's  
11 opposition to detainees' brief, which was a motion in limine  
12 essentially to keep out certain types of government evidence  
13 regarding tradecraft, and these were attachments to a brief, and  
14 it seems to me they stand for whatever it is they stand for.

15 I will be reading them. I haven't read them all yet. And  
16 detainees' counsel will certainly, if they haven't read them  
17 all, they'll read them all. It's part of the fabric of the case  
18 now. They did some similar things with attachments that I  
19 permitted to be added to their -- to supplement their traverse  
20 with, and I think it only fair to the government to let the  
21 government supplement its amended return with it, and I already  
22 indicated that earlier.

23 So because it's not really fact centric, it's the bigger  
24 picture centric, I'd rather focus our time tomorrow morning on  
25 the new fact dimensions that are being brought out in the

1 rebuttal and leave to the final arguments any references you  
2 want to make and your colleagues want to make to these  
3 declarations.

4 If you think those declarations can help you in your final  
5 statements, final arguments, you're welcome to use them, but I  
6 just think tomorrow morning, in the couple hours we have, my  
7 guess is we'll use every bit of it on whatever new factual  
8 issues that are being raised in the rebuttal case.

9 MR. YOUNG: Very well, Your Honor. And just to be  
10 clear, similar to one or two of the issues that I had planned to  
11 raise in connection with the 122 discussion yesterday, I wanted  
12 to make sure that Your Honor wouldn't mind if we actually  
13 displayed some of the declarations during the closing in order  
14 to direct Your Honor's attention to what we believe is  
15 additional factual material, but we're happy to do it during  
16 closing rather than tomorrow morning.

17 THE COURT: Yeah, that's fine. Obviously, they have a  
18 lot of declarations, too. They've made reference to them as  
19 this case has progressed, and that's fine. It's part of the  
20 record to the detainees. It's part of your record. And if they  
21 want to put on the ELMO an excerpt from a declaration that they  
22 have put in their traverse, they can do that in the closing  
23 statement. They're welcome to highlight it that way. That's  
24 fine.

25 MR. YOUNG: Thank you, Your Honor. That was it.

1 THE COURT: Mr. Kirsch.

2 MR. KIRSCH: Thank you, Your Honor. We just have one  
3 request. We would like to know the name and the position of the  
4 agency representatives that will be addressing the court  
5 ex parte in camera.

6 THE COURT: I don't even know myself.

7 MR. KIRSCH: Perhaps the government could tell us,  
8 Your Honor.

9 THE COURT: I could tell you tomorrow morning.

10 MR. KIRSCH: It is our position that since we should  
11 be there, we at least are entitled to know who they are on this  
12 record, and it would help us in our preparation to understand  
13 tonight.

14 THE COURT: I can't answer your question. I don't  
15 know.

16 Do you know, Mr. Young? I don't know. I don't know who's  
17 coming.

18 MR. YOUNG: With the court's indulgence, I need to  
19 leave that question to Mr. Oldham who's working with the agency  
20 representatives. Certainly, we'd be able to state our position  
21 on that at the secret session tomorrow morning.

22 THE COURT: That's fine. Okay. Anything else? Have  
23 a good evening.

24 (Proceedings adjourned at 6:14 p.m.)  
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24  
25

INDEX

WITNESS:

PAGE:

Mustafa Ait Idir	DIRECT EXAMINATION.....	3
	CROSS-EXAMINATION.....	27
	REDIRECT EXAMINATION.....	43
Hadj Boudella	DIRECT EXAMINATION.....	46
	CROSS-EXAMINATION.....	73

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

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BRYAN A. WAYNE