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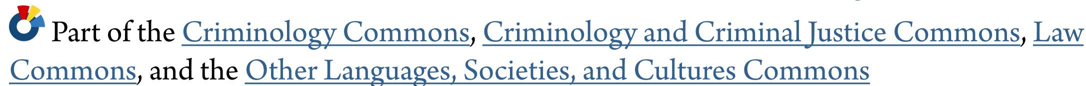

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TRANSLATOR, TRAITOR:
A CRITICAL ETHNOGRAPHY OF A U.S. TERRORISM TRIAL

by

MAYA HESS

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2014

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This manuscript has been read and accepted for the
Graduate Faculty in Criminal Justice in satisfaction of the
dissertation requirement for the degree of Doctor of Philosophy

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THE CITY UNIVERSITY OF NEW YORK

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Abstract

TRANSLATOR, TRAITOR:
A CRITICAL ETHNOGRAPHY OF A U.S. TERRORISM TRIAL

by

Maya Hess

Adviser: Professor Diana Gordon

Historically, the role of translators and interpreters has suffered from multiple misconceptions. In theaters of war, these linguists are often viewed as traitors and kidnapped, tortured, or killed; if they work in the terrorism arena, they may be prosecuted and convicted as terrorist agents. In *United States v. Ahmed Abdel Sattar, a/k/a "Abu Omar," a/k/a "Dr. Ahmed," Lynne Stewart, and Mohammed* [sic] *Yousry*, 02 Cr. 395 (JGK) (S.D.N.Y. 2003), Yousry, an Arabic linguist and scholar of Middle Eastern history, was labeled such an agent, his work as translator/interpreter construed as material support to terrorism, and his expertise recast as dangerous knowledge. Drawing on moral panic theory and applying ethnographic content analysis in combination with the extended case method, this critical ethnography of a terrorism trial (a) analyzes trial records and courtroom observations; (b) relates the findings to secondary data, such as Islamophobia polls and translator-traitor incidents and litigation; and (c) locates the synthesized product within an extralegal and historical context. The verdict's effects on the translation and interpreting community, academia, the terrorism knowledge base, and, by extension, national security are discussed and policy solutions offered.

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Acknowledgments

This dissertation did not come easily. It was an emotional rollercoaster that entailed deep losses along the way, and I would not have managed if it weren't for the support of a circle of extraordinary people, who prodded me forward and were important and instrumental in ways they may never know. Foremost among them is my daughter, Ila, whose teen years were intertwined with my work as a forensic linguist on terrorism trials, especially the Yousry case. I thank her for her patience, for tolerating my absorption with this topic, and for putting up with the mountains of terrorism data piled up in our apartment all these years.

My heartfelt thanks go to the members of my dissertation committee, for whom I have the highest regard. I have been very fortunate to have a scholar of the stature of Diana (Dinni) Gordon as my chair; her expert and thought-provoking advice, detailed comments, as well as warm and steady encouragement made this dissertation a reality. I am deeply grateful to David Brotherton, one of the nation's leading ethnographers, who has gone out of his way to provide me with critical insights and unwavering support. I wish to thank Susan Opotow, whose groundbreaking work on moral exclusion taught me the concepts and academic vocabulary of social (in)justice. The theory underlying this dissertation is moral panic, and I had the privilege of studying under one of its originators, Jock Young, by all accounts one of the most influential cultural criminologists of our time. Jock passed away while I was writing these pages. As an examiner during my dissertation proposal defense, he engaged me in absorbing discussions in his paper-strewn office, which I will cherish forever. In this context, I also gratefully acknowledge the faculty of the PhD Department of Criminal Justice at John Jay College/CUNY Graduate Center, which provided me with a stellar education and the skills to frame my practical experiences in the terrorism arena in a scholarly manner.

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I am particularly indebted to my friend Naomi Robbins for her always thoughtful edits, Muhammad Muslih for his invaluable insights, and Ruth Bittorf, a fellow linguist and historian, for stimulating discussions of the translation/interpreting issues involved in this case. A special thank you likewise goes to my research assistant, Audrey Greene, who helped assure interrater reliability, as well as to Sally Lam, who assisted with dissertation PowerPoint presentations.

At a point when the writing ground to a halt, my friend and neighbor Eileen Raffo pried me loose from my basement office and offered me light in her beautiful seaside home. Colleen Johnson also opened her pristine New England cottage to me and generously lent an ear, as did many other friends probably more times than they care to remember.

Lastly, I owe a debt of gratitude to Robert Hatcher, director of the Wellness Center at CUNY's Graduate Center. His perceptive analysis enabled me to examine my thinking and emotions associated with terrorism trials and errors of justice, and gain a more detached perspective while retaining my passion for a story that needed to be told.

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If you are neutral in situations of injustice,
you have chosen the side of the oppressor.
(Archbishop Desmond Tutu)

Introduction

When former President George W. Bush divided the world into "Us vs. Them" in his 2002 State of the Union address four months after 9/11, he broadly outlined a theme that would undergird much of what was to come. By demonizing entire nations—in this case, Iran, Iraq, and North Korea—he gave the country the green light to embrace international aggression and inhabit xenophobic attitudes. Many heeded the call. They included Congress, which passed the Iraq war resolution; U.S. troops, who tortured prisoners and soiled holy books (Hersh, 2004; "Iraq prison abuse," 2004; "Red Cross," 2005;[1] Watson, 2005); and a solid third of Americans, who preferred that their Muslim neighbors carry a special identification card (Elias, 2006).

To achieve national unity by mainstreaming everyone into a homogeneous "Us," the Bush Administration deployed an official post-attack narrative that rallied the country with tales of heroism and victimhood. However, on the darker side, it out-grouped members of Muslim cultures, pronouncements to the contrary notwithstanding. This narrative successfully tapped into an assortment of Islamophobic and other post-9/11 anxieties, producing an atmosphere—at least in the immediate aftermath—bred of pain, grief, fear, anger, and a desire for vengeance.

It was in this kind of atmosphere, with Osama bin Laden on the loose in the Afghan mountains and the neoconservative script spellbinding the nation, that the United States held its first major terrorism trial since 9/11. Against such a backdrop, this dissertation takes the reader on an ethnographic journey back in time and into a Manhattan federal courtroom in which, a few

[1] The International Committee of the Red Cross informed the Pentagon multiple times that U.S. military personnel at the Guantánamo Bay detention camp were mishandling the *Qur'an* ("Red Cross," 2005).

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hundred steps from Ground Zero, the case of *United States v. Ahmed Abdel Sattar, a/k/a "Abu Omar," a/k/a "Dr. Ahmed," Lynne Stewart, and Mohammed* [sic[2]] *Yousry*, 02 Cr. 395 (JGK) (S.D.N.Y. 2003)[3] was tried. Focusing on "Them," it centers on the fate of Mohamed Yousry,[4] an Arabic translator and interpreter (T/I)[5] and scholar of Middle Eastern history, whom a jury convicted of defrauding the U.S. government and aiding and abetting a foreign terrorist organization as a result of his work for the attorneys of a convicted terrorist.

By drawing on a variety of sources, among them court records, current literature on translation and interpreting in conflict situations, jury research, and moral panic theory, the dissertation analyzes *one* facet of the country's response to 9/11 and shows how, under "the 'cover' of legitimacy" (Apfelbaum, 1979, p. 202), social injustice was promoted within a legal context. The trial process is intended as both a search for truth and a means to achieve justice; in *United States v. Sattar* (2003), this process instead produced a distorted factual record and an unjust result. Multiple examples from the trial transcript and direct observation reveal that, in the hurried quest to find culprits, procedural justice became procedural injustice, academic freedom was compromised, and the terrorism knowledge base diminished. A brief examination of the role of T/Is highlights the misconceptions that surround this profession, misconceptions that may impact the criminal justice system and U.S. national security for years to come. Finally, it is the

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[2] In the court record and much of the media, Yousry's first name is spelled incorrectly with two *M*s. I adopt Yousry's own spelling throughout the dissertation (M. Yousry, personal communication, 1993).

[3] Hereinafter *United States v. Sattar* (2003).

[4] For a list of main trial appearances (defendants, attorneys, etc.), see Appendix B.

[5] In the media, courtrooms, and other venues, the terms *translator* and *interpreter* are often used interchangeably. Although both professions refer to rendering information from one language into another, a translator works with written text, while an interpreter deals with the spoken word. Yousry did both, frequently within the same attorney-client meeting. In this dissertation, except when reference is made to interpreter role definitions, professional codes of ethics, or interpreter research, or the specific role/assignment is known, the terms *translator/interpreter* (*T/I*) or *linguist* are adopted throughout.

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story of an Arab man who experienced the tightening noose of a narrower "scope of justice" (Opotow, 1995, p. 347), one of the more shameful hallmarks of post-9/11 America.[6]

To gain some understanding of "how" and, more importantly, "why" such a verdict was possible, as well as its implications, this dissertation provides a baseline exploration of the case, broken down into eight chapters. Chapter 1 lays out the background of *United States v. Sattar* (2003), introduces the key participants, and explains the counts charged in the indictment. Chapter 2 discusses the significance of and fallout from this verdict in two parts: "Expansion of the translator/interpreter role" generalizes from this single case study to the larger context of the translation/interpreting industry and deficits in the foreign-language capabilities of U.S. national security, while "Dangerous knowledge" delves into the repercussions for academic freedom and the terrorism knowledge base. Chapter 3 frames the argument and the research question; Chapter 4 presents the theory applied, that is, moral panic; and Chapter 5 outlines the methodology and data. Chapters 6 and 7 provide the body of evidence, gathered by conducting an ethnographic content analysis of pertinent court records supplemented by the author's observations of the approximately eight-month trial. This evidence is structured into eight legal and three extralegal factors, with each factor containing a brief review of the relevant literature. Finally, Chapter 8 discusses the contribution of this dissertation to the literature, and concludes with micro and macro policy suggestions directed at protecting T/Is in high-risk settings.

[6] Opotow (1995) defines *scope of justice* as the psychological boundary within which justice and moral rules are perceived to be relevant. Accordingly, a narrower scope "constricts the set of situations in which justice concerns are applicable," while for "social categories outside the scope of justice, the concepts of deserving and fair treatment do not apply" (p. 347).

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Chapter 1: Background and Cause of Action

In the early hours of April 9, 2002, the Federal Bureau of Investigation (FBI) entered Mohamed Yousry's home in Queens, New York, executing arrest and search warrants and seizing his computer, documents, and books. In a simultaneous operation, the Manhattan office and Brooklyn residence of attorney Lynne Stewart and the Staten Island home of Ahmed Abdel Sattar, a paralegal, were searched, and both Sattar and Stewart were arrested. Across the Atlantic, the British authorities took into custody Yassir Al-Sirri, the head of the London-based Islamic Observation Center.[7] That same day, John Ashcroft, the U.S. Attorney General, held a news conference to announce the indictment returned by a federal grand jury charging Sattar, Al-Sirri, Stewart, and Yousry with "aiding Sheikh Abdel Rahman in continuing to direct the terrorist activities of the Islamic Group (IG) from his prison cell in the United States" (Ashcroft, 2002). Dr. Omar Abdel Rahman, also known as the Blind Sheikh, is considered to be the spiritual leader of the Islamic Group (IG), or *Gama'a al-Islamiyya*, an extremist Egyptian social movement designated a foreign terrorist organization (FTO) by the U.S. Secretary of State in 1997 pursuant to 8 U.S.C. § 1189, and redesignated as such in 1999 and 2001, respectively (U.S. Department of State, 2001). He is currently serving a life sentence plus 65 years for his role in the 1993 conspiracy to wage a war of urban terrorism against the United States. This war included a plot to bomb New York City landmarks, among them the United Nations, the FBI building in downtown Manhattan, and the Holland and Lincoln tunnels, and to assassinate former Egyptian President Hosni Mubarak during his visit to the United States (*United States v. Rahman,* 1993).

[7] Depending on the frame of reference, the Islamic Observation Center is a human-rights organization dedicated to furthering Islam-related causes ("Interview," n.d.) or an extremist propaganda hub that raises funds for and serves as a "conduit for *al-Qaida*" ("Head of London Islamic Center," 2001, p. 2).

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Sattar, a Staten Island postal worker and father of four, was the court-appointed paralegal during Rahman's conspiracy trial. He continued performing this function for Rahman's legal team in the appeals phase as well as during the team's ongoing representation of the sheikh. Egyptian by birth, Sattar had left his native country for the United States in the early eighties to avoid persecution for his anti-government stance. He became a U.S. citizen in 1989 but remained very interested in Egyptian politics (Preston, 2004). A religious follower of Rahman, he was regarded by the U.S. government as "an active IG leader and surrogate for Sheikh Abdel Rahman" (*United States v. Sattar*, 2002, April 8, p. 8), an interpretation that appears to have accorded him status beyond his actual involvement. What is factual is that he was a very engaged member of Rahman's defense committee and, in that capacity, was in contact with co-defendant Yassir Al-Sirri and other IG figures.

Al-Sirri, an Egyptian dissident who monitored government actions against Islamists around the globe, had fled Egypt in 1988. He arrived in London from the Sudan in 1994 and was granted political asylum by Great Britain on the grounds that he faced persecution in his home country. He was twice sentenced to death in absentia by an Egyptian military tribunal: once in 1993 for his alleged role in the assassination attempt of former Prime Minister Atif Sidqi, and again in 1999 for his alleged involvement in the case of the "Returnees from Albania"[8] (Moussa, 2001).

Stewart, a self-proclaimed "radical human rights attorney" (Stewart, 2007), was the lead attorney in Rahman's trial in the nineties, and she remained part of his legal team throughout his appeal and his continued legal representation. This legal team also included Ramsey Clark,

[8] An allusion to the American euphemism *extraordinary rendition*, the "Returnees from Albania" refers to a 1999 criminal case in which suspects were kidnapped from select foreign locations, among them Albania, and rendered to Egypt to stand trial before an Egyptian military court on a variety of charges or, as in Al-Sirri's case, were tried in absentia (El-Hamalawy & Kellogg, 2005).

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Attorney General during Lyndon Johnson's presidency; Abdeen Jabara, a civil rights attorney and one of the founders of the Arab-American Anti-Defamation League; and Lawrence Schilling, a Harvard-educated attorney and former chief of the Civil Division of the U.S. Department of Justice. In addition to defending the blind cleric, Stewart had been involved in many other high-profile and controversial cases, among them *United States v. Levasseur* (1985), better known as the United Freedom Front bombings; *People v. Davis* (1986), which related to the shooting of six New York City police officers; and, while already under indictment, *People v. Assi* (2000), in which she represented Mazen Assi, a young Palestinian charged with attempted arson at a New York City synagogue and other related counts.

With the exception of Jabara, no one on the legal team spoke or read Arabic.[9] In order to communicate with their client and understand Arabic-language documents, they hired Yousry as the team's translator, interpreter, and cultural consultant. Stewart and Clark had met Yousry in the pretrial phase of Rahman's trial, in which the latter was indicted, together with 10 co-defendants, on a variety of charges, chief among them seditious conspiracy (*United States v. Rahman,* 1993). Yousry had been contracted by Hess Translations Inc., the court-appointed agency for the defense, as one of many linguists translating Arabic-language discovery.[10] In addition to the translation work, he interpreted at attorney-client conversations and took the stand as a linguistic expert witness after the original expert witness withdrew out of fear for his family's safety in Egypt. After Rahman's 1995 conviction, the team continued their efforts on his behalf, and Clark hired Yousry directly to translate and interpret for them. Yousry's assignment, which lasted from 1995 through April 8, 2002,[11] the day of his indictment, consisted of

[9] Jabara was not a native speaker of Arabic (T. 7476–77).
[10] The dissertation author's company.
[11] With the exception of the period from the end of 1996 to mid-1997.

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translating appeal-related and assorted other documents from/into Arabic[12]; interpreting at the legal weekly prison calls between the cleric and his lawyers, which took place at the lawyers' offices (mainly Clark's); and accompanying individual lawyers on occasional prison visits. He was also directed to purchase Arabic-language newspapers, scan their content, translate same for the lawyers to vet, and then read the approved items to Rahman during the prison calls.[13] In a procedure established by the lawyers, Yousry likewise acted as a liaison in that he briefed one attorney on the substance of a prior phone call/visit conducted by another attorney (T. 8755[14]). This system of exchanging information was a logical outgrowth of the fact that Yousry was the only one present during the majority of contacts with Rahman. To handle this added responsibility, Yousry kept notebooks in which he jotted down notes during the calls/visits, not only a common practice among consecutive interpreters but, in Yousry's case, essential as an *aide memoire* for subsequent attorney briefings.

These notebooks also contained dissertation research. In addition to his work as a linguist, Yousry was a doctoral student at the Department of Middle Eastern and Islamic Studies (MEIS) at New York University (NYU), writing a thesis on Rahman and the Islamic Group. His dissertation advisor, Professor Zachary Lockman, chair of MEIS, testified at the trial that it was actually he himself and his colleagues who had encouraged Yousry to study the topic in light of his rare access to Rahman, believing that this access "could be used to produce an important work of scholarship" on the man and his movement (T. 8858). Yousry, who had already done preliminary research on Egyptian popular culture, agreed to switch topics, a decision that would prove fateful.

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[12] *United States v. Rahman*, 189 F.3d 88 (2d Cir. 1999).
[13] Articles were selected from *Al-Ahram, Al-Hayat, Al-Murabitun, Al-Quds Al-Arabi*, and *Asharq Al-Awsat.*
[14] "T." refers to the transcript of the trial.

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Indictments

The original indictment was filed on April 8, 2002, and contained five counts. In Count 1, Sattar, Al-Sirri, Stewart, and Yousry were charged with conspiring "to knowingly provide material support and resources" to a foreign terrorist organization, the IG, in violation of 18 U.S.C. § 2339B (*United States v. Sattar,* 2002, April 8, p. 11), while Count 2 charged them with providing and attempting to provide such "material support and resources" to the IG in violation of 18 U.S.C. §§ 2339B and 2 (p. 20). Count 3 charged Sattar and Al-Sirri with soliciting "other persons to engage in violent terrorist operations worldwide" in violation of 18 U.S.C. § 373 (p. 21), and Count 4 charged Sattar, Stewart, and Yousry with conspiring "to defraud the United States and an agency thereof " in violation of 18 U.S.C. § 371 (p. 22). Count 5 only pertained to Stewart and charged her with making "materially false, fictitious, and fraudulent statements and representations" and making and using "a false writing and document knowing the same to contain materially false, fictitious, and fraudulent statements and entries" in violation of 18 U.S.C. §§ 1001 and 2 (p. 23).

Following multiple rounds of hearings, the Court dismissed the charges of material support to terrorism on the basis of constitutional vagueness (*United States v. Sattar*, 2003, July 22). On November 19, 2003, the U.S. Attorney of the Southern District of New York filed a seven-count superseding indictment, which no longer included defendant Al-Sirri[15] and restated some of the charges using a different legal foundation (*United States v. Sattar*, 2003, November 19). The Court allowed the newly formulated charges to go forward, and the case went to trial in the summer of 2004.

[15]Approximately one and a half years after the original indictment was brought, Al-Sirri, who had been charged with facilitating communication worldwide among members of the IG and providing material support and financial resources to same, was dropped from the indictment because Britain refused the United States' extradition request.

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According to this superseding indictment, Sattar was charged with "conspiring to defraud the United States (18 U.S.C. § 371); conspiring to kill and kidnap persons in a foreign country (18 U.S.C. § 956(a)(1) and (a)(2)(A)); and soliciting crimes of violence (18 U.S.C. § 373)" (Comey, 2003, p. 1).[16] The counts against Stewart were "conspiring to defraud the United States (18 U.S.C. § 371); conspiring to provide and conceal material support to terrorist activity (18 U.S.C. §§ 371 and 2339A); providing and concealing material support to terrorist activity (18 U.S.C. §§ 2339A and 2); and two counts of making false statements (18 U.S.C. § 1001)" (ibid). Yousry was charged with "conspiring to defraud the United States (18 U.S.C. § 371); conspiring to provide and conceal material support to terrorist activity (18 U.S.C. §§ 371 and 2339A); and providing and concealing material support to terrorist activity (18 U.S.C. §§ 2339A and 2)" (ibid).[17]

Specifically, in Count 1, Yousry and his co-defendants Stewart and Sattar were charged with violating 18 U.S.C. § 371 by conspiring, from June 1997 to April 2002, to defraud the United States in that they hindered the Department of Justice (DOJ) and the Federal Bureau of Prisons (BOP) in the administration and enforcement of the Special Administrative Measures (SAMs) that had been imposed on Rahman.[18] The SAMs are rules promulgated by the Department of Justice to prevent prisoners loyal to a power other than the U.S. from communicating with their associates either through phone calls or contact visits, and from engaging in criminal activities on behalf of that power. They came into effect on May 17, 1996,

[16] Cover letter dated November 19, 2003, from James B. Comey, U.S. Attorney for the Southern District of New York, to Hon. John G. Koeltl, U.S. District Judge, accompanying the superseding indictment.

[17] See Appendix A for a detailed explanation of the charges from the superseding indictment.

[18] Stewart and her co-defendants could not technically violate the SAMs, since they were imposed on Rahman; thus the count was formulated as conspiring "to defraud the United States and an agency thereof, to wit, to hamper, hinder, impede, and obstruct by trickery, deceit, and dishonest means, the lawful and legitimate functions of the United States Department of Justice and its agency, the Bureau of Prisons, in the administration and enforcement of the Special Administrative Measures for inmate Abdel Rahman" (*United States v. Sattar*, 2003, November 19, pp. 13–14). Hereinafter, for brevity's sake, this defrauding will also be referred to as violating the SAMs.

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and are codified at 28 C.F.R, with § 501.2 pertaining to national security and § 501.3 pertaining to violence and terrorism (U.S. Department of Justice, 1997). The government alleged that to perpetrate this fraud, Yousry and Stewart enabled communication between Rahman and persons/entities with whom Rahman was barred from communicating. As stated in the SAMs provisions, Rahman was only permitted contact with his lawyers and his family in Egypt.

Considering Rahman to be an important figure on the world stage, Stewart had adopted a provocative legal strategy that included keeping Rahman's case as visible and topical as possible (Van Susteren, 2002).[19] In line with this strategy of creating and maintaining a high profile for her client, she contacted the media and conveyed his views on a politically sensitive issue. Specifically, Stewart communicated to *Reuters* correspondent Esmat Salaheddin in Cairo that Rahman had withdrawn his personal support for a ceasefire initiative that had been negotiated between the IG and the Egyptian government prior to the 1997 Luxor massacre. Rahman's rationale for this change of position was that since he was incarcerated in the United States and thus without direct knowledge of domestic Egyptian affairs, the IG should decide for itself if the initiative remained feasible and produced the desired benefits for the group. The U.S. government contended that this particular phone conversation between Stewart and Salaheddin gave rise to the indictment. In fact, Anthony S. Barkow, one of the prosecutors, stated in his rebuttal summation that there would not have been a case if it weren't for the fact that "Rahman's blessing of violence" was "announced to the media and broadcast and published in the newspapers around the world" (T. 12111). Of note is that Yousry played no part in devising Stewart's legal strategy, nor was he present when Stewart made that fateful call to the English-speaking Salaheddin (T. 9028).

[19] Stewart expressed this view on May 6, 2002, on the broadcast *Ties to Terror, On the Record with Greta Van Susteren*.

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According to the SAMs, attorneys are responsible for enforcing the measures' provisions, which means they must instruct their staff in that regard, including linguistic personnel (Stewart, 2001). Stewart, the attorney of record, who periodically had to sign a SAMs affirmation, admitted to and was convicted for violating the SAMs by having disregarded the gag order (Preston, 2006a).[20] Yousry, who had not been a signatory to the SAMs, was convicted for violating them even though he had been in full compliance by (a) following attorney instructions, and (b) never communicating anything from any attorney-inmate meeting to anyone outside the legal team.

Counts 2 and 3 pertained only to Sattar: Count 2 charged him with conspiring to kill and kidnap persons in a foreign country in violation of 18 U.S.C. § 956(a)(1) and (a)(2)(A) by facilitating communication between Rahman and followers who allegedly were planning terrorist acts, while Count 3 charged Sattar with soliciting crimes of violence in violation of 18 U.S.C. § 373 by collaborating with Rifa'i Ahmad Taha Musa,[21] a leader of the IG's militant wing, on a *fatwah* in October 2000 that called on fellow Muslims to kill Israelis.

Count 4 stated that, from September 1999 through April 2002, Stewart and Yousry, in violation of 18 U.S.C. §§ 371 and 2339A, agreed to the contents of Count 5, which charged that they provided and concealed material support and resources in the form of personnel to a separate transatlantic terrorist conspiracy in violation of 18 U.S.C. §§ 2339A and 2.[22]

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[20] In a letter to the Court, Stewart admitted that "she knowingly violated prison rules and was careless, overemotional and politically naïve in her representation of a terrorist client" (Preston, 2006a, p. 1).

[21] Aka Abu Yasir and referred to as "Taha" in the trial and hereinafter.

[22] Count 5: "From in or about September 1999 through in or about April 2002, in the Southern District of New York and elsewhere, LYNNE STEWART and MOHAMMED [sic] YOUSRY, the defendants, together with others known and unknown, within the United States, provided material support and resources, to wit, provided personnel by making Abdel Rahman available as a co-conspirator, and concealed and disguised the nature, location, source, and ownership of material support and resources, to wit, concealed and disguised the nature, location, source, and ownership of personnel by concealing and disguising that Abdel Rahman was a co-conspirator, knowing and intending that such material support and resources were to be used in preparation for, and in carrying out, a violation of Section 956 of Title 18,

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"Personnel" referred to Rahman, who, the government claimed, would have been unavailable to participate in this second conspiracy (or Count 2 conspiracy) if it weren't for the defendants. In other words, the government alleged that Yousry and Stewart made Rahman available to his followers by functioning as his communication pipeline. Yousry's participation in this pipeline consisted of translating and interpreting at prison meetings and prison calls between Stewart and Rahman.

On February 10, 2005, after a trial lasting approximately eight months, a jury convicted all defendants of all charges. Sattar was facing the possibility of life imprisonment, while the prosecution asked for 30 years for Stewart and 20 years for Yousry. Sentencing was delayed several times and finally took place on October 16, 2006. Sattar received 24 years, Stewart 28 months, and Yousry 20 months (Preston, 2006b).[23]

The wheels of justice have ground very slowly: Seven and a half years after the original indictment, Judges Guido Calabresi, Robert Sack, and John M. Walker, Jr. of the Second U.S. Circuit Court of Appeals upheld the lower court's decision and instructed Stewart and Yousry, who were free on bail, to immediately start serving their sentences (Sattar was already in custody). They additionally remanded the case to the district court to determine whether, inter alia, Stewart had perjured herself at trial and therefore deserved a harsher sentence, and to review Yousry's and Sattar's sentences relative to a potentially longer Stewart sentence (*United States v. Stewart,* 2009, November 17). At the resentencing, the district court complied with the appeals court's directive and increased Stewart's sentence to 10 years while affirming Yousry's and Sattar's sentences (*United States v. Stewart,* 2010, July 15). Sattar, whose health has taken a turn

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United States Code, to wit, the conspiracy charged in Count Two of this Indictment, and in preparation for, and in carrying out, the concealment of such violation" (*United States v. Sattar*, 2003, November 19, pp. 31–32).

[23] See Appendix A, "Overview of Charges."

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for the worse, is serving his sentence in solitary confinement at the U.S. Penitentiary Administrative Maximum Facility in Florence, Colorado (K.A. Paul, personal communication, July 15, 2010). Better known as Supermax, or Alcatraz of the Rockies, this prison houses men who are deemed the most dangerous criminals within the U.S. Federal Prison System. Stewart, who had received a diagnosis of breast cancer in 2005, had been incarcerated at the Federal Medical Center Carswell in Fort Worth, Texas, but due to her terminal state of health, she was granted compassionate release on December 31, 2013, after serving more than 49 months (Weiser, 2013).[24] Yousry was released on April 29, 2011, after serving approximately 17 months of his 20-month sentence at the Federal Correctional Institution in Fort Worth, Texas, a low-security facility for male offenders (Federal Bureau of Prisons, n.d.).

[24] Her appeal arguing that her more than quadrupled sentence was substantively unreasonable had been denied by the Second U.S. Circuit Court of Appeals, her petition for a rehearing *en banc* to reverse was denied as well, and her petition for a *writ of certiorari** to the U.S. Supreme Court was pending when she was ordered released on December 31, 2013 (lynnestewart.org).

*Informally called a *cert petition* and most commonly used by the U.S. Supreme Court, it is a petition for a "writ … issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein" (Black, H. C., Nolan, J. R., & Nolan-Haley, J. M., 1990, p. 228).

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Chapter 2: Significance

The Yousry verdict is important for two reasons: (a) It forever altered the landscape for translators and interpreters in the United States in that, for the first time in the country's history, a T/I was held responsible for the legal strategy and actions of an attorney who employed him as well as for the content of attorney-client conversations at which he translated and interpreted. This precedent represents a substantial expansion of the role of T/Is, which has broad implications not only for the profession itself but also for national security. (b) The majority of evidence against Yousry consisted of First Amendment-protected activity and material, including dissertation drafts, academic texts, and research data on a variety of Islam- and terrorism-related topics, primarily in the form of newspaper articles. This suggests that scholarly expertise in the field of terrorism has been reconceived as "dangerous knowledge" and academic freedom has been curtailed.

Expansion of the Translator/Interpreter Role

September 11 and the rise of violent extremism was a painful reminder of the United States' foreign-language deficits.[25] The wars in Afghanistan and Iraq have further heightened the focus on the linguistic state of affairs in the U.S. and its glaring inadequacies. The various intelligence agencies continue to struggle to attract qualified linguists[26] for processing the ever-

[25] It took the National Security Agency (NSA) two days to translate the Arabic-language intercept containing the statements "Tomorrow is zero hour" and "The match begins tomorrow" (Ensor & Snow, 2002; United States Congress, 2002).

[26] See Congressional testimonies on personnel shortages by representatives of the U.S. General Accounting Office before the U.S. Senate in 2002 and 2007, respectively (Westin, 2002; Ford, 2007). Congressional testimonies from the May 2012 hearing entitled "A National Security Crisis: Foreign Language Capabilities in the Federal Government" are available at http://www.hsgac.senate.gov/subcommittees/oversight-of-government-management/hearings/a-national-security-crisis-foreign-language-capabilities-in-the-federal-government

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mounting FISA[27] intercepts and endless stream of terrorist chatter in critical languages, while the BOP is falling behind in reading inmates' foreign-language mail.[28] Courts often experience linguistic manpower shortages when staffing terrorism trials, and attorneys for terrorist suspects or convicts at times must make do with substandard T/Is—or even government linguists—to translate/interpret at attorney-client meetings. For instance, following Yousry's indictment, Rahman's attorneys were forced to use FBI personnel to facilitate attorney-inmate phone conferences, since many private-industry linguists were no longer willing to accept such high-risk assignments. Of course, this completely subverts the attorney-client privilege. Similarly troubling, a guard commander at Guantánamo had gone so far as to request that a detainee speak English with his lawyer (Glaberson, 2008), presumably so that conversations could be monitored without having to be translated first.[29]

The reasons for these foreign-language shortfalls are manifold and include political quarrels, exploding demand, English-only ideologies, regulatory and funding issues, as well as a profound distrust of Middle Eastern natives working as T/Is (see Chapter 7, "The Translator-Traitor Mentality"). Now added to this list is the expanded role of linguists resulting from the Yousry case, which broadens the scope of their responsibility well beyond established industry standards.[30] This new, unsettling accountability is evident in the fact that T/Is working for

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[27] The Foreign Intelligence Surveillance Act (FISA) (1978) provides for special procedures to conduct "physical and electronic surveillance and collection of foreign intelligence information" and for setting up a special court authorizing such procedures (U.S. Department of Justice, 2013, p. 1).

[28] Inmates at the super-maximum-security prison in Colorado wrote more than 90 letters to Islamic radicals connected to the group responsible for the 2004 Madrid train bombings and other conspiracies. To cite one example, a letter from Mohammed Salameh, a participant in the 1993 World Trade Center bombing, was found in the possession of Mohamed Achraf, the ringleader of a radical cell called "Martyrs of Morocco," who was convicted of terrorist activity by a Spanish court in February 2008 (Cardona, 2008; Goodman, 2008).

[29] When defense lawyer Jonathan Hafetz, from the Brennan Center for Justice at New York University, wrote to the government inquiring about the English-only requirement, he received no response (Glaberson, 2008).

[30] The traditional understanding of language interpreting as set forth by the American Society for Testing and Materials (ASTM) is "the process of understanding and analyzing a spoken or signed message and re-expressing that message faithfully, accurately, and objectively in another language, taking the cultural and social context into account" (as cited on http://NAJIT.org, n.d.). This standard has been adopted by the National Association of

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attorneys who represent inmates subject to these measures must now sign a SAMs acknowledgment.

The SAMs were imposed on Rahman for the first time when U.S. Attorney General Janet Reno instructed Kathleen Hawk Sawyer, Director of the Federal Bureau of Prisons (BOP), to inform him of the new restrictions and explain why they were being applied (T. 2599–600). As of the date of Yousry's indictment, in addition to Rahman, only 15 other inmates nationwide had been subject to the SAMs (Ashcroft, 2002), among them Leonard Peltier, a high-level leader of the American Indian Movement and indigenous rights activist (T. 8038), and Luis Felipe, the self-appointed head of the New York State Chapter of the Latin Kings (*United States v. Felipe*, 1998). Today, as a reflection of the increasingly harsh penal culture in the United States, the SAMs cut a much wider swath through the prison landscape, and many alleged/convicted terrorists and assorted criminals—ranging from the remaining Guantánamo prisoners to Matthew Hale, the leader of the New Church of the Creator (Wilgoren, 2005)—have been placed under their restrictions. As a corollary to this development, the greater the number of non-English-speaking inmates subject to the SAMs, the greater the number of T/Is who are affected by this legal instrument.

In addition to the substantial increase in SAMs prisoners, the measures themselves have become progressively more complex. For instance, after 9/11, the rule was amended and, in Rahman's case, the SAMs evolved from just a few pages to approximately 20 pages of detailed provisions that govern virtually every aspect of an inmate's interaction with his attorney, spouse,

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Judiciary Interpreters and Translators (NAJIT) as well as the American Translators Association (ATA; http://www.atanet.org), the two major trade associations in the United States. NAJIT further spells out the different techniques of interpreting and stipulates that only three modes of interpretation are permissible in legal, quasi-legal, and medical settings. These modes are simultaneous (message is received and communicated at virtually the same time), consecutive (message is communicated after a pause), and sight translation (oral rendering of written text).

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visitors, etc.[31] The initial SAMs consisted of two parts: an "Attorney's Affirmation," in which the attorney affirmed under oath to uphold the SAMs, and the "Notification of Special Administrative Measures," which covered the interim SAMs modification authority,[32] adherence to customary BOP policy requirements, limits on inmate communication, attorney affirmation of receipt of the SAMs restrictions, the use of T/Is, and an inmate's telephone contacts, mail, visits, and communication with the news media (U.S. Department of Justice, 1999).

In the period from 1996 until mid-2003, T/Is were neither required to sign any document related to the SAMs nor provided with a copy of the SAMs; compliance with the measures was the sole responsibility of the attorney of record. This means that Yousry was never officially given the SAMs, nor had he been asked to sign anything. In the aftermath of his indictment, however, the Department of Justice now supplies linguists with a copy of the SAMs and mandates that they sign an acknowledgment. These post-9/11 SAMs comprise three sections. Part 1 is entitled "Acknowledgment of Receipt of Special Administrative Measures" (U.S. Department of Justice, 2003c), which the T/I must sign. Part 2 is the "Notification of Special Administrative Measures" (U.S. Department of Justice, 2003b), the content of which has been restructured and expanded to include general provisions, attorney-client provisions, inmate's non-legal contacts, communication with the news media, group prayer, prohibitions against communal cells and communication between cells, the recording of conversations between cells, cellblock procedures, commissary privileges, access to mass media, and the frequency of cell searches. The newly added Part 3 covers general provisions, privilege teams,[33] legal visits, legal

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[31] The extent of detail in the SAMs is specific to the individual inmate; however, the document now generally exceeds 15 pages (Underriner, 2007).

[32] An interim rule that expanded the authority of the Attorney General and the BOP under the SAMs.

[33] The privilege team is assigned to monitor attorney-client communication, and no individual who has participated or will participate in investigations or prosecutions of an inmate who is subject to the SAMs may be part of the team (U.S. Department of Justice, 2003a).

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mail, telephone calls, and the disclosure of monitored communication (U.S. Department of Justice, 2003a).

This means that linguists have to sign an acknowledgment pertaining to an agreement that regulates prison phone calls, meetings, legal mail, etc. Just a cursory glance at the SAMs reveals that the majority of the document does not pertain to T/I duties; for example, a provision from one of the versions of the SAMs entered into evidence reads: "The inmate's attorney may not send, communicate, distribute, or divulge the inmate's mail … to third parties" (U.S. Department of Justice, 1999, p. 6). As is readily apparent, this area is not under the control of the T/I and, consequently, it is unreasonable to find a T/I culpable if an attorney defrauds the BOP in its administration of the SAMs. Thus, while this signatory requirement increases awareness of the SAMs' content and reach, it also compounds the already fragile position of the linguist in such high-risk settings.

Furthermore, the fact that T/Is had not been supplied with a copy of the SAMs pre-9/11 suggests that, until the Yousry case, the government did not consider them active participants in attorney-prisoner interactions, active being defined as having to perform functions that fall outside the traditional interpreting role. This marked change in policy—particularly the addition of the signature requirement—indicates that the government has shifted its understanding of the role of linguists. Following the indictment, and especially after the verdict, the role expanded to include functions that are broad and ill-defined, and as such, likely to incur unanticipated liability.

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Evaluative and reporting functions.

The most serious fallout from the Yousry case is that T/Is are now expected to evaluate the legality of an attorney's strategy as well as the content of attorney-client conversations, and to inform the authorities if they deem anything suspicious. Rafael (2009) writes that "the systematic instrumentalization of foreign languages to serve nationalist ends runs far and deep in American thinking" (p. 2). The Yousry prosecution, which equated the act of translation with terrorism, is evidence of this thinking and fits squarely within current U.S. defense policy, where critical languages such as Arabic are conceived "as part of a 'critical weapons system'" and "a 'war-fighting skill'" (p. 3). Now that the legal road is paved, the clarion call to linguists has been sounded, a call to adopt the state's interest in the war on terror or else.

Such a call, though, does not come without unwelcome side effects. For one, it violates attorney-client privilege and potentially subverts a defendant's right to counsel as guaranteed by the Sixth Amendment. Second, T/Is who fail to comply with what amounts to serving as the government's watchdog now run the risk of being accused of conspiring with the attorney for whom they are working. T/Is, however, are rarely lawyers nor are they ever privy to all the facts of a case, a precondition for making any legal evaluation. Moreover, when facilitating an attorney-client conversation, they may now encounter two types of content—permissible and not permissible—and have the added responsibility of distinguishing between the two and, depending on the political winds, not translating the latter. This, of course, raises many questions, including, "What constitutes not permissible or dangerous content, and in what context?" In the Yousry case, not permissible content referred to Rahman's opinion on the continuation or cessation of the ceasefire initiative in Egypt. Essentially, the prosecution claimed that Yousry should have refused to translate the part of the prison visit between Stewart and

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Rahman that related to the ceasefire, since it could lead to violence. Clearly, such a demand to differentiate is problematic because prison linguists, especially those working in the terrorism arena, are dealing with violence-laced rhetoric as a matter of course, and if they provide attorneys with sanitized translations of clients' comments, it may adversely impact the preparation of an effective defense or appeal because the attorney will lack an accurate picture of the client's situation.[34]

The U.S. government is fully cognizant of the traditional definition of the professional duties of an interpreter, as evidenced by the attitude of the judiciary[35] and the various codes adopted by trade associations and court systems, both internationally and throughout the United States.[36] In none of the canons of any of these codes does it state that an interpreter is required to assess the appropriateness of content and second-guess attorney decision-making and strategy. In fact, an expansion of the role in this direction is comparable to expecting that an interpreter facilitating communication between a patient and a doctor question the diagnosis and therapy prescribed; moreover, if the patient were to come to harm, the Yousry precedent would suggest

[34] If linguists from intelligence agencies were to decline to process material that might cause one or the other side to engage in violence, a great deal of terrorism-related information would remain untranslated, which could either advance or compromise public safety. For instance, the United States' engagement in the Iraq war was partially based on the translated pre-war assertions of Ibn Al-Shaykh Al-Libi, who, after being handed over to Egypt for interrogation by the Central Intelligence Agency (CIA), fabricated the link between Iraq and *Al-Qaeda* (Jehl, 2005). Had the Yousry standard requiring a translator's assessment and intervention been applied in that instance and the linguist who translated Al-Libi's statement from Arabic into English refused to do so, the Bush administration would have had a harder time making its spurious case for war to the American public.

[35] When exploring legal attitudes toward interpreters, Morris (1995a) examined written judicial statements on the skills and performance of interpreters and found that, in general, "the dominant view of the interpreting process is of something which is performed in a mechanical fashion by a transparent presence" (p. 27). Obviously, assigning interpreters a bilingual ghost role is diametrically opposed to expecting them to assess content and the legality of attorney strategy.

[36] See, for instance, the codes of ethics of the National Association of Judiciary Interpreters (http://www.najit.org) and the Austrian Association of Certified Court Interpreters (http://www.gerichtsdolmetscher.at). See also the *Code of Professional Responsibility for Interpreters in the Judiciary* of the National Center for State Courts, which sets forth a model guide for policy and practice on the state level that has been adopted by various states (http://www.ncsconline.org). Codes drafted by individual U.S. states are available at http://www.courtethics.org. For the court district in which Yousry worked, the current *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts* is available from the website of the U.S. District Court, Southern District of New York (http://sdnyinterpreters.org).

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that the medical linguist could be cited for malpractice for not questioning the physician's judgment. This example gives an inkling of the troubling implications arising from the Yousry verdict for other interpreting domains.

Accordingly, expecting that T/Is will edit out portions of conversations or texts if the content runs counter to some vague, undefined standard signals a major departure from the conventional understanding of the role. Notwithstanding the fact that neither the substance nor the spirit of these codes has fully caught up with recent scholarship on situated practices and the position of T/Is on the agency continuum (see Chapter 7, "The Translator-Traitor Mentality"), what remains undisputed is that speech is to be conveyed irrespective of content. Whether it involves an inmate/defendant asking for a glass of water, dictating letters to confederates, or expressing anti-American sentiments, the T/I is not supposed to pick and choose what speech he or she transmits.[37] Even if the content of the communication was illegal, judicial precedent up until the Yousry verdict never held the linguist responsible for that content (Wolfson, 2003). Thus, it seems unreasonable to expect a T/I to omit segments of conversation or text based on some ambiguous danger quotient; rather, it is up to the attorney not to violate the SAMs by communicating such content to inappropriate recipients.

U.S. government linguists are not required to question their supervisors with respect to the legality or content of the work assigned to them. This was borne out in the cross-examination of FBI language specialist Nabila Banout by David Stern, one of Yousry's lawyers, who asked her whether she questions the agent who hands her wiretaps for translation as to why they needed to be translated and what the translations will be used for once completed, and whether she conducts research to determine if there are sufficient grounds for obtaining warrants for the

[37] Also, NAJIT expressly states that professional standards do not allow for summary interpretation, a mode of interpreting whereby the interpreter abstracts the information according to what he/she considers important.

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respective wiretaps and the legality thereof (T. 3628–32). With this line of questioning Stern elicited that Banout, when accepting work, takes the agency at its word that everything had been done according to law. Thus, if FBI translators are not required to question their supervising agents, why was Yousry expected to confirm the legality of Stewart's decisions? More generally, why should the T/I-attorney relationship in quasi-legal and legal settings be held to a standard different from that which applies to FBI linguists?

On a national security level, the above-outlined evaluative and reporting requirements may compound the already acute shortage of qualified linguists in Middle Eastern languages in both the government and the private sector. When conducting a brief review of U.S. foreign-language competence over the last 10-plus years, especially with regard to languages critical in the war on terror, one comes away with a fairly grim picture. For instance, a Congressional inquiry into 9/11 found that prior to the attacks, intelligence agencies did not have the personnel to translate the massive volume of foreign-language counterterrorism intelligence they had gathered, and the readiness level in terrorism-related languages was assessed to be at 30% (U.S. Congress, 2002). Years later, the FBI's collection of material still outpaces its translation capabilities, despite authorization under the USA Patriot Act (2001) designed to expedite the hiring of linguists. In its 2005 audit report, the Office of the Inspector General noted that the FBI's foreign-language program still suffers from key deficiencies, among them a substantial backlog of unreviewed audio and an inability to meet target staffing levels (U.S. Department of Justice, 2005). Fast-forward to May 21, 2012, and the shortcomings are still evident in the title of the most recent hearing on this issue, "A National Security Crisis: Foreign Language Capabilities in the Federal Government," which was held before the Oversight of Government Management, the Federal Workforce, and the District of Columbia Subcommittee of the Committee on

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Homeland Security and Governmental Affairs. In an alarming statement, the hearing's chairman, Senator Daniel K. Akaka, emphasized that the FBI, the CIA, and the Departments of Defense, Homeland Security, and State all "continue to experience shortages of people skilled in hard-to-learn (Middle Eastern, Pashto, Dari, etc.) languages due to a limited pool of Americans to recruit from. Because of these shortages, agencies are forced to fill language-designated positions with employees that do not have those skills" (A National Security Crisis, 2012, pp. 1–2).[38]

The private industry is facing similar problems. There has been a steep increase in demand for Arabic linguists due to the rise in terrorism trial work; however, qualified professionals willing to get involved in this high-risk area are hard to find. Anecdotal evidence compiled by Hess Translations Inc. revealed that after the Yousry indictment, Arabic T/Is refused to accept assignments requiring their participation in attorney-client meetings. To date, no surveys polling the views of Arabic linguists on the SAMs and terrorism-related work have been conducted, but empirical research in this area could yield valuable insights and quantify the level of T/I attrition.

In sum, the Yousry case law, coupled with the application of the more muscular SAMs and expanded attorney-client monitoring, created a veritable legal twilight zone, reducing an already small pool of professional linguists (Sallin, 2011). This may not only contribute to the erosion of due process for Arabic-speaking defendants but also worsen the existing shortcomings in U.S. foreign-language capabilities, in turn compromising counterterrorism efforts.

[38] For individual Congressional testimonies, see http://www.hsgac.senate.gov/subcommittees/oversight-of-government-management/hearings/a-national-security-crisis-foreign-language-capabilities-in-the-federal-government

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Dangerous Knowledge

History is replete with threats to academic freedom at the hands of the state.[39] It is hard to forget the virulent, nationwide anti-Communist purges of left-wing faculty during the McCarthy era in the 1940s and 1950s and the failure of academia to defend the blacklisted members (Schrecker, 1986). The post-9/11 world has seen its own share of strong attacks on college professors and equally timid, capitulating responses on the part of university administrators and academic colleagues. Indeed, the two time periods offer striking parallels, as they both demonstrate a forceful expansion of state power into the ivory tower. In their book *Dangerous Professors*, Schueller & Dawson (2009) argue that the current governmental overreach is turning universities into "ancillaries of the War on Terror" (p. 1), and to support their notion of emerging national security campuses, they cite a number of high-profile victims. Among the most chilling examples of university officials succumbing to a general climate of fear are the cases of Ward Churchill, an ethnic studies professor at the University of Colorado, who believes that he was fired based on his political views (Ward, 2009) and whose dismissal was first demanded by Republican Congressman Bob Beauprez (Kelly, 2005),[40] and Sami Al-Arian, a tenured computer engineering professor at the University of South Florida, whose swift firing and Kafkaesque legal journey was in part a function of a shrill right-wing media storm (Fisher, 2012). Now joining this list is Yousry, who was doubly impacted: first, in his capacity as a professor who

[39] For a definition of academic freedom and a thorough discussion of its current limits, see *Dangerous Professors: Academic Freedom and the National Security Campus* by Malimi Johar Schueller and Ashley Dawson (2009).

[40] In its *Report on the Termination of Ward Churchill*, the Colorado Conference of the American Association of University Professors elaborated on the governmental overreach: "[I]t is deeply disturbing that, as this report will demonstrate, the Regents and administration and some faculty of the University of Colorado at Boulder (CU) allowed an obvious political vendetta against Ward Churchill to override their honesty, deny due process, violate their own published rules, ignore accepted standards of shared governance and academic freedom, and manipulate the investigative process to produce a predetermined, false conclusion. At few points in recent history have the political machinations to censor opinion been so brazen. The governor testified under oath that he urged CU to fire Churchill because of the views expressed in his essay" (Eron, Hudson, & Hulen, 2011, p. 14).

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was considered too "dangerous" to be allowed into the classroom, and second, as a PhD candidate whose scholarly expertise stemming from his dissertation research was turned into dangerous knowledge during the trial.

A dangerous professor.

In addition to his work as a T/I for Rahman's legal team, Yousry served as an adjunct lecturer at York College, a senior college of the City University of New York (CUNY), from 1995 until April 2002. He taught two sections in the Program in Cultural Diversity: *Understanding Cultural Diversity* and *Cultures and Societies of the World: The Middle East*. Although the latter course encompassed the Israeli-Palestinian conflict, a topic prone to complaints of bias, Yousry received only positive student evaluations in all the years he taught it, and his teaching was rated consistently high by fellow faculty. There was no record of Yousry's participation in intra- or extramural political activities nor had he expressed controversial views. Nevertheless, when the federal government issued the initial indictment on April 9, 2002, Matthew Goldstein, CUNY's chancellor, and Frederick P. Schaffer, its general counsel and vice chancellor for legal affairs, immediately relieved Yousry of his teaching responsibilities and discontinued his services (Finkin, Nails & Uviller, 2004). The American Association of University Professors (AAUP) subsequently investigated CUNY's handling of the Yousry matter and concluded that the school's action was taken "with none of the procedural protections required by Association-supported standards of academic due process and without any claim of harm threatened by the faculty member's continuance" (pp. 54–55). The investigation committee also faulted the central administration for not informing Yousry on a timely basis that his

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appointment at CUNY for the following semester would not be honored.[41] The legal and administrative wrangling between the two entities continued for some time, with responses and counter-responses flying back and forth. Throughout this process, however, CUNY never wavered from its original position and called the indictment "a solemn civic act to which an institution should respond" (Goldstein & Schaffer, 2004, p. 36), the chosen response being the summary dismissal of Yousry.[42] By ignoring that an indictment is simply a collection of allegations that represents the view of the government, CUNY dispensed wholesale with the presumption of innocence, cavalierly tossed out a bedrock legal right common to modern nations, and essentially functioned as the government's national security arm.

Notwithstanding the moral panic reaction of CUNY's central administration, Yousry received support from other academic quarters. Dr. Charles Coleman, the coordinator of York College's Program in Cultural Diversity in which Yousry taught, testified on his behalf (T. 8876–79), and Dr. Lockman from NYU turned out to be Yousry's most stalwart supporter in academia not only during the trial but also afterward. In trying to raise awareness of Yousry's situation, he attended a panel discussion entitled "Academic Freedom and Middle East Studies" that was sponsored by the Princeton Middle East Society (Adas, 2005, p. 46). In the discussion's keynote address, Joan Scott, the chair of the Committee on Academic Freedom of the AAUP, lamented that anti-Arab and anti-Muslim sentiment had become a fact of life on university campuses. In addition to the Yousry case, among the incidents that the AAUP had tracked since 9/11 were the matter of Tariq Ramadan, the Swiss Islamic scholar and activist professor whose work visa had been revoked by the U.S. Department of Homeland Security shortly before he was to come to America and teach at the University of Notre Dame (Buruma, 2007); the

[41] Yousry had been hired for the fall 2002 term to teach a course in the Department of History and Philosophy but then was effectively fired inasmuch as CUNY refused to reappoint him.

[42] Yousry was suspended with pay for the duration of the spring 2002 term.

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aforementioned case of Sami Al-Arian, who, like Yousry, was fired after the federal authorities filed charges that he conspired to violate a federal law that prohibits funding the Palestinian Islamic Jihad (U.S. Department of Justice, 2006); as well as incidents relating to professors from Columbia University. Scott reported that the AAUP attributed this state of affairs to the activities of off-campus lobbying groups, "elements of the USA Patriot Act and a compliant press" (Adas, 2005, p. 46).

Attempts by the government and various organizations to police the thoughts of university professors is nothing new in U.S. history, but this undemocratic practice has accelerated considerably since 9/11. It reached new heights of fearmongering with a 2002 report issued by the American Council of Trustees and Alumni (ACTA), Lynne Cheney and Senator Joseph Lieberman's educational non-profit organization, whose stated mission is "academic freedom, excellence, and accountability at America's colleges and universities" (ACTA, 2007).[43] While seemingly advocating the protection of academic freedom, the report entitled "Defending civilization: How our universities are failing America and what can be done" (Martin & Neal, 2002) does precisely the opposite, providing a long list of statements by professors who are critical of U.S. foreign policy.[44] In doing so, the authors supplied ready-made fodder to outfits such as Campus Watch, Daniel Pipes' notorious Internet forum that blacklists scholars who voice "unpatriotic" views."[45]

Prior to Yousry's indictment, the government had already attempted to investigate his teaching, sending two FBI agents to his classroom at York College. Introducing themselves as students, they asked if they could audit his lecture and said that they had come on the

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[43] See http://www.goacta.org

[44] The report caused a stir, and ACTA removed it from their website. They subsequently loaded a new version without the names of the professors but then pulled the report again.

[45] See http://www.campus-watch.org

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recommendation of the preeminent Orientalist scholar Bernard Lewis. Yousry, however, had never met Lewis and the explanation struck him as odd. He informed his visitors that he was giving a test that day and turned them away (Hess, 2003).

Ultimately, CUNY and the AAUP agreed that Yousry had been terminated because of the indictment, not because of his teaching. By giving credence to the indictment before the evidence was in, CUNY, a major institution of higher learning, had essentially labeled one of its adjuncts a terrorist threat to the student body, which certainly could have biased the jury. But Yousry was not only considered a dangerous professor; more significantly, his dissertation-related work came under attack.

A dangerous dissertation.

Since 9/11, terrorism as a field of academic study has been thriving, whether measured in terms of funding; the establishment of terrorism centers at universities across the country; the massive volume of journal articles, books, and conferences dedicated to the topic; or the steadily increasing number of terrorism scholars (Sallin, 2011).[46] While there is considerable disagreement among these scholars as to what constitutes legitimate knowledge production in the field and how its main concept should be defined—to the point where Stampnitzki (2011) notes that "[t]errorism studies fails to conform to the most common sociological notions of what a field of intellectual production ought to look like" (p. 1)—what is undisputed is that just a small fraction of these scholars have conducted face-to-face research with alleged or convicted terrorists. Indeed, according to Mahmood (2001), an ethnographer who researches Sikh separatist

[46] During a Swiss television interview, Charles B. Strozier, Director of the Center on Terrorism of John Jay College of Criminal Justice in New York City, discussed how after 9/11 an entire terrorism industry appeared overnight in academia and elsewhere (Sallin, 2011).

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militants, "there are only a handful of 'experts' who have actually dealt with their subject matter directly" (p. 525).[47]

Yousry was one of these experts. As indicated in Chapter 1, at the time of his arrest he had been working for several years on his dissertation on Rahman and the IG at NYU's Department of Middle Eastern and Islamic Studies. Since, as a prisoner, Rahman was part of a vulnerable population and in keeping with academic practice, Yousry had obtained Rahman's consent to conduct his study. In addition, he secured the permission of the lawyers to ask dissertation-related questions during prison calls and inmate meetings whenever time remained after the attorney concluded his/her legal business. During what the legal team referred to as the *legal weekly prison calls* and on sporadic prison visits, Yousry thus conducted unstructured interviews and, over the course of approximately six years, collected a wealth of biographical and IG-related data from a man the United States considers one of the world's top terrorists. The significance of such dissertation research cannot be underestimated. As any academic in Terrorism Studies knows, the opportunity to undertake longitudinal research involving personal interviews with alleged or convicted terrorists is rare, and the knowledge extrapolated from such data invaluable.

To supplement his field work, Yousry had compiled a substantial research archive consisting of books, newspaper clippings, and videos relating to his area of study. As will be shown in Chapter 6, "Evidence," and Chapter 7, "Moral Panic," the prosecution presented these standard academic tools of the trade and the expertise derived from them as evidence, under the

[47] Prominent among them are Jerold M. Post, Ehud Sprinzak, and Lurita M. Denny, who conducted interviews with 35 incarcerated Middle Eastern terrorists (Post, Sprinzak, & Denny, 2003), and Mark S. Hamm, who interviewed Peter Langan, the principal leader of the Aryan Republican Army, whom he suspects of having been a confederate of Timothy McVeigh, the perpetrator of the 1992 Oklahoma bombing (Hamm, 2002).

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theory that "Yousry's *mens rea* was one simply of knowledge, not intent" because he was an expert in Egyptian political movements (*United States v. Stewart*, 2007, June 29, p. 6).

The Yousry verdict thus constitutes an example of how a scholar's expertise can become "dangerous knowledge." In a political climate in which academic freedom really means support for U.S. policy, in which punishing academics who voice dissent is acceptable, in which university administrations toe the line drawn by an overreaching Justice Department, and in which scholars are convicted for their knowledge, doing primary research has become a risky undertaking. Formulating effective counterterrorism policy, however, entails knowing the mind of the enemy. To obtain the requisite insights, Middle Eastern scholars are needed who, by virtue of their ethnic, linguistic, and educational background, can "connect" with their subjects. In fact, to fine-tune its national policy in the global fight against terrorism, the United States would benefit from incorporating non-Orientalist viewpoints, soliciting all the research available from sources that approach the issue from a less Western stance. In the wake of the Yousry verdict, though, scholars may think twice about engaging in primary research on such topics, an outcome that critically impoverishes the national-security knowledge base.

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Chapter 3: Research Question

Jury verdicts are not issued in a vacuum and, as such, constitute a public measure of many factors. While, ideally, only legally relevant evidence should figure into jury decision-making, voluminous research has shown that the quest for truth is subject to many other influences. Jurors' perceptions of guilt may be affected, inter alia, by social and demographic characteristics, jurors' attitudes and personality, prior jury experience, defendant characteristics, lawyer and judge characteristics, pretrial publicity, and case characteristics (Ford, 1986). Whether it is the emotionality of a defendant (Salekin, Ogloff, McFarland, & Rogers, 1995), gender (Mills & Bohannon, 1980; Constantini, Mallery, & Yapundich, 1983), the race of defendants and jury members (Wolfgang & Riedel, 1975; Bernard, 1979; Cole, 1999), age (Smith & Hed, 1979; Mills & Bohannon, 1980; Ackerman, McMahon, & Fehr, 1984), physical attractiveness (Efran, 1974; Stewart, 1985; Burke, Ames, Etherington, & Pietsch, 1990; Castellow, Wuensch, & Moore, 1990), education and social class (Gleason & Harris, 1976; Hoffman, 1981), prior jury experience (Nagao & Davis, 1980), joinder issues (Tanford & Penrod, 1982, 1984; Bordens & Horowitz, 1985; Tanford, 1985), etc., verdicts are conditioned by the complex relationships between mediating and interacting facts and factors.

This dissertation assesses the factors that influenced the final disposition in *United States v. Sattar* (2003). Roper (1986) developed a useful typology for jury research and divided the dependent variables into four categories: (a) "the outcome of the jury's deliberations," (b) "the behavior of the jury," (c) "factors related to jury administration and management," and (d) "juror attitudes toward jury service" (p. 7). The independent variables are grouped into (a) "juror selection methods," (b) "legal factors," (c) "non- or extralegal factors," and (d) "organizational and structural factors" (p. 8).

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The dependent variable in the case at hand is the decisional output of the Yousry jury, that is, the guilty verdict on the three counts. The independent variables are the legal and extralegal factors. The category of legal factors encompasses the processes that are legally relevant to jury decision-making (p. 9). Accordingly, the variables are (a) cause of action (Counts 1, 4, and 5), (b) severance, (c) jury anonymity, (d) trial sequence, (e) evidence, (f) limiting instructions (LIs), (g) jury instructions (JIs), and (h) trial complexity (TC). The extralegal factors are (a) the translator-traitor mentality (TTM), (b) Islamophobia, and (c) moral panic.

TTM refers to the continuum and spectrum of distrust translators and interpreters have been subjected to throughout the ages. This inquiry represents the first focused treatment of the phenomenon within the terrorism arena. Certain manifestations of TTM are not language-specific; however, its more extreme forms are generally linked to a particular linguistic culture during a specific era that is defined by a particular political context. For instance, during the Cold War, interpreters were exposed to Russophobia. In *United States v. Sattar* (2003), TTM was coupled with Islamophobia, which in turn overlapped with moral panic.

Specifically, the legal factors were influenced and intensified by an atmosphere characterized to varying degrees by TTM, Islamophobia, and moral panic. Inside the courtroom, this atmosphere was laden with fear-inspiring and/or pain-suffused elements such as a venue adjacent to a mass grave, an abundance of security measures, steady invocations of Osama bin Laden, and defendants (two of them Arab Muslims) the press had labeled “terrorist lawyer” (Packer, 2002), “cheerleader for terrorism” (Stakelbeck, 2003), “point man” for a “vicious terror group,” “terror sheikh aide” (Smith, 2002), and “terror agent” (Burns, 2002), among other choice epithets. Outside the courtroom, the atmosphere was dominated by the military response

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to the 9/11 attacks, namely, the wars in Iraq and Afghanistan; the ubiquitous presence of police and security personnel deployed to defend the homeland at subway stations, airports, etc.; and the media, which single-mindedly and sensationally fed at the 9/11 trough.

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Chapter 4: Theoretical Framework

As a robust rationale for the Yousry verdict, the most germane theoretical framework is the theory of moral panic. The concept of moral panic was originated by Jock Young and Stanley Cohen in the late sixties and early seventies, with the former introducing the term into the literature and the latter contributing research that catapulted the concept to its present position as a significant tool in social science analysis (Ben-Yehuda, 2009). Specifically, Young explored the media's ideological role in the construction of social meanings and the amplification of deviance, while Cohen (2002) used the term to describe the reactions of the media and agents of social control to public clashes between the Mods and Rockers, two youth subcultures in England, and how these reactions influenced social policy, laws, and law enforcement.

According to Cohen, a moral panic broadly refers to states of heightened fear, hostility, and collective hysteria that periodically occur in civil societies in which "[a] condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests" (ibid, p. 1). These states promote the moral perceptions of the dominant group and, as such, provide the mechanism for creating and maintaining cultures of fear. The vehicles of delivery that sustain these panics may be sermons, speeches, legislation, law enforcement agendas, etc., all of which focus on and frame moral issues. When events such as terror attacks, crime waves, and wars cause major cultural and economic changes, these mechanisms become engaged full force, and the key question of moral panic theorists is how people respond to such changes (Ben-Yehuda, 2009).

For a moral panic to occur, Cohen (2002) requires five stages and six actors. The stages are (a) something or someone is defined as a threat to societal values and interests, (b) this threat is depicted in an easily recognizable form by the media, (c) there is a rapid buildup of public

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concern, (d) there is a response from authorities or opinion-makers, and (e) the panic recedes or results in social changes. The actors are (a) folk devils, (b) rule enforcers, (c) the media, (d) politicians, (e) action groups, and (f) the public.

September 11 and its aftermath exhibited all the elements of a moral panic as defined by Cohen's framework. It was an event that profoundly ruptured life as we knew it, both culturally and economically, and continues to permeate many facets of our world post-9/11. The umbrella moral issue was outlined by President Bush when he beat the biblical drums and launched the battle between good and evil. The designated "folk devil" or threat was Osama bin Laden and followers of *Al-Qaeda*; however, this was quickly broadened to encompass not only bin Laden and consorts, but entire nations such as Iran and Iraq (Bush, 2002) and Muslim cultures in general. Yousry, a representative of the latter and hailing from the part of the world that gave birth to the 9/11-terrorists, was designated accordingly.

The administration's post-attack narrative was amplified and solidified by the media, which flooded American living rooms with an unrelenting loop of 9/11 imagery. This visual barrage of terror was accompanied by a river of governmental rhetoric, which poured forth from television screens and other media and included color-coded terror alerts and talking heads reiterating the bellicose, fearmongering Bush narrative. Hollywood was not far behind, serving up terror-themed fare in shows such as *Law & Order* and *24*. Even Attorney General John Ashcroft, the country's chief rule enforcer, strutted onto the stage of the *Late Show with David Letterman* to talk tough about terrorism and the indictment at hand (Chan, 2006).

In combination, the one-dimensional, day-in and day-out coverage of terrorism and terrorists fomented a consensus of concern among the public absent any alternative reporting

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(Rothe & Muzzatti, 2004). And as members of the public, the Yousry trial participants, including the jurors, had been steeped in the coverage and thus contributed to this concern.

Over time, the concern escalated, manifesting itself in various ways. Prime among them was the proliferation of anti-Muslim bias. As confirmed by opinion poll research conducted after the 9/11-attacks, a significant number of Americans hold fearful and negative attitudes toward Muslims and Islam (Lee, Gibbons, Thompson, & Timani, 2009). For instance, a USA TODAY/Gallup poll found that 39% of respondents felt some prejudice against Muslims and their religion; 33% believed that U.S. Muslims were sympathetic to bin Laden's *Al-Qaeda*; and 22% would not want Muslims as neighbors (Elias, 2006). Some of these attitudes spilled over into actual hate incidents, captured in the FBI's 2001 Hate Crime Statistics, which recorded a 1,600% increase in bias attacks against Muslims over the previous year.[48] Extrapolating from these figures, the verdict, in part, reflected this same bias among the Yousry jurors.

Yet it was the response from the authorities and opinion-makers that proved most instrumental in creating the atmosphere of moral panic. The call to war and ensuing normalization of warfare in the form of enhanced security searches, for instance, has become an immanent feature of daily life in the United States (Bratich, 2003). This hawkish state of mind was accompanied by an "exaggerated and conspiratorial style of terrorism rhetoric," where terrorism provided "the arena for a chamber of horror in which imagined events are as possible as factual ones" (Zulaika & Douglass, 1997, p. 4). This rhetoric primarily consisted of apocalyptic tales spun by President Bush and an endless procession of surrogates, who tapped into evil archetypes (McLaren, 2003). Most memorable is the aforementioned infamous State of the Union address in which he neatly divided the world into us versus them. In doing so, he laid the groundwork for much of the discourse, including the Yousry prosecution, which confronted

[48] See http://www.fbi.gov/ucr/ 01hate.pdf

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the forces of evil by introducing evidence that reinforced the dualistic theme. The jurors thusly enlisted in this epic battle had no choice but to take sides.

And they did take sides. Cohen (2002) states that moral panics result in social changes. While some of the changes in the aftermath of 9/11 are universally known, such as the wars in Afghanistan and Iraq and the massive legislative response articulated in the USA Patriot Act (2001), others are far less visible. The Yousry verdict belongs to that category of hidden changes; its consequences, though, are far-reaching and profound.

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Chapter 5: Methodology and Data

Critical Ethnography

According to Thomas (1993), critical ethnography is “a type of reflection that examines culture, knowledge, and action” (p. 2) with an eye toward revealing hidden agendas and exposing asymmetrical power structures. As such, it widens our experiential horizon, expands our choices, and brings our responsibilities as citizens and human beings into sharper focus. By not just describing what is apparent but delving beneath the surface, this type of research questions and seeks to disrupt the political status quo in an effort to formulate alternative values, even moral imperatives, that ideally move the individuals within the domain at issue toward greater equality and freedom. It requires distinctive thinking and action, and the development of an arsenal that is a bit more radical than that of conventional ethnography. While both types of ethnography rely on the same key ethnographic methods and analysis, such as field work, qualitative interpretation of empirical data, and “adherence to a symbolic interactionist paradigm” (p. 3), critical ethnography goes beyond describing and interpreting cultural meanings by assigning political responsibility to these meanings. In practical terms, this means that while conventional ethnographic research ends once data collection and analysis are concluded, critical ethnography goes a step further and reconnects with the subjects under study to share findings and obtain feedback in order to produce political change that will improve the lives studied.

In the exploration at hand, this translated into an analysis and deconstruction of specific trial occurrences to gain an understanding of the forces that led to the Yousry verdict—whether they were forces that reached back into history, emanated from the Bush White House, or represented the moral panic reaction of jurors—and dissemination of this understanding to a wider audience in the hope of effecting change (see Chapter 8).

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Accordingly, this is not simply a critical examination of an Arabic interpreter being tried during an anxiety-ridden time; rather, this dissertation extends from the trial back into history and locates the interpreter within a long line of translator-traitor occurrences. This approach corresponds, in part, to Burawoy's (1998) extended case method, which connects "the present to the past in anticipation of the future" (p. 5). Specifically, it starts "from dialogue, virtual or real, between observer and participants, [and] embeds such dialogue within a second dialogue between local processes and extralocal forces" (ibid). Burawoy also emphasizes that objectivity in such an approach is measured by the growth of knowledge spurred and not by procedures that strive for an accurate recording of the world.

What's more, this task was not undertaken from a perch of definitional authority but from a stance of learning. Whitaker (1996) points out that in the past, ethnography has often taken an authoritative position; however, he suggests that "ethnography should be approached contingently, as a form of learning, rather than absolutely, as a form of representation" (p. 1). This dissertation embarked on such a path of learning and engaged in what Clifford (1988) described as a form of "culture collecting" in which "diverse experiences and facts are selected, gathered, detached from their original temporal occasions, and given enduring value in a new arrangement" (p. 231). In line with critical ethnography, this new arrangement not only comprises a description of the "how" but also of the "why." To facilitate the transition, Katz (2002) suggests appreciating and dwelling on particularly "luminous data" that "can light the path to causal inference" (p. 63). Thus, by allowing the actors—whether defendants, witnesses, prosecutors, defense lawyers, or the Court—to speak for themselves, juxtaposing the prosecution's shrillness with the court-appointed counsel's sotto voce approach and the methodical, anesthetizing delivery of the judge, and by highlighting poignant courtroom

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vignettes or drawing attention to the trial's embeddedness in a dramatic, emotion-laden post-9/11 atmosphere, the dissertation lines up evidence that attests to the presence of the phenomena hypothesized.

Ethnographic Content Analysis

In view of the fact that the majority of the data consists of textual material, the inquiry availed itself of Altheide's (1996) ethnographic content analysis (ECA). ECA conceptualizes document analysis as field work (pp. 13–14), and its purpose is to record and understand "the process and the array of objects, symbols, and meanings that make up social reality" (p. 2). The main feature of such "plugged in research" (p. 1) is its interactive nature, in other words, there is continual reflexive movement between researcher, concepts, data collection, analysis, and interpretation. As such, ECA represents a symbolic-interactionist journey of discovery that focuses on the meaning of certain activity, the context in which that activity emerges, and the significance of interaction for the communicative process. The journey in this inquiry was further accompanied by full awareness that the process itself is key, because everything—from belief systems to values to attitudes to commitments—is constantly "under construction" (p. 8).

The following table represents an adaptation of Altheide's approach, with dimensions customized to reflect the particulars of the dissertation.

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Ethnographic Content Analysis (ECA)	
Research goal	Discovery, verification
Emphasis	Validity
Progression from Data Collection, Analysis, Interpretation	Reflexive, circular
Primary researcher involvement	All phases
Pre-structured categories	Yes
Type of data	Narrative
Narrative description and comments	Always
Concepts emerge during research	Yes
Data analysis	Textual
Data presentation	Text

Table 5.1 Ethnographic Content Analysis (ECA)

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Explanation of Methodological Strategies

Prolonged engagement.

Having worked as a language specialist on many trials over the course of two decades, I am sufficiently familiar with court culture and the phenomenon under study, that is, terrorism cases, from the perspective of a translator/interpreter, linguistic case administrator, expert witness, and court observer.

Analytical procedure.

As a first step, all primary data (13,129 pages of trial transcript) was reviewed, coded, and allocated to broad thematic categories, i.e., the legal and extralegal factors, producing a coding grid of 848 pages. To achieve interrater reliability, a research assistant also read and coded portions of the record. Further, to enhance my case knowledge, I reviewed a range of documents, such as pretrial motions, opinions, specific exhibits, appellants' briefs and appellate decisions. In the next step and to the extent possible, I related the findings to secondary data, such as the government's narrative and poll results as well as TTM-occurrences and cases, and data- and theory-triangulated conclusions/inferences. The specifics of included data are summarized in Table 5.2:

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Data Collection Details				
Setting	**Source**	**Time frame**	**Location**	**Content**
Legal	Pretrial and trial records	4/9/2002 to 2/10/2005 (Exhibits predate 4/9/2002)	Personal archive	Indictments; pretrial motions; pretrial and trial transcripts; exhibits (textual, audio, video)
	Visual and audio recollections	6/21/2004 to 2/10/2005	Memory (i.e., retro-spective participant observation, triangulated with court records)	Facts and perceptions of events, such as playing of Osama bin Laden video and reading of Rahman sermons; conduct of parties; extraordinary details; etc.
	Post-trial	6/29/2007 to 12/31/2013	Personal archive; digital media search	Appellants' briefs, appellate decisions; prison release
Extra-legal	Pretrial and trial media coverage	4/9/2002 to 2/10/2005	Personal archive; digital media search	Newspapers, selected magazine articles, and websites
	Polls (UCR, Gallup, etc.)	9/11/2001 to 2/10/2005	Internet search (government agencies, non-profits, private corporations)	U.S. public sentiment and attitudes
	Other translator/ interpreter incidents/ litigation	Antiquity to present	Personal archive; literature review; Internet search	TTM-related evidence (Iraq and Afghan wars, Guantánamo, various countries, etc.); scholar persecutions
	Government statements	9/11/2001 to 2/10/2005	Personal archive; Internet search	Moral panic narratives (State of the Union address, AG John Ashcroft's television appearance)

Table 5.2 Data Collection Details

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Researcher reflexivity and ethics.

Willig (2002) distinguishes between epistemological reflexivity and personal reflexivity. The former prompts a researcher to question the assumptions underlying the inquiry, such as how the research question defines and limits the investigation, or how research design and analytical methods construct and shape the data and findings; the latter involves contemplating the ways in which personal values, experiences, beliefs, political orientation, social identities, and broader life goals influence all the stages of research. In brief, reflexivity refers to a researcher's awareness of his or her connection to the research topic and the effects such a connection may have.

My connection to this case is a matter of public record. As the owner of the court-appointed translation agency for the defense, I possess in-depth knowledge of the case in that I attended all the trial sessions (except voir dire), and thousands of documents and tens of thousands of surveillance calls passed through my hands. As a case manager and editor, I collaborated with Yousry on several court cases since 1993 and, accordingly, am very familiar with his work history and performance. Moreover, as a long-term practitioner of the profession of translator/interpreter, I have a detailed understanding of its virtues and limitations. So it is on these three specific knowledge strands that I based the research question guiding this dissertation.

Baarts (2009) points out that "the ethics of embedded research must consist in a defense of the importance and relevance of the particular object of study and an acknowledgement of partial knowledge" (p. 436). Yousry's story has been largely invisible, and my thoroughly privileged position obligates me to analyze the record, frame an alternative perspective by offering a reasoned and persuasive argument, and bring that perspective to light. In terms of

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interrogating my own history, Becker (1967) notes in his seminal paper entitled "Whose side are we on?" that it is impossible to do research that is "uncontaminated by personal and political sympathies" (p. 239). Ferrell (2009, November 3) echoes this belief in describing all ethnography as autoethnographic, albeit on a continuum, and implores ethnographers to account for themselves.[49] For me, this accounting included reflecting on my values and sympathies, and being mindful of such ethical considerations throughout the research process. To arrive at a rigorously constructed end product, I explored data contrary to my initial line of thinking and sought alternative explanations for the diverging elements. In this context, it is interesting to note that when I read prosecutorial submissions for days at a time, I often found myself apprehensively starting to question my position (especially since the government's narrative was very strong). At times, I found myself experiencing a certain level of discomfort, especially since my findings are at odds with the government's and contrary to the general public consensus with regard to this case.

Overall, I adhered to Becker's (1967) "solution," which advocates taking the side that matches my political commitment, availing myself of theoretical and technical resources to minimize distortions, tailoring my conclusions narrowly, recognizing "the hierarchy of credibility for what it is" (p. 247), and fielding as best I can the criticisms that may follow.

[49] American Society of Criminology Ethnography Workshop, November 3, 2009.

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Chapter 6: Legal Factors

The taxonomy of legal factors covers a broad spectrum of statutes and precedents, and involves writings from the nexus of law and psychology. A brief introduction of the relevant law/literature is presented for each factor at the beginning of the respective section, followed by an analysis of applicable evidence.

Cause of Action

The cause of action is detailed in Chapter 1.

Severance

Rule 14 of the Federal Rules of Criminal Procedure (2002) provides that "[i]f the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the Court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires."[50] Social science research has clearly demonstrated that defendants are more likely to be convicted when multiple charges are joined in a single rather than severed trial (Bordens & Horowitz, 1985; Tanford, 1985; Tanford & Penrod, 1982, 1984). Consequently, joining multiple defendants with multiple charges may increase exponentially the prejudicial effects of such a joinder, especially if a co-defendant's charges are more severe.

Stewart's attorney, Michael Tigar, filed several motions to sever Stewart from co-defendant Sattar—motions that were joined by Yousry—based on the risk of prejudice arising from a joint trial where the alleged criminal conduct was of a "markedly different type" (*United*

[50] Rule 14: Relief from prejudicial joinder (Fed. R. Evid., 2013).

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States v. Sattar, 2004, January 22, p. 159).[51] This different type of conduct referred to Counts 2 and 3 that pertained only to Sattar, i.e., "conspiring to kill and kidnap persons in a foreign country," and "soliciting crimes of violence" (Comey, 2003, p. 1).[52] The flexible standard in a severance analysis being "sound discretion" (*United States v. Zafiro*, 1993, p. 534), the Court chose to deny all severance motions submitted in the course of the trial (see, for instance, *United States v. Sattar*, 2003, July 22). As a result, Yousry was exposed to evidence regarding actions by Sattar—and, for that matter, Stewart—that cast a long, harmful shadow.

Foremost among this evidence, an excerpt of which is reproduced in the "Evidence" section, was the ghostwritten *fatwah*, or what came to be known in the trial as the "fake *fatwah*." This *fatwah*, which called for the killing of Israelis in Rahman's name, had erroneously been attributed to Rahman but was actually a collaboration of Sattar and Taha (T. 10203–05). As the evidence showed, neither the lawyers nor Yousry were aware of the existence of this *fatwah* until they read about it in media reports (T. 5498–5500). One of Yousry's defense lawyers, David A. Ruhnke, argued that the evidence associated with this "hateful document" (T. 2228) was not admissible against his client. In the understatement of the trial, he summed up his concerns about its prejudicial effect by saying, "[I]t gets a little hard, you have to keep things separately" (ibid).

Equally damaging was the extraordinary volume of intercepts from Sattar's phone that had been gathered over a seven-year period and were entered into evidence. Much time was spent throughout the trial playing many of these conversations. While they were unrelated to Yousry and admitted only against Sattar to prove the Count 2 conspiracy, they were often highly prejudicial (passim). For that reason, these submissions were frequently accompanied by limiting instructions, the shortcomings of which are addressed in the section "Limiting Instructions."

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[51] Originally, Yousry had moved for a bench trial, which was denied.
[52] See Appendix A, "Overview of Charges."

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In fact, the respective presence or absence of limiting instructions formed the grounds for one of the applications for severance by the attorneys for Stewart and Yousry. Making the case for both clients, Tigar pointed out that various Rahman speeches involved the use of similar if not identical concepts and language, yet confusingly, only some of them were subject to a limiting instruction while others were not (T. 3347–50). In denying the motion, the Court expressed full faith in the jury's ability to parse such issues and a belief that instructions were a sufficient remedy for any possible confusion (T. 3350).

But for many reasons, confusion abounded. For instance, the line between the defendants was often blurred because the prosecution tended to double back during their presentations to pick up items that were skipped over earlier (T. 3790). Even one of the prosecutors appeared to be confused as to who was who, and evidently had difficulty distinguishing between the two Arab male defendants. In a foreboding slip of the tongue during his opening statement, Christopher J. Morvillo, when discussing the acting skills Stewart displayed during one of the Minnesota prison visits (see "Evidence"), referred to what he called "the illicit conversation that *Sattar* was having with Abdel Rahman right there in the prison" (T. 2143). Of course, he meant to say Yousry.

Overall, melding the defendants was a favorite prosecutorial strategy. For instance, when discussing the SAMs in his summation, Andrew S. Dember pervasively used the pronoun "they":

> MR. DEMBER: To the extent they didn't like those restrictions, to the extent they thought they were illegal or improper, Stewart had the capability, had the training to challenge them, challenge them legally if she wished. She chose not to. They chose, instead, to violate them and lie about them. (T. 11114)

Thus, in the above passage, the argument pertaining to one defendant, i.e., Stewart, became the action of and argument against all the defendants. Stewart spoke to the media in violation of the SAMs; Yousry did not. Stewart, in union with Rahman's other counsel, chose

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not to file a legal challenge to the SAMs; Yousry, as a non-lawyer, had no say in this. Nevertheless, Dember said, "[they chose." One of the more appalling examples of this fusing, however, was when Dember elaborated on the fake *fatwah*:

> MR. DEMBER: This case is not about the Israeli-Palestinian conflict. Whatever Sattar, Stewart or Yousry think of that particular conflict, that very difficult and complex relationship that exists in the Middle East, whatever they may think, it is no defense to what they did in this case. It does not justify anything they did in this case, including issuing a *fatwah* calling for the murder of Jews everywhere. (T. 11113)

Here, Dember attributed authorship of the *fatwah* to all the defendants, even though Sattar alone among them was responsible and had acknowledged his participation on the witness stand. What's more, although he stated that the case was not about the Israeli-Palestinian conflict, Dember nonetheless brought in the conflict and all that it entailed. He did this knowing full well that the only person who expressed views about the conflict in general, and Jews in particular, was Sattar. In doing so, Dember effectively associated Yousry and Stewart with Sattar's actions.

On the defense side, a favorite strategy of Stewart's lawyer was to push the two male defendants closer together but away from Stewart. For instance, Tigar, Stewart's attorney, argued that Sattar had been under electronic surveillance since March 1995 and Yousry since November 1999, whereas his client's phone had never been tapped (T. 2183). Obviously, this created the perception that the two male defendants were greater culprits than Stewart; after all, an electronic eavesdropping warrant had been issued against them. Predictably, Tigar omitted the legal complexity involved in wiretapping an attorney's phone. Tigar also fused Sattar and Yousry by being non-specific. When distancing his client from the fake *fatwah*, for example, he did not identify the authors, i.e., Sattar and Taha, but said, "somebody in the sheikh's name issued some statement, a statement, not some statement, a horrible violent statement calling for violence" (T.

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2167). With respect to the bin Laden *fatwah*, he similarly stated that "[t]he 1998 so-called *fatwah* will not be offered as to Lynne Stewart. It will be offered as to somebody else" (T. 2170).

Sattar's attorney, Kenneth A. Paul, also pulled Yousry toward his client. For instance, when introducing his client in his opening statement, he said:

> MR. PAUL: Sattar also met at this time his other co-defendant, Mohammed [sic] Yousry, a translator who also worked on the sheikh's case. Both Sattar's closeness and belief in some, but certainly not all—and I emphasize "not all"—of the sheikh's opinions continued even after the sheikh was convicted and sentenced to life imprisonment. (T. 2269)

In barely drawing a breath between two sentences whose content was completely unrelated, Paul hitched Yousry to Sattar's political activities. He did this by connecting their initial professional introduction at an attorney workgroup meeting with Sattar's outspoken support of Rahman.

Stewart, for her part, muddled the distinction between herself and Yousry. During her cross-examination, for example, when asked by the prosecutor about her method of selecting letters for Rahman's prison visits, she habitually used the personal pronoun "we":

> MS. STEWART: Because we or I recognized that this was the first visit by any lawyer since the new affirmation, the new SAMs actually had gone into effect and—actually it was the new affirmation. And, as I say, we traveled 1,500 miles to do these visits and we didn't want anything to interrupt them.
>
> So, we thought that perhaps that we would go through and select out—we had no idea whether there would be a heightened, what I call it security check before we went into the prison, so rather than show up with a sheaf of letters we brought in the ones that we were going to work with that day and the next day brought the next ones. (T. 8592)

By constantly including Yousry, Stewart attempted to abdicate her decisional responsibility and diffuse her authority, knowing very well that, according to the SAMs, it was her duty to supervise linguistic staff (U.S. Department of Justice, 1999, December 10). The above represents a subtle but telling example of what turned out to be Stewart's "throw the translator under the bus" mindset, the strongest evidence of which surfaced in an affidavit

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submitted on behalf of Stewart during her resentencing (see Chapter 7, "The Translator-Traitor Mentality").

The seating arrangement at the defense table also did not favor Yousry. While Sattar and his attorneys were seated on the left side of the table, Yousry and his attorneys were sandwiched in the middle, with Stewart and her attorneys occupying the right side. Sattar was placed on the far left to accommodate the marshals stationed next to him for security reasons.[53] Moreover, since the marshals were mostly standing or leaning against the wall, having them anywhere else would have blocked the sightline of members of the courtroom audience. How Stewart obtained the "best" seat, farthest away from Sattar, is unclear; what is clear, though, is that this seating sequence positioned Yousry, who faced the fewest charges, between the co-defendant with the most serious charges and the co-defendant whose actions gave rise to the indictment and who has publicly stated that she believes in the use of directed violence (T. 8364). Plainly, this put Yousry at a disadvantage.

Another source of bias in this non-severed scenario was the number and stature of the various unindicted co-conspirators who populated the superseding indictment. For all intents and purposes, Yousry, in addition to his indicted alleged co-conspirators, was sharing the defense table with some of the world's foremost violent extremists, who, while not physically there, nevertheless loomed large throughout the trial.

As a matter of fact, the government turned Count 1 of the indictment into a veritable terrorist catch-all, explaining that "generally, the various Islamic group leaders who will figure in these calls, that would include Mustafa Hamza, Salah Hashim, so on, Al-Zayyat … the government's position is that all of these people are coconspirators in the Count 1 conspiracy" (T. 3695–96). Of note is that the calls prosecutor Robin L. Baker referred to were phone

[53] Gallery perspective.

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conversations intercepted from Sattar's line between Sattar and various persons overseas in which Yousry had no involvement whatsoever.

In ascending numerical order, the indictment referred to an Islamic Group leader, unnamed and labeled "CC-1," who stated in an April 21, 1996, interview that "the question of kidnapping Americans as a ransom for [Abdel Rahman] is in the cards, not ruled out, and under consideration" (as cited in *United States v. Sattar,* 2003, November 19, p. 7). A second unindicted co-conspirator, designated "CC-2," participated in phone calls with Sattar, calls that the government described as communications among IG members "relating to a possible Islamic Group terrorist action" (p. 27). Furthermore, CC-2 was believed to be an associate of Alaa Abdul Raziq Atia, another militant IG member who was in contact with Sattar and who was a fugitive wanted in Egypt in connection with the Luxor massacre.[54]

Sattar also communicated with a third unindicted co-conspirator, Taha, who, as noted above, was in the top echelon of the IG and intent on gaining Rahman's release. A statement issued in his name on October 13, 1999, said that the United States' "hostile strategy to the Islamic movement would drive it to unify its efforts to confront America's piracy" (p. 9; internal quotation marks omitted). In pursuit of this objective, he met with Osama bin Laden as well as Ayman Al-Zawahiri, *Al-Qaeda*'s second-in-command, in Afghanistan. The gathering of this triumvirate was subsequently televised on September 21, 2000 by *Al-Jazeera*, which showed the three men assembled under a banner calling for support of Rahman and pledging to free the religious scholar from incarceration in the United States (p. 9–10). In terms of associations with violent extremists, it would be hard to get more high-ranking than that.

[54] Atia was killed by Egyptian law enforcement during a raid on October 19, 2000 (*United States v. Sattar,* 2003, November 19, p. 28).

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By far the most omnipresent and influential unindicted co-conspirator, though, was Rahman himself. Viewed through a Western lens, Rahman is considered one of the foremost terrorists in the world, and many crimes, rightfully or wrongfully, have been attributed or linked back to him. In terms of his politics, among his stated goals was the toppling of Egyptian President Mubarak and the installing of a fundamentalist government in his stead. Such objectives made Rahman a persona non grata in his homeland and were in conflict with U.S. foreign policy. In terms of crimes, his conviction for participating in a conspiracy to destroy beloved landmarks and major traffic arteries in the jurors' home state only reinforced for them his violent extremist image. Thus, having a figure such as Rahman present in the courtroom (albeit not physically) as an unindicted co-conspirator was a challenge difficult to overcome. The government's narrative actually began with Rahman because Morvillo, in his opening statement, displayed a photo of the sheikh on the giant screen placed across the jury box (T. 2122). In fact, Rahman was essentially retried throughout the trial in that the prosecution engaged in lengthy readings of evidence from Rahman's own trial, for instance, claiming that it needed to prove Rahman's views and state of mind as a co-conspirator in Sattar's (and only Sattar's) conspiracy to kill or kidnap (T. 2535–36). In this way, the prosecution intricately wove Rahman into the proceedings and enveloped the jury in Rahman's world through both sight and sound. And while the effect of reading a hard-line cleric's fire-and-brimstone sermons may not have been cumulative and prejudicial for Sattar—whose political activism on behalf of Rahman had been acknowledged by his own attorney, Paul (T. 2266–68)—or for Stewart, who shared some of Rahman's political objectives, it certainly was for Yousry, who did not agree with Rahman's ideology and solely dealt with him from a professional and academic standpoint. Furthermore, Yousry's views on Rahman were well established, for instance, in his dissertation writings (T.

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2222–24) and in a 1993 WBAI radio interview that Ruhnke offered into evidence (T. 9018–19). More importantly, his views had been conceded by the government, which, in its rebuttal summation, described Yousry as follows:

> MR. BARKOW: Now Mohammed [sic] Yousry is not a lawyer. He is not a practicing Muslim. He is not a fundamentalist. He is not a supporter of Abdel Rahman or of the Islamic Group. And alone, among these three defendants, Mohammed [sic] Yousry is not someone who supports or believes in the use of violence to achieve what he wants. Alone among these three defendants. (T.12074)

Nonetheless, because he was denied severance, Yousry became associated, over the lengthy course of the trial, with a parade of violence that included the world's most heinous crimes. Hateful speeches by leading terrorists, Sattar's various communications with militant IG figures, the continuous invoking of Osama bin Laden's name, the Luxor massacre, assorted terrorist attacks around the globe[55]—all these were demonstrably unrelated to Yousry, with no fact-finding bearing on his innocence or guilt. Yet in combination, they produced a prejudicial spillover that could not be remedied.

Jury Anonymity

Empaneling an anonymous jury is an extraordinary measure designed to allow jurors to render a verdict free from fear, intimidation, and undue influence. In determining the need for such a measure, courts consider a combination of factors, including a defendant's involvement in a particular group and the group's capacity to retaliate, a prior criminal record, the risk of jury tampering, the jurors' privacy concerns, and the extent of pretrial publicity. There are various degrees of anonymity, generally ranging from the court alone having access to identifying details and the access ban extending indefinitely, to a less restrictive scenario where the court, counsel, and the defendant know the juror information, but the public and press are given the particulars

[55] See "Evidence" for a full range of examples of prejudicial evidence.

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only in the post-verdict phase (American Judicature Society, n.d.). No matter the degree of restriction, critics assail this practice "both as an infringement of the sixth amendment guarantee of an impartial jury and as a serious and unnecessary erosion of the presumption of innocence" (Wertheim, 1986, pp. 983–84).

In *United States v. Sattar* (2003), the government moved for an anonymous, escorted jury and other related protective measures. Yousry's lawyers filed opposition papers, which were joined by Stewart and Sattar. However, the Court granted the government's motion based on the massive, widespread pretrial publicity about the case, and because the alleged criminal wrongdoing involved terrorist activity and the corruption of the judicial process (*United States v. Sattar,* 2004, April 29). The resulting degree of jury anonymity was extraordinarily high, which signaled to the jurors that the defendants were dangerous; moreover, the myriad measures this engendered cumulatively created a cloud of tension and fear that hung over the entire proceedings.

Among those measures were the Court's initial instructions, which included language cautioning the jurors never to disclose their names or addresses to Fletcher, the ubiquitous clerk, or any other court personnel (T. 1950). The jurors' personal information was known solely to the jury administrator's office and, for transportation purposes, to the marshal's service. The marshal's service was responsible for shuttling the jurors to and from the courthouse, and it did so by contracting a private company that supplied drivers as well as vans with tinted windows (T. 12621); at times, marshals also accompanied these vans (T. 13009). The information on transporting the jury was basically secret and, when an issue arose, only scant details made it into the courtroom. In fact, the Court stated explicitly that it stayed away from transportation

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particulars so as to maintain the distance mandated by the designated level of anonymity (T. 12623).

The jurors were also instructed never to discuss anything case-related with the marshals, be it of a substantive nature or regarding organizational details such as scheduling. The same applied to the marshals vis-à-vis the jurors. When civility managed to pierce the straightjacket of anonymity, for instance, when some jurors "were trying to be friendly" with the marshals, the latter informed the Court of these attempts and the Court subsequently issued an instruction admonishing the jurors to refrain from any niceties (T. 2511). Of course, this made for a generally stern and frosty atmosphere among marshals and jury members outside the courtroom. Moreover, the prohibiting of common courtesies was not restricted to interactions with court staff but also extended to conversations among the jurors; in fact, they were not permitted to talk to each other. When one juror exchanged a pleasantry with another juror as they walked up the court steps, for example, it warranted an explicit mention by the Court and a reiteration of the no-talk instruction (T. 6715).

The Court further mandated that the jurors retain their anonymity vis-à-vis family members. Actually, the Court strongly preferred that they did not even disclose what case they were sitting on, based on the rationale that if they maintained complete silence on the matter, no one would engage them in any conversation. In circumstances where a juror was unable to do so, he/she was only permitted to name the case; anything beyond disclosing the case citation would compromise their anonymity and was in violation of the Court's order (T. 2243). To keep the jurors on their toes and uncover any untoward contact with the outside world, Stewart's attorney, Tigar, asked the Court to institute "a policing mechanism," which required that the jurors report back to the Court any remarks, whatever their nature and regardless of their triviality, for

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evaluation (T. 2244). Thus, if anyone spoke to them about the case, the jurors were directed to immediately ask them to stop; if this approach was unsuccessful, the jurors were to report the offending party to Fletcher. So, for eight long months, the jurors not only had to keep a large portion of their lives separate from family and friends, a demand that is stressful and isolating in itself, but they were also ordered to inform on anyone who spoke to them about the case. This comprehensive gag order surely compounded the nervousness and tension that was palpable in the courtroom from the onset of the trial, and undoubtedly created some awkward and uncomfortable situations around family dinner tables.

Evidence of the jurors' overall apprehension with regard to potentially compromising their anonymity can be seen in a discussion relating to the sketch artists who periodically attended the court sessions. The jurors expressed concern to Fletcher that the artists seemed to be looking at them and were worried that they were being drawn and their identities disclosed. The Court subsequently warned the sketch artists to respect the jurors' confidentiality and refrain from sketching them. The judge instructed the marshals to check that the court order was carried out; he also comforted the jury, informing them that the artists were seasoned professionals who were cognizant of the respective rule and that they had been told not to sketch the jurors "in any sort of way that would reveal you" (T. 2484–85). The marshals were very diligent in enforcing this order, monitoring the artists as well as the courtroom audience. For instance, when a member of the audience drew a sketch of the courtroom, the marshals confiscated it, even though it wasn't possible to make out any faces. Moreover, the individual in question was ordered to cease drawing any such sketches.

Ironically, despite this looming specter of anonymity, the jurors found themselves at the center of constant, and discomfiting, attention. While the Court acknowledged that it must be

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disturbing for the jury to be incessantly looked at by the various parties, it also pointed out that the dictates of fairness entitled them to look at the jury in a criminal case (T. 2710). In addition, the Court indicated that it very carefully monitored the jurors and tried "to stare" at them to ensure that they stayed attentive and followed the proceedings (T. 3740). No matter why or how all these roving, watchful eyes scanned the jury box throughout the duration of the trial, it indisputably added another stressor to an already tense environment.

This extreme edginess and, at times, outright fearfulness manifested itself in various ways. For instance, during deliberations, even the mundane task of window-washing turned into a cause for concern, and Juror 329 (seated as No. 1) felt compelled to inquire of the Court whether the man cleaning the courtroom windows presented a problem (T. 13002). To alleviate this particular worry, the Court decided to ask Fletcher to contact building management and request that the window-washers move along (T. 13004).

A far more serious incident occurred on January 25, 2005, about two weeks into the jury deliberations. According to the marshal's report, Juror 14 [sic: 146 (No. 10)] left a voicemail indicating that she was speaking on behalf of all the jurors in the van. She complained that their van driver had compromised their anonymity, they felt threatened, and that she would further elaborate on this issue the following day (T. 12621). The next morning, the jurors sent the Court a note that read:

> 26 January '05. Judge Koeltl, we had an incident in the van on our way home yesterday. The marshal was notified. However, jurors number 329, 217, 82, 146, 292 and 364 were present in the van and because we feel threatened we would like to discuss this with you in person. Number 329. We would like to discuss this before we start deliberations. (CX 69;[56] T. 12624)

Upon receipt of this note, the judge officially suspended deliberations and, in the presence of the prosecution and defense counsel, brought the six rattled jurors into his robing

[56] "CX" refers to Court Exhibit.

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room to interview them about the previous night's incident. Initially, the interview proceedings were sealed but later were opened to the public. Juror 329, the foreperson, was questioned first. After being directed not to reveal anything about the deliberations, his identity, his address, etc., the man described the incident as follows: The van carrying him and his fellow jurors left the garage. He was sitting in the front passenger seat and closed his window. When the van ascended the ramp, the windows on the driver and passenger side were rolled down. The van then swung past the guard station and, where it usually would make a right turn, with the throng of media crews generally about 30 feet away, on this particular day it turned left, slowed down, and almost came to a stop. The driver then yelled out the window if anybody knew who Lynne Stewart was. Subsequently, people came up to the van carrying placards that said, for instance, "Free Lynne Stewart" (T. 12654; T. 12667; T. 12674; T. 12684). Juror 329 also mentioned that he saw TV camera people, but that their cameras were down. When the jurors disembarked from the van, they brought to the foreperson's attention the fact that "they felt very threatened" (T. 12630), while he himself considered the driver's behavior "infantile" and "aggressive" (T. 12631) and was concerned that the driver was "a loose cannon" and acting "toward retribution" (T. 12637). Juror 329 also indicated that he thought the procedures instituted were for the jury's protection due to the nature of the case, and to protect their privacy from media invasion (T. 12636). Of course, "the nature of the case" appears to confirm that jurors associated the case with danger and risk to their personal safety.

The second interview was conducted with Juror 217 (No. 3), who stated that the van incident made her "very uncomfortable," that it "crossed the line," that they were "a little bit fearing for our own safety" and "feeling very apprehensive" (T. 12644). She also recognized four of the people who were crowding the van as regular members of the courtroom audience and

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singled out one of the men carrying a sign, describing him as an “ominous looking person” (T. 12645). Juror 364 (No. 6) “didn’t feel great about it” and was concerned that her anonymity was compromised due to the open van windows (T. 12654), while Juror 292 (No. 8) was “highly uncomfortable,” “felt unnerved” and wondered “how the hell did they get there” (T. 12667). His perception was that the crowd of people somehow knew that it was the van belonging to the Stewart trial and indicated that “there was a personal aspect to it that was, as I say, disconcerting” (T. 12667–68). Juror 146 (No. 10), who was farthest removed from the melee, as she was the sole passenger in the last row of the van, also remembered the protesters from the audience but felt “more annoyed than threatened” (T. 12673–74). Without being asked, she indicated that she did not feel “physically threatened” because of the presence of the marshals and because everything happened so fast (T. 12674). Of course, while her fears may have been allayed by the omnipresent marshals, her unprompted reference to not feeling threatened physically raises the question as to whether she felt otherwise threatened, a question that the Court decided not to ask when urged by the defense. Juror 82 (No. 12) believed that the driver clearly breached juror anonymity in that he rolled down the windows and allowed the protesters to peer inside (T. 12684). The juror described how one man was leaning forward with his sign and indicated that he might have been able to get a good look at the van occupants. When asked if he was uneasy about anyone in particular, he singled out “this big guy,” whom he had seen in the courtroom and who paced around a lot and got into an argument with a marshal (T. 12689). In addition to being perturbed about the fact that the man saw the six jurors in the van, Juror 82 was also troubled that the juror pick-up location and route had been disclosed and that supporters of the defendants had learned details, which they might use against the jurors (T. 12684; T. 12689).

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Ruhnke concluded from the jurors' answers throughout this inquiry that the majority of them believed that somehow their safety was at issue (T. 12634). He thus repeatedly asked the Court to frame its questions more directly, i.e., instead of simply asking whether the jurors felt threatened, to be more specific and inquire whether they feared anything from the defendants or their supporters, or if they were worried about retribution as a result of the verdict. In doing so, Ruhnke aimed to expose the subtext of fear running through the entire trial. As expected, the government objected, and the Court said it was satisfied that its line of questioning had explored the jurors' feelings sufficiently.

No matter how any one juror's perception and sense of peril is interpreted, the van incident offers a glimpse of how these severe measures to protect anonymity emotionally impacted the jury. If such factors as a different route, an ornery driver, and a gaggle of Stewart supporters exercising their First Amendment rights led jurors to feel threatened, it stands to reason that they may have felt endangered by two Arab male defendants, one of them accused of conspiring to kidnap and kill and of soliciting crimes of violence. Moreover, the dramatic set piece that functioned as overture and coda to every day in court, which involved the jurors being picked up in the morning from a secret location by a van with darkened windows, and vice versa at day's close, exacerbated any existing apprehension they had about sitting on a "terror" trial.

One of the primary objectives of an anonymous jury is to ensure that the jurors are free from fear and intimidation. But fear and intimidation were clearly present among the jurors and, ironically, within the jury room. In a letter to the Court dated March 25, 2005, Juror 39 (No. 9) wrote that she voted guilty "only as a result of the fear and intimidation I was made to feel for my life during the course of the deliberations" (as cited in *United States v. Sattar*, 2005, p. 2), expanding on that to say she was subjected to "a relentless verbal assult [sic] on my person and

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my position until I had no other choice but to relent because of fear I felt" (as cited in ibid, pp. 2–3). She complained that the deliberations had become a "platform" for a few jurors who appeared to have "a hidden agenda" (as cited in Preston, 2005a). Additionally, Juror 39's informal counsel, Steven J. Masef, told Stewart's defense lawyers that his client "had been one of the two 'holdouts' on the jury" and that "a person not on the jury had said to her at some point, in sum and substance, 'So you're the holdout? If you let the terrorist go, you're a terrorist yourself'" (as cited in *United States v. Sattar*, 2005, p. 2). Masef also indicated that this person was a court officer or one of the court staff who, when Juror 39 exited the van on the last day of deliberations, identified her as one of the holdouts. Thus, Juror 39 not only communicated that her vote was coerced but also that her anonymity had been breached. In addition to Juror 39, another juror came forward and indicated that "she had been intimidated by other jurors during their deliberations and was not clear-headed when she voted to convict" (Preston, 2005b). Based on these complaints during deliberations and allegations of outside pressure, Stewart's lawyers moved for a new trial, or, alternatively, requested an evidentiary hearing, with Sattar and Yousry both joining the applications (*United States v. Sattar*, 2005).[57] The government objected, not least because defense counsel had failed to adhere to proper post-verdict interview protocol, which required, at a minimum, notice to the Court and opposing counsel. The defense conceded that it had neglected to give such notice and attributed it to a communication failure among counsel. Aside from the tainted juror contact, the Court found that the statements contained in the juror's letter and the outside influence as reported by Masef were barred by § 606(b) of the

[57] These applications also included allegations of juror misconduct for providing materially false information during voir dire, thus denying the defendants their Sixth Amendment right to an impartial jury. Specifically, on his juror questionnaire, Juror 82 supplied sworn answers that (a) he had not been in prison, and (b) he would accept the presumption of innocence, be fair and impartial, and base his verdict only on the evidence presented. Prospective Juror 76 submitted an affidavit to defense counsel after the trial saying that she had overheard Juror 82 state that (a) when he was in the military he had spent a couple of nights in jail, and (b) if someone is before a judge, they must have done something wrong (*United States v. Sattar*, 2005).

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Federal Rules of Evidence[58] because they did not reach the threshold imposed by case law, which requires that "possible *internal* abnormalities in a jury will not be inquired into *except in the gravest and most important cases*" (as cited in ibid, p. 7; emphasis in original; citation omitted).

Although the Court denied the defense applications, the account of Juror 39 offered a rare glimpse into a pressure-cooker of a jury room, one that offered no outlet valve after eight long months except a guilty verdict. Judging from the letter, one result of such pressure was the emotional battering of this small, slight woman to the point where she feared for her life, cast a guilty vote against her will, secured her own counsel, took the extreme step of approaching the defense post-verdict, and, most likely with the assistance of her counsel, wrote a letter to the Court recounting the verbal harassment and intimidation. Necessarily, jury deliberations, especially in criminal trials, involve periods of heightened emotions. In this case, however, the tense atmosphere produced by the forced closeness of a random group of people, thrown together for an extended period of time under the rubric of terrorism, also gave rise to jury bullying. The strictness of the anonymity rules served to undercut the togetherness, utterly isolating individual jurors and rendering some of them particularly vulnerable. Protective measures such as not being allowed to reveal their names to each other or exchange pleasantries inside and outside the jury room, let alone vent the frustration and anxieties arising from a drama-filled day with family and friends, further increased the sense of isolation. And being ferried in darkened vans along secret routes, feeling threatened by the wrong turn of a cantankerous driver and a throng of gray-haired Stewart supporters, worrying about an "ominous-looking guy" in the gallery and the pencils of court sketch artists all added to the already existing stress levels. Tigar expressed it best when he told the Court: "Fear, your Honor, of consequences, has intruded upon this trial inevitably

[58] Rule 606(b): Inquiry into validity of verdict or indictment (Fed. R. Evid., 2013).

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despite the best efforts of everybody" (T. 12718). In the aggregate, all these factors contributed to undermining Yousry's Sixth Amendment rights and diluting his presumption of innocence.

Trial Sequence

A courtroom is a judicial ecosystem with a complex set of relationships among the participants. As such, each one has its own culture and each trial derives its ambiance from a mix of factors. Some of these factors are relatively constant across trials; others vary from case to case. One of the more stable aspects is the trial sequence, a predetermined format of case presentation that prosecution and defense must follow (Ford, 1986). In this context, the order effects of persuasive communication come into play. Research on primacy and recency effects has demonstrated that the particulars of the conditions determine whether arguments presented first have a considerable advantage over those presented second or vice versa (Lawson, 1969). For instance, primacy effects occur when the prosecution offers a more extensive opening statement than the defense, while recency effects apply if the defense's opening remarks are more extensive (Pyszczynski & Wrightsman, 1981). Primacy effects are also present when witness testimony is very vivid (Pennington, 1982) or when the jury has been exposed to the information previously (Lawson, 1969).

The trial sequence played a key role in *United States v. Sattar* (2003) in that the prosecution scored multiple primacy advantages. First, the prosecutor, Morvillo, opened the trial with Rahman's virulently anti-American *fatwah*. Intoning for maximum effect, he faced the jury and recited the blind cleric's violent words:

> MR. MORVILLO: Dismember their nation, tear them apart, ruin their economy, provoke their corporations, destroy their embassies, attack their interests, sink their ships, and shoot down their planes. Kill them on land, at sea, and in the air. Kill them wherever you find them. Kill Americans everywhere. (T. 2122)

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Hearing these calls to violence undoubtedly had an emotional impact on the jury; to what degree individual jurors were affected and felt personally attacked as Americans, we will never know. What is certain, however, is that by prominently featuring Rahman's words at the outset of the trial, the cleric, as an unindicted co-conspirator, became an unspoken protagonist whose ideology cast a long shadow over the trial.

Second, from the very beginning, the prosecution was able to thematically frame the trial by binding the three defendants into a comprehensive but tight terrorist narrative, while the defense appeared far less coherent due to the various and, at times, conflicting positions of the three defendants. This terrorist narrative—which accused Sattar, Stewart, and Yousry of operating an illegal channel of communication between Rahman and his followers, thereby facilitating potential terrorist acts—was headlined by the brilliantly simple but highly effective notion of a jail break. In his opening statement, Morvillo told the jury that "these defendants helped Abdel Rahman break out of jail to inspire his terrorist group to return to terrorism" (T. 2130). Ramping up his rhetoric, he coupled this virtual jail break with firepower, adding that the defendants "allowed Abdel Rahman to tell his followers, 'Fire!'" (ibid). Thus, the government depicted itself as the party that had locked up a menace to society and basically thrown away the key by means of the SAMs, while all three defendants were painted as terrorist helpmates who were undermining their native or chosen homeland with their collective deeds. In doing so, it not only supplied the jury with an uncomplicated yet dramatic story line, but drew a powerful mental image that proved hard to erase.

A third significant primacy effect derived from the government's chronological structuring of its presentation of evidence (T. 1956). In their research on the story model, an explanation-based theory of juror decision-making, Pennington and Hastie (1992) found that "a

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narrative *story sequence* is the most effective 'order of proof' at trials" (p. 203; emphasis in original). This means that the prosecution not only told an easy-to-remember jail-break tale, but, in choosing the timeline approach, it started the trial off with the vivid testimony of an eyewitness to the Luxor massacre.[59] Having laid the groundwork in the opening statement by describing for the jury Egypt's popular tourist attraction, "the magnificent archeological ruins in the City of Luxor" (T. 2133), and how a serene moment with picture-snapping tourists milling about and "soaking up the ancient history" (ibid) was shattered by terrorist gunfire, the government launched its chain of evidence with blood and gore at the foot of the pyramids. By leading with a horrific attack in a faraway land, which was not even remotely related to Yousry, they created the impression that it was this 1997 terrorist incident that set everything in motion. Thus, by introducing Luxor as an early and central element of its courtroom theater, the prosecution set the mood for the rest of the trial.

Another devastating primacy effect in terms of vividness was obtained by the strategic showing of an *Al-Jazeera* videotape[60] (Gamal, 2000) on September 7, four days before the third anniversary of 9/11. From the approximately 15-foot-high screen placed across from the jury box, sitting under a banner that read "Convention to Support Honorable Omar Abdel Rahman" (T. 5344; as cited in *United States v. Stewart*, 2007b, June 29, p. 26), the towering figures of American Enemy No. 1 Osama bin Laden, his second in command Ayman Al-Zawahiri, and Taha stared down at the jury and other assembled audience as they incited followers to engage in jihad to free Rahman from prison. An off-camera voice, which purportedly belonged to Rahman's son Asadallah Abdel Rahman, called for armed action to secure the release of his father. In strident tones, Asadallah urged viewers to "avenge your Sheikh … avenge them

[59] See subsequent "Evidence" section.

[60] *Al-Jazeera* news tape dated September 21, 2000, containing excerpts from the program entitled *The Day's Harvest*.

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everywhere … let's go [to] the grounds of jihad … Let's go to the battlefield…." (ibid), adding to the fury by chanting "Let us spill blood" (ibid). Needless to say, no insistence on the part of the Court during the voir dire proceedings[61] that the trial did not involve bin Laden and 9/11,[62] and no curative instructions, carefully worded though they may have been, could nullify or lessen the impact of the powerful visuals and aggressive rhetoric that the government presented to the jury. Thus, the mere possession of a copy of a news program, a trial venue a few blocks away from Ground Zero, and a shrewdly scheduled showtime that almost coincided with the tragic date all combined to draw an invisible line of guilt—straight from the looming figures on the screen down to the defendants.

Lawson (1969) points out that a primacy effect exists when juries have heard the information before. Now, although the jurors claimed in their voir dire statements that they had little or no knowledge of Rahman, the U.S. population in general and residents of New York City in particular had been amply and consistently plied with terrorism-related information, some of it pertaining to two major events affecting their city and involving Rahman. First, city residents witnessed the first World Trade Center attack in the early nineties, the masterminding of which was widely attributed to Rahman; second, in the same time frame up to the mid-nineties, they had been exposed to intense media coverage of Rahman's trial for conspiring to bomb New York City landmarks, which included buildings, bridges, and tunnels that are close to any New Yorker's heart. Regardless of whether the jurors didn't recall, only barely recalled, or weren't

[61] A two-part voir dire process was used due to the extensive pretrial publicity. Approximately 500 prospective jurors completed a 45-page questionnaire, which was then reviewed by the Court, the government, and the defense. After striking jurors for cause and identifying issues that required questioning, the remaining prospective jurors were interviewed individually in open court (*United States v. Sattar*, 2005).

[62] During jury selection, the defense expressed concern that potential jurors might be biased if the 9/11 attacks and Osama bin Laden were mentioned during the trial. Seeking to alleviate such concerns, the Court assured the jurors repeatedly that this trial was not connected with 9/11 and bin Laden (see, for instance, T. 764, T. 5327, T. 5341, T. 5827, T. 7111, T. 7120, T. 11020). Of note is that three jurors, that is, Jurors 39, 146, and 329, among them the foreperson, expressed negative sentiments about bin Laden during voir dire and/or pointed out that they had been severely affected by 9/11. They were seated nonetheless.

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questioned during voir dire on these events taking place in their backyard, the prosecution, when elaborating on Rahman, surely reawakened any feelings they may have experienced at the time those events occurred. All in all, pre-9/11, the jurors had been exposed to coverage of four major terrorism trials that were tried in downtown Manhattan federal court: two trials related to the first WTC bombing, the landmark conspiracy trial, and the 1998 bombings of the U.S. embassies in Africa. Additionally, they most likely had heard and read about the 2000 bombing of the USS Cole in the Yemeni port of Aden. Such exposure to terrorist incidents then burgeoned with 9/11, an attack that undermined Americans' sense of security and elicited a whole range of emotions. This suggests that the jury, along with the rest of us, had been heavily primed for terrorism, cognitively and, most of all, emotionally. In other words, any New Yorker who lived through the 9/11 attack and its immediate aftermath would have been affected to some degree. There is much empirical support for this assertion, and individuals' responses to the 9/11 national trauma have been examined on variables such as political tolerance (Skitka, Bauman, & Mullen, 2004), the desire for revenge (Kaiser, Vick, & Major, 2004), mental health (Silver, Holman, McIntosh, Poulin, & Gil-Rivas, 2002), television watching among New Yorkers and the risk of incident PTSD (Bernstein, 2007), sleep disturbances (Bailey, 2006), and so forth. For instance, in their national field experiment investigating how emotions shape attributions in the 9/11 context, Small, Lerner, & Fischhoff (2006) found that participants reflecting on their anger were more blame-oriented than those who were thinking about their sadness. But whatever the jurors' personal, pretrial levels of anger, grief, and other affect relating to this watershed event, the prosecution's carefully crafted strategy—a multi-month journey through countless terrorist incidents, a witness flown cross-country to relive on the stand his escape from a spray of terrorist

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bullets, play-acting pyrotechnic sermons—served to intensify the jury's cognitive and emotional priming, resulting in a considerable primacy effect.

And last but not least, since it had the burden of proof, the prosecution enjoyed a recency effect in that they had the final say, the advantages of which they themselves acknowledged (T. 12150). Once the defense attorneys wrapped up their respective summations, Barkow embarked on his rebuttal, shoring up the government's case by painstakingly refuting any defense argument that may have fallen on fertile ground. Thus, by going first and last, and telling a succinct but dramatic tale of terror buttressed by indelible witness testimony and graphic exhibits, the government benefitted from a full array of primacy and recency effects.

Evidence

There are several types of evidence: witness testimony (including expert testimony), physical evidence (such as objects or documents), audio recordings (either in English or foreign languages, the latter accompanied by translations), videotapes (with or without audio), photographic evidence, demonstrations and simulations, and demonstrative evidence (including maps, charts, slides, scale models, etc.). In broad and simplified terms, evidence in most of these categories can be "direct evidence" or "hearsay evidence." Direct evidence is "[t]hat means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact, and is distinguished from circumstantial evidence, which is often called 'indirect'" (Black, Nolan, & Nolan-Haley, 1990, p. 460). As defined by Article 8, Rule 801(c) of the Federal Rules of Evidence, "'[h]earsay' means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement" (Fed. R. Evid., 2013). Of note is that there are

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24 exceptions to this rule, including a "catch-all" provision. Either form of evidence may be introduced through witnesses or through the stipulation of the parties (J. Soroko, personal communication, September 23, 2009).[63]

Evidence admitted by stipulation, or judicial admission, refers to "an agreement, admission or concession made in a judicial proceeding by the parties thereto or their attorneys, in respect of some matter incident to the proceeding, for the purpose, ordinarily, of avoiding delay, trouble, and expense" (*People v. White*, 1989). Stipulation-related interactions, disputes, and outcomes can materially affect the case and how a defendant is perceived.

Evidence introduced through witness testimony, including expert testimony, requires that jurors evaluate those statements in terms of their veracity. While rituals such as the administration of the oath prior to the testimony may lend an air of a priori truth, a witness's credibility can be affected by various factors. In the case of expert witnesses, the juxtaposition of differing accounts and the fact that a witness's credibility is often explicitly tested by the cross-examining party may render such testimony inherently suspect (Brannigan & Lynch, 1987). Witness credibility may be also be impacted by emotionality (Bollingmo, Wessel, & Eilertsen, 2008; Bornstein & Weiner, 2006), eye contact and gender (Neil & Brodsky, 2008), age and speech style (Ruva & Bryant, 2004), cross-race effects (Abshire & Bornstein, 2003), and eyewitness confidence (Whitley & Greenberg, 1986), to name a few. Keeping in mind such social science insights, select witness testimonies are examined in this section to gauge their potential effects on the jury.

In the course of the trial, the government submitted a total of 917 exhibits,[64] including entire books, documents that ranged from a single page to several hundred pages, photographs,

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[63] Jonathan Soroko was a former prosecutor, defense attorney, and investigative consultant on terrorism trials.

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and assorted audio and video. In what became a daily ritual, the prosecutors and their staff would line up in the hallway outside the locked courtroom holding tight to wheeled carts heaped with fat binders and expanding redwelds. As soon as the doors opened, this bulging prosecutorial caravan would proceed down the aisle into the well, ready for the day's mind-numbing offensive:

> MR. MORVILLO: Your Honor, at this time the government would offer into evidence Government Exhibit 1000, Government Exhibit 1015 and the following X transcripts: 1001X, 1002X, 1009X, 1010X, 1011X, 1012X, 1016X, 1017X, 1022X, 1023X, 1025X, 1027X, 1028X, 1029X, 1030X, 1032X, 1033X, 1035X, 1044X, 1046X, 1047X, 1049X, 1051X, 1054X, 1060X, 1061X, 1062X, 1067X, 1092X, 1093X, 1099X, 1102X, 1104X, 1120X, 1121X, 1122X, 1123X, 1124X, 1125X, 1126X, 1127X, 1128X, 1129X, 1130X, 1131X, 1132X, 1133X, 1134X, 1135X, 1148X, 1153X, 1155X, 1162X, 1163X, 1165X, 1166X, 1167X, 1169X, 1179X, 1180X, 1181X, 1183X, 1184X, 1188X, 1189X, 1192X, 1194X, 1199X, 1200X, 1205X, 1212X, 1214X, 1217X, 1226X, 1228X, 1229X, 1003X, 1004X, 1005X, 1006X, 1007X, 1008X, 1013X, 1014X, 1026X, 1031X, 1045X, 1052X, 1053X, 1069X, 1071X, 1088X, 1089X, 1090X, 1091X, 1094X, 1100X, 1101 X, 1111X, 1112X, 1117X, 1119X, 1136X, 1143X, 1144X, 1152X, 1161X, 1168X, 1170X, 1182X, 1186X, 1190X, 1191X, 1208X, 1209X, 1210X, 1216X, 1218X, 1221X, 1222X, 1223X, 1224X, 1227X and 1230X. (T. 3678–79)

While some exhibits were introduced by stipulation, many of them came in through witnesses. To this end, scores of government witnesses took the stand, including 22 FBI agents, among them field agents, technical experts, language specialists, two constable detectives from Scotland Yard, and eight miscellaneous witnesses, i.e., a corporate security staff director and custodian of records from Verizon, who attested to the authenticity of subpoenaed phone records; a representative from a calling card company; Rahman's physician at the Federal Medical Center (FMC) in Rochester, Minnesota; a legal administration specialist from the U.S. Attorney's Office who maintained Rahman's SAMs file; Rahman's former prosecutor; the Reuters correspondent who spoke with Stewart and Sattar; a language vendor who had been contracted by the government to translate Taha's book; and a bank lawyer who survived the Luxor massacre.

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[64] Two hundred and fifty-four of the exhibits were originally in Arabic and accompanied by translations.

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This seemingly endless parade of witnesses, many of whom were recalled several times, made for an impressive array of competencies, especially in the areas of law enforcement and technical expertise. The jury thus was continually plied with long resumes and dizzying titles such as "principal lead supervisor" of the FBI's "domestic terrorism division, WMD squad," and "member of the Evidence Response Team" (T. 6381–82); "assistant section chief for the electronic surveillance section in the FBI's engineering research facility" (T. 3042); "signal processing analyst," i.e., an electronics expert who enhances audio recordings for court or investigative purposes at the FBI's Quantico, VA, facility (T. 4163); and so on.

The aura of governmental prowess—technical and otherwise—emanating from the stand actually stood in stark contrast to what went on behind the scenes: discovery that had gone missing or been mislabeled; the government's providing of 810 Yousry phone wiretap files to the defense that were corrupted and unreadable (T. 2973–74; T. 2976; T. 6593);[65] access issues relating to where the FBI kept the machines, drives, keyboards, and files, or to quote Tigar, "everybody and his brother was in there" (T. 6595); and, although legally less consequential, the fact that the FBI was rodent-infested, having returned Yousry's seized property replete with mouse droppings.

No matter the issues, the mountain of exhibits and long procession of witnesses presented to the jury obviously proved successful. The defense offerings, after the governmental behemoth, were comparatively meager. In addition to their client's testimony, Sattar's defense lawyers called only one witness, i.e., a linguistic expert. Stewart's defense did not offer any witnesses with the exception of recalling one government witness and putting Stewart herself on the stand. Yousry's lawyers, in addition to having their client testify, called seven witnesses: AG Ramsey

[65] Out of a total of approximately 88,000 [sic: 93,000] files for all three defendants, 2,142 were unreadable and 3,317 were incorrectly labeled (T. 2973).

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Clark and Lawrence Schilling from Rahman's legal team attested to the manner in which Yousry performed his translation/interpreting duties; Drs. Zachary Lockman, Charles Foster Coleman, and Michael Gasper gave insight into his academic life; while Pastor Vince Sawyer and daughter Leslie Yousry served as character witnesses attesting to, among other things, Yousry's secularity (see Chapter 7, "Islamophobia"). In terms of submissions, Sattar entered approximately 33 exhibits and Stewart 36, while Yousry offered 124.[66]

Since it is beyond the scope of this dissertation to catalogue and describe every testimony and exhibit, the following selection is illustrative of the types of witnesses on the government's witness list and the types of evidence submitted as well as the concomitant prejudice inflicted on Yousry. A range of witnesses and exhibits proffered by the three defense teams are also included to supplement the narrative.

Luxor eyewitness.

On June 29, 2004, the government called Ekkehart Hassels-Weiler to the stand to testify about his firsthand experience of what is commonly referred to as the Luxor massacre. A bank lawyer originally from Berlin, Germany, who relocated to Los Angeles, Hassels-Weiler gave a detailed account of the fateful day of November 17, 1997, when he, together with his mother and two friends, toured the pharaonic burial sites in the Valley of the Kings as well the nearby temple complex of Hatshepsut. Hassels-Weiler testified that about 10 minutes into his temple visit, he heard gunfire and subsequently observed seven to ten armed men approach the temple guard post, with two of the gunmen proceeding to shoot the guards. To escape the danger, Hassels-

[66] Numbers are indicated as approximate because of possible record-related and adding discrepancies.

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Weiler separated from the large tourist group[67] and, along with his companions, sought refuge in one of the side chambers of the temple complex. On the way to his hideout, he looked back and saw an Asian woman being shot in the head and tumbling to the ground. He stayed in hiding during most of the attack, stepping out only once to grip the tour guide in a headlock after the latter ignored his request to lower his voice. While doing so, he encountered a scene that he characterized as "absolute mayhem" (T. 2699): cascades of gunshots from automatic weapons, people scattering about "screaming and wailing … sometimes for several minutes until they died" and "pleading for their lives" (T. 2700). Hassels-Weiler testified that the sounds of terror continued for about 40 minutes, and for one frightening moment, the gunshots even neared his hideout. Once the gunfire abated, he and his party waited another 30 to 45 minutes before emerging to find more than 50 people dead from gunshot wounds, with some bodies also exhibiting knife wounds to the facial region (T. 2700–02).

During Hassels-Weiler's testimony, the jurors sat motionless, eyes widening at times in horror. The slim, bespectacled man's unemotional demeanor and robotic recounting stood in stark contrast to the gruesome details he recalled, and conveyed the impression of a person traumatized by a terrible experience. Although the Court issued a limiting instruction stating that the testimony only provided the context to the alleged conspiracies and that the defendants neither "participated, planned, [n]or had advance knowledge of the Luxor attack" (T. 2708),[68] garish details—such as having the witness point out on a temple photo where the guards and Asian woman were assassinated—counteracted any such well-intended effort. The eyewitness

[67] In addition to his group, Hassels-Weiler testified that there was a smaller group of Asian tourists as well as a larger group of Swiss tourists (T. 2694).

[68] In its motion *in limine*, the government had argued (and the court ruled) that evidence related to incidents such as Luxor was relevant because, inter alia, "these defendants knew what their audience was and they knew that audience had participated and committed acts such as the Luxor attack …" (T. 449).

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testimony dramatically and unequivocally established a link between Luxor and the defendants, be they the lawyer, the interpreter, or the paralegal.

Real and fake *fatwahs*.

The jury was treated to three *fatwahs*, all equally exhorting violence. The first one, termed the 1998 *fatwah*, had been issued by bin Laden in 1998, with Taha as one of the signatories. Admitted only against Sattar, it called on Muslims "to kill Americans and plunder their wealth wherever and whenever they find it" (T. 4107; as cited in *United States v. Stewart*, 2007b, June 29, p. 23). The second *fatwah* had been issued by Rahman himself and instructed followers to kill Americans everywhere.[69] The third *fatwah*, which had been recovered during the search of Sattar's residence, was dubbed the "October 2000 *fatwah*" or "fake *fatwah*," since it had been ghostwritten by Taha and edited by Sattar[70] in a style resembling Rahman's. Entitled "Mandating the Killing of Israelis Everywhere," it was directed at the Palestinian situation in that the authors called on "the Muslim nation" to "fight the Jews by all possible means of Jihad, either by killing them as individuals or by targeting their interests, and the interests of those who support them, as much as they can" (T. 5520–23; as cited in *United States v. Stewart*, 2007a, June 29, p. 33). As demonstrated by the government's prison call surveillance, Yousry had no knowledge of the fake *fatwah* until, during one of the usual weekly attorney-inmate prison calls, he read to Rahman a lawyer-approved article from *Al-Hayat* and stumbled across it.[71] Assuming that it had been issued by Rahman, he asked the latter how he had been able to get this published.

[69] Some of the second *fatwah*'s wording has been reproduced in the foregoing section, "Trial Sequence."

[70] With input from Al-Sirri.

[71] Paralegal Sattar had contacted Yousry and asked him to buy copies of *Al-Hayat* and *Asharq Al-Awsat* to be read to Rahman during the October 6, 2000, prison call. Yousry saw nothing unusual in this request, especially since *Al-Hayat* was one of the newspapers the lawyers had routinely approved over the course of many years (T. 5503–04). The government, however, construed this as an act in furtherance of the conspiracies.

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Rahman replied, in English, that it was none of Yousry's business and essentially adopted the fake *fatwah* as his own by instructing his attorneys not to deny it. The attorneys decided to forego putting out a statement that Rahman did not deny it—a decision Ruhnke calls "the antithesis of a violation of the SAMs" (T. 5509). The government, though, construed this response to be a violation of the SAMs, which in essence meant that the government viewed issuing statements to be a violation but also deemed not issuing statements to be a violation. Of note is that all this decision-making was done by the lawyers and did not involve Yousry; moreover, the reading occurred within the confines of an attorney-client conversation in the presence of an attorney. However, the simple act of reading this edict to Rahman apparently must have contaminated Yousry in the minds of the jury. Faced with language advocating the wholesale slaughter of human beings, how could anyone compartmentalize his or her emotions and assess the evidence dispassionately?

Rahman sermons, speeches, and last will.

Stewart was Rahman's lead counsel during his conspiracy trial in the mid-nineties. The government thus was able to admit against her multiple Rahman sermons and speeches that had been introduced at that trial because she was "present at the time each was received in evidence" (T. 2463) as well as "during the reading of each of these transcripts" (T. 2465). The government had also seized from Sattar's residence numerous tapes containing Rahman sermons and speeches on the same theme. These were admitted against Sattar and Rahman with regard to their "knowledge, intent and state of mind" (T. 3699). Containing *Qur'anic* exegesis and radical rhetoric, these exhibits were offered to establish the defendants' knowledge that Rahman considered violent jihad to be a duty for all Muslims, that he harbored anti-Semitic feelings, and

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that he advocated the overthrow of the Mubarak regime by whatever means necessary. By introducing assorted proof of Rahman's ideology as well as growing anger over his solitary confinement and overall treatment, the prosecution was able to douse the jury with his fiery language over many long mornings and afternoons.

The jury also learned about Rahman's last will. Confronted with a life sentence of solitary confinement, failing health, and the inability to read even Braille due to advanced diabetes, as well as a fear of being murdered in an American prison, Rahman had issued a last will in which he urged his followers to make sure his blood was not shed in vain and to avenge him using violent means. This desperate, *Qur'an*-quoting document, various versions of which were found during defendant searches, revealed the burning anger and impotence of an embittered, increasingly radicalized and paranoid man who, in his view, had been railroaded by the American justice system. With strategic zeal, the government read a four-page version right before it rested its case. In doing so, it left the jurors with a missive of tremendous emotional force that called for their annihilation:

> MR. BARKOW: Oh Muslims everywhere, destroy their nation. Tear them apart, ruin their economy, burn their companies, plunder their interests, sink their boats, bring down their airplanes, slaughter them on land, sea and air. [God said] "Slay [the pagans] wherever ye find them and seize them, beleaguer them and lie in wait for them in every stratagem (of war)." "Fight those infidels and let them find firmness in you." "Fight them and Allah will punish them by your hands, cover them with shame, help you (to victory) over them, heal the breasts of believers and still the indignation of their hearts."
>
> I looked for peace but I did not find a way to do it but shedding blood with the sword. We used podiums to talk about it, however, the voice of arms called upon us to get back the rights. There is no other way but using force.
>
> Dear brothers, if they killed me, no doubt that they will kill me. Have a funeral for me and send my body to my family. But do not have my blood in vain. Seek for me my revenge, the most violent revenge. And remember a brother of yours who said a word of truth and was killed in [sic] the sake of God. This is my will. (T. 7128–29)
>
> …
>
> Your brother Omar Abdel Rahman from inside the US prisons. (T. 7133)

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Osama bin Laden, et al.

In addition to the above-referenced 1998 *fatwah*, the government repeatedly invoked the specter of bin Laden by mentioning his name at every opportunity, despite the Court's earlier pronouncements to prospective jurors that the trial had nothing to do with bin Laden and 9/11. But as the case progressed, the government succeeded in persuading the Court to admit considerable evidence relating to America's then most wanted terrorist. For instance, as noted in the "Trial Sequence" section, right before the anniversary of 9/11, an eager quartet of prosecutors read the translated script of an *Al-Jazeera* broadcast relating to the 2000 Convention, which was simultaneously displayed on the screen:

> MS. BAKER: We would ask that I be permitted to read the lines attributed both to the *Al Jazeera* recorder [sic] and anchorperson Rima Salha, that Mr. Barkow be permitted to take the witness stand and read the lines attributed to Osama Bin Laden and also later on to Asadallah, that Mr. Morvillo be permitted to come and stand at the lectern with me and read the lines attributed to Rifa'i Ahmad Taha, and that Mr. Dember be permitted to join me at the lectern at the appropriate points and read the lines attributed to Ayman Al-Zawahiri and also Muntasir Al-Zayat,[72] and come to the lectern at the appropriate time and read the lines of General Fouad Mohammad Tawfiq Allam. (T. 5340–41)

This performance was accompanied by a limiting instruction that "the statements in the videotape and the transcript cannot be considered against Mr. Sattar, Ms. Stewart or Mr. Yousry for the truth of any of the matters asserted, except that the statements by Mr. Taha are admitted against Mr. Sattar with respect to Counts 2 and 3, subject to connection for the truth of the matters asserted" (T. 5341).

Doubling the impact, the government then played the video for the jurors, who donned headphones to listen to the Arabic audio while also looking at the English transcript. At a later point in the trial, the terrorist summit again reared its ugly head, this time via a redacted *New York Times* article from October 20, 2000, by Judith Miller and Neil MacFarquhar; it was

[72] Muntasir Al-Zayat is Rahman's lawyer in Egypt and the lawyer of the IG.

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admitted against Stewart and sprinkled with excerpted pledges by bin Laden and Al-Zawahiri to wage a holy war. Attacking the U.S. military presence in the Middle East, bin Laden's second-in-command declared:

> "The time has come for us and for all *mujahedeen* to confront this heathen, tyrannical power which has trampled upon our holy sites and occupied our two holy mosques."… "These heathens have spread their forces in Egypt, Yemen and the gulf, killing our children, persecuting our scholars, soiling our holy shrines and stealing our wealth."… (T. 6812)

But three times was apparently insufficient, so the government quadrupled the emotional punch by reading an additional draft translation of the convention script that the FBI had recovered from Yousry's study and that was only admitted against him. In this instance, it was Morvillo's turn to play bin Laden, and he forcefully offered up the latter's religion-infused bile:

> MR. MORVILLO: We vow in this blessed night to do our utmost to triumph our religion and set up the *Sharia* over all Muslim lands, 3:17, and to expel all Jews and Christians from the Holy Land and to seek the release of our Muslim scholars from their privileges [sic] in America, Egypt and Riyadh (Saudi Arabia) and all countries of Islam, 3:31. We turn to Allah, the almighty, for his support. He is the guardian of our quest, 3:45. (T. 7063)[73]

On the same theme, an audiotape containing a speech by bin Laden was found in Sattar's home and admitted against him as to Counts 2 and 3. In the speech, bin Laden outlines the type of measures that would be effective in obstructing U.S. interests in the Middle East.

In addition to dramatic audio and video evidence, the prosecutors inundated the jury with myriad print and electronic media reports discussing bin Laden and other terrorist figures and activities. These reports had been seized from the defendants' premises or sometimes simply retrieved from public sources. The topics varied widely and included a 1995 assassination attempt on President Mubarak; the Luxor massacre; the 1998 bombing of the U.S. Embassies in Kenya and Tanzania, which left 258 people dead and many thousands injured; the 2000 bombing

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[73] 3:17, 3:31, and 3:45 are time stamps.

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of the USS Cole in the Yemeni port of Aden, which killed 12 American sailors; a CNN transcript headlined "Sons of jailed Egyptian cleric join bin Laden terrorist network" (T. 7111–12); and clippings reporting on sundry terrorist activities across the globe, such as a suicide bombing in Pakistan.

If a connection could be made, no matter how remote, such terrorist activity was given center stage. The above-mentioned article by Miller and MacFarquhar—the main topic of which was a possible terrorist attack by Egyptian Islamic Jihad, a group closely affiliated with bin Laden—also contained a reference to the USS Cole incident by a group of *Al-Qaeda*-affiliated suicide bombers (GX 544;[74] T. 5818–21). On that basis, a phone conversation between Sattar and Taha from October 25, 2000, was offered against Sattar. In the call, Taha suggested opportunistically that Clark use the potential threat of similar terrorist attacks as a bargaining chip in negotiating with the U.S. government for the release of Rahman from prison:

> TAHA: Okay, it is just a message that we want, if Ramsey Clark can only deliver it.
> SATTAR: What is its content?
> TAHA: The problems are related to the man they have, if this man eh, I mean eh, I mean eh, if his status is straightened out—
> SATTAR: Hm.
> TAHA: —it will follow that other things will get straightened out also.
> SATTAR: Okay, good, God willing. I can pass to him these words. (GX 1207X; T. 5830–31)

If the government wished to make a point on asymmetrical warfare and the effectiveness of small terrorist cells, they managed to do so. Who could forget the large hole blown into the side of the mighty warship by explosives that were ferried out on a dinghy and killed 17 U.S. Marines? Of course, volatile content such as this caused irreparable harm to Yousry. In fact, Yousry's sitting next to Sattar at the defense table only served to reinforce the perception of a "cell" in the courtroom.

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[74] "GX" refers to Government Exhibit.

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Astonishingly, news articles did not have to be recovered in the residence or office of any of the defendants as long as the government found a reference to the content of these articles among the defendant conversation wiretaps. In a move that was particularly galling to the defense, the government simply went to the publisher of *Al-Quds Al-Arabi* to obtain an article that had been briefly referred to in a conference call among Sattar, Muntasir Al-Zayat, and Taha on December 12, 1998. This article contained a long discussion of who was responsible for the U.S. embassies bombing, a biographical sketch and large picture of bin Laden, as well as a profile and picture of Taha (T. 3765). Ruhnke objected strenuously, especially since the government would be able to use this article to introduce bin Laden's 1998 *fatwah* through a trail of guilt by association:

> MR. RUHNKE: By way of brief reply, your Honor, it is the core of our argument that a couple of brief references to a newspaper article in the course of a long, long conversation, is a very thin vehicle for what the government is attempting to make out of it. That Taha in the conversation cites an interview as an example of how we should handle, quote, "our way of media coverage of issues", close quote, and from that, the government posits they can bring Osama bin Laden into this case, to bring the very virulent and prejudicial, in the nonlegal sense, "*fatwa[h]*", which basically says that Americans are to be attacked, wherever they are and wherever they may be found.
>
> Whatever probative value there is to the interview of Taha in which he discusses the—his views of any number of things—I think that probative value is substantially outweighed by the danger of unfair prejudice. (T. 3778)

However, the Court assessed the 1998 *fatwah* to be "highly relevant" and the relevance "not outweighed by any danger of unfair prejudice" (T. 3805), allowing the Taha interview, including pictures, to come in against Sattar.[75]

Whether articles and broadcasts were seized from Stewart's file cabinets, Sattar's home, or Yousry's study, whether they were given to Yousry by Stewart or Sattar, gathered by Yousry himself for professional and/or research purposes, or pulled by the government from other sources, it hardly seemed to matter. Their volume and inflammatory content made it unlikely that

[75] Some portions of the article were redacted (T. 4107–08).

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the jurors would recall which exhibit was admitted against which defendant (see "Limiting Instructions").

Cross-examinations also provided the government with a convenient platform to discuss bin Laden. By way of example, during Stewart's three-day cross, the government brought up bin Laden every single day for a total of 12 times (see, for instance, T. 8149–50, T. 8278, T. 8538). The same modus operandi was apparent in the government's closing arguments, where bin Laden's name and other emotion-triggering references were inserted liberally (see Chapter 7, "Moral Panic").

Thus, with the Court's blessing and accompanied by frequent limiting instructions that, ironically, themselves mentioned bin Laden's name up to three times (see, for instance, T. 8539), the government played the bin Laden card at every opportunity and inserted terrorist activities that had no discernible connection to the case.

Yousry's dissertation.

The government cross-examined Yousry extensively on his dissertation and his knowledge on all things Rahman and IG. For the corresponding analysis, see Chapter 7, "Moral Panic."

Special Administrative Measures.

To establish violation of the SAMs, the government called Patrick Fitzgerald, former Assistant U.S. Attorney (AUSA) in the Southern District of New York, as a witness. Fitzgerald had been the lead prosecutor in Rahman's conspiracy trial and the attorney who negotiated the SAMs with Rahman's legal team. He testified at length about the content of the SAMs, Stewart's

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release of Rahman's statement to *Reuters*, and the affirmations he drafted in response to her actions. Specifically, he testified that, in June 2000, he had come across several articles reporting on the withdrawal of Rahman's support for the ceasefire initiative. Morvillo then requested that Fitzgerald read aloud several newspaper articles on this topic, starting with pieces by Salaheddin. In the process, the jury learned about Rahman's statement; his perspective on President Mubarak's harsh treatment of political detainees, among them many IG members; and the IG's plan to topple the Egyptian regime and "install a purist Islamic state" (T. 2363). The government also requested that Fitzgerald read the now-prophetic response to Rahman's statement by Taha, who declared that "revolution was the only way for Egyptians to get rid of the government and select their own leaders" (T. 2364) and that as long the regime's harassment, detention, and torture of fundamentalists continued and requests for inclusion in the political process were rejected, the IG would review their position on the ceasefire. Of note is that in 2004, at the time these articles were read to the jury, Mubarak was a close ally of the United States, and the views expressed by Rahman and Taha, which did not align with those of the Egyptian government or with U.S. foreign policy, were considered hostile and terrorist.

In further support of the SAMs conspiracy, the government put the 18-year *Reuters* veteran on the stand and asked him to read Rahman's statement that appeared in his article dated June 14, 2000:

> MR. SALAHEDDIN: "He is withdrawing his support for the ceasefire that currently exists."
>
> "She read a statement which she said he had issued two weeks ago from his jail cell in Rochester, Minnesota which his defense team had held while considering how best to release it.["]
>
> "Stewart said Sheikh Omar had concluded that the unilateral truce observed by the Islamic Group since the Luxor slaughter of 58 foreign tourists and four Egyptians had brought no advantage to Egypt's biggest militant group."

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> "There is absolutely nothing moving forward. The thousands of people who are in prison in Egypt are still in prison. The military trials continue. Executions are taking place."
>
> "The people who launch the ceasefire have good faith, but the Egyptian—sorry—the government has shown no good faith."
>
> "He wants people not to place hope in this process because nothing is moving forward."
>
> "Stewart said the Sheikh was completely isolated in jail and was not well treated."
>
> "He is held in solitary confinement, but his faith is very strong. They (U.S. prison authorities) may bar me from visiting him because of this announcement" (T. 5574).

Salaheddin, a visibly nervous man on crutches who repeatedly had to be told to speak up, was uncomfortable testifying and had trouble remembering crucial details. For instance, he did not recall how many times he spoke to Stewart, and there were discrepancies in his testimony. During Barkow's direct, he stated that Sattar was on the line with Stewart; however, during Tigar's cross-examination, he testified that he did not remember if Sattar was on the line and that he spoke to Sattar separately. Tigar expressed concern about Salaheddin's fearfulness and that his testimony might have been influenced by phone calls he had received from Egyptian intelligence about his upcoming court appearance. Tigar also was worried about Salaheddin's recollection. In that regard, he questioned him about an article the latter had authored that was published six days after his report of Stewart's press release. The article included statements by Muntasir Al-Zayat:

> Q. Going down, I have highlighted them for you, the first is the Sheikh has slammed the Egyptian government['s] position but he has certainly not withdrawn his backing [for the initiative]?
> A. Yes.
> Q. The Sheikh referred to the truce in a small part of the message sent to me. He asked them (*Gama'a* leaders) to review the initiative, saying what's the benefit of this initiative?
> A. Yes.
> Q. And then the written message does not include the [sic] a word or a phrase that shows he's withdrawing his support, withdrawing support for the peace initiative?
> A. Yes.
> Q. Then I don't know if I highlighted this, but it's two paragraphs down, say at [sic] said that *Gama'a* had not yet renounced the truce?

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A. Yes.
Q. And the latest position by the *Gama'a* on the initiative is what the jailed leaders have announced about their insistence on the cease fire. The exiled leaders have seen the announcement and have not objected to it?
A. Yes. (T. 5597–98)

The purpose of this cross, inter alia, was to show that, in contrast with the government's claim[76] and the phrasing Salaheddin adopted in his June 14, 2000, article, i.e., that Rahman had withdrawn his support for the ceasefire, the issue was far more nuanced, and in fact, Rahman had not cancelled the ceasefire but called for a review of the initiative so as to open a dialogue.[77] Tigar further established that Taha's opinion within the IG did not carry much weight, since he was not a member of the *shura* responsible for formulating IG policy, and that the IG leaders left the ceasefire initiative in place. Even so, regardless of the interpretation of Rahman's statement by the various parties involved, Salaheddin's testimony firmly established that Stewart, in conjunction with Sattar, had made these calls and thus violated the SAMs.

Stewart testified that she thought she operated under some sort of "bubble," meaning she believed Fitzgerald understood that the SAMs "could not superimpose itself [sic] upon the work a lawyer needed to do" (T. 7717) and interfere with her obligations to her client. What her testimony and that of Salaheddin made patently clear, though, was that Yousry had not been a participant in the SAMs violation, neither in the decision to make the call nor in actually making the call. Nonetheless, Yousry was charged with violating the SAMs.

[76] In Salaheddin's direct examination, the government had the journalist read portions of an article dated June 18, 2000, that reported on his phone conversation with Taha and the latter's interpretation of Rahman's statement as that Rahman "renounced the unilateral ceasefire from his US jail cell" (T. 5578).

[77] The statement that was published caused a rift between pro- and anti-ceasefire IG factions, and Sattar was accused of being a liar, CIA agent, etc. Stewart (along with Sattar) subsequently disseminated a follow-up press release to Salaheddin on June 21, 2000, which clarified Rahman's position:

> Even though the Egyptian government is still killing the innocents and not releasing the detainees from arbitrary imprisonment, and even though they are terrifying people in their homes and other criminal acts continue, I did not cancel the ceasefire. I do withdraw my support to the initiative. I expressed my opinion and left the matter to my brothers to examine it and study it because they are the ones who live there and they know the circumstances where they live better than I. I also ask them not to repress any other opinion within the *Gama'a*, even if that is a minority opinion. This is the way we have been since we founded this *Gama'a*, and we should continue to be open to all opinions. (T. 10188–89)

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To demonstrate the process by which the SAMs were administrated, the government called Gerard C. Francisco, a paralegal in charge of maintaining the SAMs files at the U.S. Attorney's Office for the Southern District of New York. Francisco testified as to how he managed the SAMs for inmates subject to them, including the mailing of affirmations and renewals to lawyers. On cross-examination, Stern asked Francisco if he ever sent Yousry "any SAMs," "any affirmations and affidavits" (T. 2437), or "a letter" inquiring if he had "read and been informed about the requirements and obligations the SAMs impose" (T. 2438). Francisco answered no to all three questions. With this brief cross, Yousry's lawyer established that the government had never sent Yousry a copy of the SAMs, and Stewart's cross by Dember likewise revealed that she did not recall ever having reviewed the SAMs with Yousry or given him a copy (T. 8181). In his direct examination, Yousry testified that at some point he had "looked through" (T. 9187) the SAMs, that he had a general understanding that Rahman was subject to certain restrictions and that it was upon the lawyers to instruct people who worked with him "about what to do and what not to do" (ibid).[78] For instance, Yousry testified that after Stewart's press release, he was informed by Schilling that there was a change in the SAMs and that the reading of foreign newspapers to Rahman was no longer permitted (ibid; T. 9193).[79] This prohibition was later reversed again, and the lawyers instructed Yousry correspondingly. Ruhnke buttressed Yousry's testimony about how he learned about the new policy and its subsequent reversal with excerpts from the legal weekly prison call in which Yousry informed Rahman of the various

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[78] In his cross, Yousry testified that he had various versions of the SAMs: "[M]ost of the pages of the SAMs that I have in my possession were issued after Ms. Stewart's visit of 2000" (T. 9749). As to versions prior to 2000, he testified that he

> was aware of some, maybe not. I didn't know. I mean, I don't know how many times they changed. I don't know how many times they were amended. That was the lawyers' job, not mine. They are the ones that dealt with the US attorneys. I never dealt with the US attorneys, so I really don't know. (T. 9752)

[79] Yousry believed it to have been Schilling (T. 9193), but later added that it could have been Clark, or perhaps both of them (T. 9312).

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SAMs changes (T. 9192). The audio file and corresponding transcript also demonstrated that Yousry immediately stopped reading Arabic-language newspapers to Rahman when instructed to do so and resumed only when the policy was modified.

To attest to Yousry's trustworthy service and adherence to the protocol established by Rahman's defense team, two legal heavyweights took the stand. Schilling testified to the routine employed in the legal weekly prison calls, explaining that it was not Yousry who decided what could be communicated to Rahman, but that he, Schilling, thought it important for Rahman to be kept informed about world events. When asked about Yousry's character (T. 8896) and if he knew of any instance where Yousry "did something that was not implicitly or directly authorized by the attorneys" (T. 8897), Schilling responded:

> A. I always found him to be truthful and to be accurate, especially in the sense that he didn't exaggerate his own role. He spoke carefully and did not distort the things that he was talking about. (T. 8896)
> A. I know that he always displayed an awareness of the need to stay within parameters that are actually somewhat there and I have no awareness that he ever departed from those parameters. (T. 8897)

Clark similarly praised Yousry's professional performance ("an extremely good translator" (T. 8716)), confirmed that Yousry did not make any legal decisions ("No, certainly not. He's not a lawyer" (T. 8717)), and stated that he never read Yousry the SAMs nor saw any other lawyer explain the SAMs requirements to him. When asked if he formed an opinion after having known Yousry for nine years, he answered that "he's as honest as anybody I ever met" (T. 8751).

But no matter what legal icons testified to Yousry's character and performance, Stewart's SAMs-related violation cast a wide net. The genesis of a particular piece of evidence did not matter to the Court as long as it fell within the time frame of the alleged SAMs conspiracy. For instance, a redacted *Al-Hayat* article from January 10, 2001, which contained a claim by Sattar

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that the prison authorities were withholding insulin from Rahman, was admitted against all the defendants over the objections of Yousry's lawyer:

> MR. RUHNKE: Mr. Sattar has a conversation with someone about a conversation that the Sheikh had with his wife. It is then determined by the people involved in that conversation that they will falsely put out information, that the Sheikh is not taking his insulin or is being deprived of his insulin, and that that's basically—and that is conveyed to other people.
>
> But none of this involves Mr. Yousry. None of this involves, obviously, a conspiracy to defeat the SAMs. It has got nothing to do with releasing unauthorized information. It has people not even involved with Mr. Yousry deliberately disseminating, giving the government the benefit of all of this false information. And I don't see for the life of me how it can be admissible against Mr. Yousry, on what count and on what theory. (T. 6125–26)

Ruhnke was not successful. Although Yousry had not been charged with disseminating false information and the government never contended that he had leaked any information at any point, the government and the Court nonetheless threw him into the mix with people who decided to purposely disseminate information about Rahman—in this case false medical information—simply because he worked as an interpreter during the alleged conspiracy period and had a copy of the article in his study.[80] This particular court ruling meant, in essence, that if anything remotely related to Rahman was said by anyone anywhere, and if the government and the Court deemed the respective statement in furtherance of the conspiracy, it could be admitted against Yousry if it fit temporally.

How the jury ended up convicting Yousry for participating in a SAMs conspiracy is incomprehensible in view of the ample evidence to the contrary, including Stewart's own testimony that she, after consulting with Clark and Jabara, decided to place the violative phone call to Salaheddin. In his direct, Tigar asked her:

> Q. Ms. Stewart, as you made your decision, did you talk about the issue, the question that you faced, with anyone else?

[80] As noted earlier, Yousry was tasked by Rahman's lawyers with reading Arabic-language newspapers to him, among them *Al-Hayat*.

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A. I did.
Q. And with whom did you have those discussions, if you remember?
A. I discussed this with Abdeen Jabara and Ramsey Clark.
Q. What was the subject of those discussions?
A. The subject of the discussions dealt with possible repercussions and whether or not—whose decision it had to be, what they thought of the substance of the statement, which was reported to them. (T. 7804)

Moreover, and it bears repeating, the Salaheddin conversation did not require the presence of an interpreter inasmuch as it was conducted in English—not that the interpreter would have been responsible if he had interpreted at such a call, since he is not part of the legal decision-making process nor is he qualified to assess the ever-evolving SAMs restrictions and the attorneys' interpretation of them. In fact, the evidence clearly showed that Yousry never made any decisions to publicize anything Rahman said but simply adhered to the protocol as established by the lawyers.

In the ultimate irony of this sordid SAMs tale, prior to the Minnesota prison visits in 2000, Yousry had asked Rahman's lawyers on several occasions to hire a replacement interpreter (T. 9078). The lawyers then asked that AUSA Patrick Fitzgerald, "acting in his capacity for the SAMs and the Bureau of Prisons" (T. 7694), approve another linguist. Despite repeated requests, however, the government never approved another interpreter. [81] Yousry, for his part, did not want to leave the attorneys in the lurch and continued to provide language services, whether at the legal weekly calls or during prison visits (T. 9078).

Prison visits.

Throughout the years, Yousry accompanied Clark, Jabara, and Stewart on various visits to their incarcerated client at the FMC Rochester. Perceiving these visits (especially the one on

[81] In fact, the government rejected from 15 to 25 interpreters whose names were submitted by Rahman's lawyers (T. 9078).

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May 2000) as the crux of their case against Stewart and Yousry, the government introduced evidence from five such visits, i.e., March 1999 (Stewart), September 1999 (Clark), February 2000 (Jabara), May 2000 (Stewart), and July 2001 (Stewart).[82] These visits demonstrated that all the lawyers materially followed the same procedure: In addition to asking Yousry to interpret the attorney-client back-and-forth, they instructed him to read and summarize newspaper articles for Rahman; translate and read communications from various individuals, among them Sattar and Taha; and take down Rahman's dictated responses and translate said replies back to the attorneys. A critical point to note is that the newspaper articles and communications were all selected and preauthorized by the lawyers.

The content of this material was often political and pertained to Egyptian internal affairs, including ceasefire-related discussions and correspondence. During her March 1999 prison visit, Stewart directed Yousry to ask Rahman for his opinion on whether the IG should form a political party. Rahman's advice on the matter had been solicited by two well-known Islamist figures, Gamal Sultan and Kamal Habib, via a letter to Sattar (T. 4386). Rahman rejected the idea, his response was relayed back to Sattar, and it subsequently appeared in the Middle Eastern press (T. 4386–87; T. 7591). Similarly, Clark discussed political topics with Rahman and transmitted inquiries and responses as well as issued press releases (see, for instance, T. 7640, T. 7715–16, T. 7805, T. 8130–31, T. 8727–8733).[83] During his September 1999 visit, Clark had Yousry read Taha's request that Rahman withdraw his support for the ceasefire and write down Rahman's answer, which Yousry then translated back to Clark (T. 8790).[84] The preceding examples

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[82] Prison visit surveillance started on February 19, 2000, the second day of the two-day visit (T. 9382–83); however, evidence from earlier visits was introduced through conversations intercepted from Sattar's phone.

[83] For instance, Clark publicized Rahman's endorsement of the ceasefire initiative in August 1997 in violation of the SAMs (T. 7715–16; T. 8130–31; T. 8727).

[84] Clark testified that he "had no recollection" of issuing a public statement that Rahman was reconsidering his support for the ceasefire (T. 8790).

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illustrate that interpreting these types of communications was business as usual for Yousry and that he performed the same task for all the attorneys in the same manner. In fact, the ceasefire conversation was a constant in these visits .

The May 2000 prison visit, the government's *pièce de résistance*, was no exception. But the government sought to cast it in a sinister light. So, although the visit lasted only two days, the government took a week to play the grainy video and read the transcripts to the jury. Moreover, as illustrated by the two central episodes highlighted below, the government selectively construed a work routine practiced over many years as evidence of a conspiracy post-9/11. In the following excerpts, the non-underlined speech is a translation of the Arabic, the underlined text is the English transcription, and "(UI)" means unintelligible:

YOUSRY:	Do you also know, Sir, that Abu Sayyaf of the Philippines is requesting your release?
ABDEL RAHMAN:	Abu Sayyaf, yeah.
YOUSRY:	How did you know?
ABDEL RAHMAN:	Abdeen read it to me.
YOUSRY:	Really?
ABDEL RAHMAN:	Uhm.
YOUSRY:	Mr. Abdeen is eh… <u>I am telling the Sheikh about the Abu Sayyaf group in the Philippines, and they took hostages… The, in the New York Times, never said that they wanted to free the Sheikh.</u>
ABDEL RAHMAN:	And Ramzi Yousef.
STEWART:	<u>Uhm.</u>
YOUSRY:	<u>But they eh, their demand is to free the Sheikh and Ramzi Yousef.</u>
STEWART:	<u>Good for them. I didn't read that either.</u>
YOUSRY:	She says, Sir[,] that she never read it in the newspapers either.
ABDEL RAHMAN:	No, I eh, eh …
STEWART:	<u>Amazing, and they never said that.</u>
YOUSRY:	<u>Yeah, they never did, they never did.</u>
ABDEL RAHMAN:	But are they still holding the hostages?
YOUSRY:	Yes[,] Sir, they still hold the hostages.
ABDEL RAHMAN:	Uhm.
YOUSRY:	[Arranging his papers] They are still holding them, they are telling them that unless they respond to their demands, they will kill them.
ABDEL RAHMAN:	Wow!
YOUSRY:	Especially a German female with a heart condition, they are raising a big fuss.

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STEWART: Have they still, are they still holding them?
YOUSRY: Yeah, and they still have them.

GOVERNMENT VERSION:
STEWART: (UI) … That was a very (UI) …

DEFENSE VERSION:
STEWART: That's so sad … That was a very (UI) …

ABDEL RAHMAN: Uhm. (Federal Bureau of Investigation, 2000, May 19, Video Tape 1, pp. 26–27)

Stewart's comment on the militant group's demands, i.e., "good for them," unfortunately portrayed her as a terrorist sympathizer despite her later comment of "That's so sad…" (which the government transcriber indicated as unintelligible despite the fact that it was audible).[85] Stewart's careless utterance with respect to the hostage-taking may have tainted Yousry, although the tape established that Yousry was simply digesting news for Rahman that had been preauthorized by the lawyer and that, in fact, Rahman had already heard about the incident from Jabara during a previous telephone conversation.

Aside from Stewart's politics, her "big mouth," coupled with the attorney-interpreter protocol, provided the prosecution with one of its greatest triumphs. During Tigar's direct, Stewart described this protocol and how the prison meetings were prepared for and conducted:

> We had developed at the MCC[86] a method[87] whereby on the outside we would go over all the material, myself with Mr. Yousry. I would say to him, this is approved, do this, read that, do the letters, get the answers to the letters and you do that without having to translate back to me every word that's said. Because it was many times just duplicative of what I had read earlier and had translated to me by Yousry. Yousry had to translate twice,

[85] Stewart testified that she had a "mixed reaction," that is, she disagreed with the taking of hostages but not with the fact that Rahman's name was linked with the incident because the publicity helped "to keep his name alive in the Muslim world" (T. 7752).

[86] Metropolitan Correctional Center in southern Manhattan.

[87] This method was developed because the entry and exit process at the MCC takes up an inordinate amount of time, often leaving little time to actually spend in the attorney-client meeting. Stewart was not the only one who experienced delays. In fact, many attorneys working on terrorism cases believe that the government is delaying them on purpose as evidenced by Sattar's attorney's memo to the Court: "We are sorry to have to write again about another problem with the MCC. ... Each time we visit, it takes at least one hour to be processed. In addition, it takes at least 40 minutes to leave once we are finished. ... Like all attys, who visit clients charged with terrorist-related activities, we strongly believe that the time consuming process is deliberate and intentional. We urge the Court to schedule a hearing w/the appropriate MCC officials" (*United States v. Sattar*, 2002, September 16).

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> unfortunately, but that we felt was preferable to wasting time whereby he would read, I would get the answer, I would question, he would read again, I would get the answer. It just speeded up the process a great deal. (T. 7724)

While her testimony crystallized that she was the decision-maker, it also detailed the strategy she employed to economize her time and maximize visits with her client, i.e., dispensing with the customary, time-consuming interpreting process. However, as the legal team learned in visiting Rahman during his detention at the MCC, this approach tended to raise the suspicion of the prison guards, who expected continuous back-and-forth between parties in conversations involving an interpreter.[88] Or, as Stewart put it: "We also realized that it might look peculiar sometimes that he [Yousry] was seeming to carry on long conversations with the Sheikh without my intervening" (T. 7724). Therefore, when Yousry noticed the guards approaching the meeting room window, he informed Stewart. Stewart, to avoid the impression that Yousry was conducting a private conversation with Rahman, made extraneous comments at periodic intervals.[89] The following excerpt illustrating this modus operandi was in the context of Yousry's informing Rahman about student demonstrations at Al-Azhar University and statements issued in connection therewith:

YOUSRY:	Rifa'i Ahmad Taha issued a statement, and the Al-Azhar Students' Union issued one.
ABDEL RAHMAN:	Ah.
YOUSRY:	Which one should I read first?
ABDEL RAHMAN:	Eh.
YOUSRY:	Rifa'i's statement?
ABDEL RAHMAN:	Yeah.
YOUSRY:	[Reading] God is great! Al-Azhar's voice got loud, this is the voice of its students, can you imagine the voice of its scholars! [Interjecting] Fine, Sir?
ABDEL RAHMAN:	Uhm.

[88] As Yousry testified, in one such incident at the MCC, a guard asked Yousry to leave the attorney-client meeting. He had to wait downstairs in the reception area for approximately 45 minutes until a captain arrived and requested the legal materials.

[89] In addition to comments, in the July 2001 visit Stewart also shook a jar of water exclaiming, "I am just doing covering noises" (T. 2153).

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YOUSRY: Lynne, look at me and talk a little bit because they are watching us closely.

STEWART: I am talking to you, I'm making notes, (UI).

ABDEL RAHMAN: Why?

YOUSRY: I don't know, Sir, they are standing very close by the glass.

STEWART: Yes, the uhm…I am talking to you about…him going to have a, uh, chocolate eh…heart attack here. No, but (UI).

ABDEL RAHMAN: Uhm.

YOUSRY: [Laughs]

ABDEL RAHMAN: Hm.

YOUSRY: Alright, Sir. Okay, let me do this and eh …

STEWART: Okay.

YOUSRY: [Reading] God is great! Al-Azhar's voice got loud, this is the voice of its students, can you imagine the voice of its scholars! The incidents Al-Azhar University witnessed, the revolt the students launched for a few days despite the rubber bullets, the clubs of the State Security, and the large number of casualties, put Al-Azhar back in its role and its leading position defined by His Majesty God. The Al-Azhar demonstrations say "No" to the forces of atheism, secularism, the forces of apostasy, the atheism and treason of rulers and others. These demonstration [sic] took place to draw the attention—

STEWART: Why don't you stop a minute now. And (UI) say to him that, you know, "You understood what we are saying (UI)."

YOUSRY: Lynne says, (UI) when they look, you look at me a little, talk, then look at the Sheikh.

ABDEL RAHMAN: Okay. (UI)

YOUSRY: That's fine, now I continue.

STEWART: Very good, continue.

YOUSRY: [Reading] These demonstrations draw the attention to Al-Azhar which will one day break the bond and the leach [sic] they put on it. At that point, the nation will be liberated through the liberation of Al-Azhar. Its bonds will be broken with Al-Azhar's bonds broken. A nation, led by scholars towards freedom, honoring God's book and the Sunna of His Prophet, may God's blessings be upon him, is, God willing, a victorious one. [Clears his throat] As we …

STEWART: (UI) If the Sheikh understands all that and uh… for his uh—

YOUSRY: [Simultaneously] She is saying, Sir, is everything clear, or do you want me to read something else?

STEWART: —understanding that uh, the future of his case that (UI) this—

YOUSRY: Oh, okay.

STEWART: —is uh, appropriately presented.

YOUSRY: Lynne just says anything, [laughing] (UI) Sir. Now I continue.

ABDEL RAHMAN: Yeah, yeah, that is good, good.

YOUSRY: [Laughing and reading] As we emphasize our support—

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STEWART: <u>I can get an academy award for it.</u>
YOUSRY: She is saying, Sir[,] that she can get an award in acting. [All laugh] Alright, fine now, they stepped back. (Federal Bureau of Investigation, 2000, May 19, Video Tape 1, pp. 49–51).

While Stewart explained that this practice was designed to benefit her client, she also conceded the imprudence of some of her comments during her direct:

> A. Mr. Yousry is reading the material we mentioned earlier about al-Azhar and a student demonstration therein [sic: there in] which a number of young people were killed. And he is reading this. Of course, I don't know what he is reading because I don't speak Arabic, but he first notices that the guards are very close to the glass, and then he brings [it] to my attention and I'm saying, well, let's do something to demonstrate that we are engaged in a three-way meeting here so that they do not interrupt. That's the working of my mind at this point.
>
> I say the thing about the chocolate heart attack because [the] Sheikh was eating a lot of chocolate. It is not good for him and he has the heart condition. That's just a gratuitous comment. And we go on to say the academy award is just so stupid. Just another remark, big mouth, not thinking. But it was hardly an academy award performance. (T. 7764–65)

For his part, when Yousry was asked about the protocol by Ruhnke during his direct examination, he explained it as follows:

> A. All the lawyers were adapting that technique, it was not only Ms. Stewart. I did that with Mr. Clark, Mr. Jabara, who spoke Arabic, actually, because it was much easier for me to do that with Mr. Jabara around. And that's the way we did it.
> Q. Was there a concern ever expressed about that the guards would be overhearing what was being stated?
> A. Yes, of course. All lawyers are concerned about that. (T. 9117)
> …
> Q. Were there times when guards approached right up to the glass?
> A. Yes. Sometimes actually they put their face into the glass.
> Q. Were there times when the guards appeared to be looking at what was on the table?
> A. Yes.
> Q. And was that ever a subject of discussion between you and Ms. Stewart?
> A. Between me and all the lawyers who participated in meetings in these particular rooms, yeah.
> Q. And what was the concern that was expressed?
> A. The concern was the guards might listen to our conversation and our conversation should be confidential and private. And we will try to ask them to either move away or we will do whatever we can to keep our conversation confidential. (T. 9120)

When Ruhnke asked his client if he believed he did anything wrong, Yousry stated:

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Q. At the time you were asked to pretend to translate from time to time, did you believe that you were doing anything that was particularly wrong?
A. Stupid, yes. Wrong, no.
Q. Did you, your own state of mind, believe that anything that was being discussed during the visit was, in any way, improper, proper? What was your point of view?
A. No. I believed as long as a lawyer was in the room and a lawyer was telling me what to do, that was the proper thing to do. I did that with Mr. Clark, Mr. Jabara and Ms. Stewart.
Q. Did it ever occur to you that you were committing a fraud on the government?
A. Absolutely not. (T. 9123–24)

Of course, just because something was ill-considered, that does not make it criminal. But the government obviously had a vastly different perspective on the defendants' conduct, and their position was strengthened further by certain comments Stewart and Yousry made during the reading of a letter by Sattar. This letter contained a variety of items and inquiries, covering family events, a potential visit by Louis Farrakhan, and Taha's repeated request for Rahman's position on the ceasefire, including his blessing for media escalation in Egypt. Immediately after Yousry informed Rahman that the latter had a new grandson who was named after him and following banter about Yousry's mispronunciation of the Arabic term for grandfather, the exchange below ensued:

YOUSRY: [To Abdel Rahman] Alright? [To Stewart] Lynne, I think you should talk to him because they are looking at me.
STEWART: (UI) there (UI), they, uh, (UI)…[she taps Yousry's pad with her pen] uhm, if he finds out what this is, then we're… [Laughs].
YOUSRY: [Laughs] In trouble. (Federal Bureau of Investigation, 2000, May 19, Video Tape 2, p. 29)

The government construed this exchange as evidence of guilty minds, while Yousry, when asked in his direct examination by Ruhnke whether he actually used the word "trouble," responded as follows:

A. I don't believe I did. I heard the tape several times. I started to say something like in tr— and then I stopped. So there was no clear word to me. I heard the tape several times. I think what I was saying was interrupted, but I didn't finish that word.

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> Q. And on a transcript, when you cannot get a clear word as an interpreter, what would you do?
> A. I put UI down, unintelligible. (T. 9372–73)

The quality of the tape was poor, Yousry was soft-spoken, and the government has a tendency to hear incriminating speech where there is none or miss an exculpatory one that is audible (as evidenced by the "That's so sad" omission). But even if one took the government's side in the audibility debate, one reasonable explanation for the "in trouble" comment could have been that it was in response to Stewart worrying that her access might be cut off if she revived Rahman's case in the media (T. 9372).[90] Overall, Yousry saw nothing unusual in Stewart's wanting to go to the press, since Clark and Jabara had done interviews on many occasions (T. 9372).[91]

Thus, contrary to the government's interpretation that the prison visit surveillance showed an effort to smuggle messages, they actually proved the reverse: They confirmed that Yousry consistently adhered to the protocol set by the lawyers and that all the lawyers spoke to the media.[92] Furthermore, reading letters and taking down Rahman's responses at the request of the various lawyers was a task Yousry had become accustomed to performing over many years. In short, the video tapes showed that Yousry had plenty of chances to smuggle messages to and from Rahman if that had been his intent and unequivocally established that Yousry never engaged in any acts that could be even remotely construed as the criminal activity alleged in the indictment (see Chapter 7, "The Translator-Traitor Mentality").

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[90] In fact, losing access to their client was a frequently discussed concern among the lawyers in view of the fact that their client was blind and in solitary confinement (see, for instance, T. 9395–96).

[91] For example, Clark had traveled to Cairo "to bring attention to the case of the imprisoned cleric," as reported in *Al-Ahram* Weekly Online, February 4–10, 1999 (T. 9136), and Jabara had given an interview to the weekly magazine *Al-Mushahid Assiyasi*, June 15–21, 1997, with the headline reading "Attorney Abdeen Jabara: We stated in the appeal that the Sheikh is innocent" (T. 9140). See also Yousry's direct examination (T. 9372).

[92] With the exception of Schilling.

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Ahmed Abdel Sattar.

Sattar had a long history with Rahman and Rahman's lawyers and was a central figure in the case. Stewart testified that when she joined the defense during Rahman's conspiracy trial, she had inherited the paralegals, including Sattar, who fulfilled multiple roles for the legal team. For instance, because Rahman was blind and diabetic, he needed special assistance, and Sattar would translate and read to him as well as attend to some of his personal needs. As a court-approved paralegal, he was also permitted to visit Rahman by himself at the MCC in downtown Manhattan, where the latter was housed during his trial. After Rahman's conviction and subsequent transfer to the Medical Center for Federal Prisoners in Springfield, Missouri, the lawyers, unable to hire a full-time linguist, looked to Sattar to facilitate prison calls, since Rahman had unlimited use of the phone at that time and called the lawyers quite often.

> MS. STEWART: So he took on this role of being the conduit from the Sheikh to the lawyers as well as other things. He also was a spokesperson to some degree for the—I would characterize it as the concerns of the Sheikh. He would speak out. He would be the point person that we would refer the press to for that kind of information. (T. 7586)[93]

This decision by the lawyers, i.e., to have Sattar wear all these hats, had significant consequences. Sattar, a very chatty individual, had been communicating with several major IG figures in the Middle East, Europe, and Afghanistan, or as he put it, was engaged in "semi-constant contact" (T. 10165). In fact, he functioned as a kind of switchboard to what could be called an IG Who's Who. He testified that at times he was part of these conversations, and at times he just passively listened or left the calls to do something else:

> A. What I was, just used to do, connect the people, sometimes I sit for about five

[93] The SAMs were imposed on Rahman in April 1997 (T. 2327) and with it the gag order. Despite these restrictions, however, Sattar continued to communicate with the Arab press. See, for instance, his answer when shown AS-11-T:

> A. It is my interview—transcript of my interview, English transcript of my interview with *Al-Jazeera*.
> Q. And this is dated June 23, 2000. at 8:35?
> A. Yes. (T. 10192)

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> minutes. I go, I smoke a cigarette, I have a cup of coffee, I do something and then I come back to the phone call. (T. 10226–27)

Sattar's hidden life, with its maze of three-way calls, introduced the jurors to a world of hushed, at times coded phone conversations with people from afar, the content of which triggered the U.S. government to charge Sattar with "conspiring to kill and kidnap persons in a foreign country," i.e., the Count 2 conspiracy (Comey, 2003, p. 1). The courtroom swirled with the AKAs of Arab men going by such names as Abu Hazim (Mustafa Hamza); Yunis (unidentified, possibly Mustafa Hamza); Abu Yasir (Taha); Al-Asmar (meaning the "Dark-Skinned" one, also Taha); the Engineer (Salah Hashim); Abu Mus'ab; Abu Harith; Abu Ithak; Abu Khalid; Hani (first identified as Fawzi); Hani's "father" (first identified as Hamab Badarway, subsequently as Alaa Abdul Raziq Atia); Dr. Ismail (whom Sattar believed to be a professor at Al-Azhar University); and others. For years, Sattar had been connecting people whose identities he knew, did not know, or only suspected. For instance, in his direct, Fallick asked Sattar about a man named Yunis:

> A. Well, Yunis is a very—until today, it is very murky. I really don't [know]. I am not quite sure. The government claimed that he is Mustafa Hamza. Until now I don't know if he is Mustafa Hamza or he can be any Joe Schmo. I really don't know.
> Q. Did you know or have an understanding of who Mustafa Hamza was?
> A. Yes.
> Q. Who was that?
> A. Mustafa Hamza was in charge of the Islamic Group after Rifa'i Taha resigned from the Islamic Group after the Luxor attack. (T. 10105)

These conference calls often involved several participants and revolved around various topics, among them IG policy with regard to the ceasefire initiative and the conflicting positions of IG members; discussion of a potential meeting between Taha and Atia;[94] the transfer of funds

[94] During Fallick's direct examination, Sattar testified that he had read about Atia in magazine articles and knew of his violent extremism, and that in the course of the phone conversations among the IG members he came to learn that Atia had played a major role in the Luxor massacre:

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to Atia to finance his escape from Egypt; talk of "action" and being "ready and able 'to do things'" (*United States v. Sattar*, 2003, November 19, p. 28); conveying the fake *fatwah* to IG members, among them, Atia;[95] and so on and so forth. Sattar's conversations with Taha proved particularly fatal for the former's co-defendants, especially in view of the fact that Taha had "authorized and committed acts of violence," (T. 10169) including murder. To familiarize the jury with Taha's militant ideology, the government put Walid Farhoud on the stand, a translator who had been contracted by the government to translate and produce chapter abstracts of Taha's book entitled *The unveiling of the rulings about the higher principles of Islam* (T. 6462). Admitted only against Sattar, the 39 yellow-highlighted portions that the prosecutor asked Farhoud to read vividly illustrated Taha's radical interpretation of Islam and his belief in the use of violence to achieve the IG's political and social goals. To that end, he advocated suspending the ceasefire initiative and sought Rahman's support for his position.[96] However, as indicated above, the IG leadership decided differently.

Aside from facilitating phone calls for IG members, Sattar's most egregious act was his role in the fake *fatwah*. No matter what explanation he offered—that it needed to be viewed in

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Q. And was it your understanding that Atia was saying he was part of a group that did the massacre at Luxor?

A. Either he is—I'm not quite sure if he was saying that he was a part of it because, you know, in my knowledge, that nobody survived, that attack. The people who were executed at that time, nobody survived. They were all killed.

But I know—I understand from what he is saying here [intercepted phone conversation] that, you know, he had a great knowledge about it so, you know, he is, probably was one of the people who planned that attack, yes. (T. 10231)

[95] Continuation of Fallick's direct:

A. After this conversation with Taha, yes, I did inform Atia about the *fatwah.* (T. 10275−76)

[96] Sattar testified that

Abu Yasir [Taha] was in the opinion of to use [sic] the initiative card to exert pressure on the government to come to a political solution. Use the thread that, you know, the initiative would be cancelled. The initiative, you know, it is not working so talking [sic] in the newspapers against the initiative and utilize him.

Basically, he was a bad boy. He is a bad guy. Use—he said it so many times in so many conversations. Use me as the bad boy. Use me as a foil, all right, so he can get some results from the Egyptian government. (T. 10170−71)

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the context of the second Intifada; that the entire Arab world had been enraged by Prime Minister Ariel Sharon's visit to the Temple Mount;[97] that it was in reaction to the killing of 72 Palestinians in two days, particularly to the footage he watched of the Palestinian boy who was shot,[98] and that his "intent was just to scream loud, to cry" (T. 10212)—the undisputable reality was that Sattar had urged Taha to write a *fatwah* in Rahman's name, and had also edited and disseminated it:

> Q. What did you and Taha discuss?
> A. We discussed the situation in the Middle East, and I discussed with him if he could write something.
> Q. And when you say you discussed with him, meaning Taha to write something, what were you talking about?
> A. I was talking to him if he could write a statement in the Sheikh's name.
> Q. Do you recall if Taha wrote anything in the Sheikh's name?
> A. Yes, he did.
> Q. Do you recall when he wrote it?
> A. I'm sorry?
> Q. Do you recall when he wrote it?
> A. I think a day later or a couple of days later.
> Q. Do you recall what he wrote?
> A. Did I recall what he wrote, yes.
> Q. What did he write?
> A. He wrote the statement or the *fatwah* that was read here in court about kill the Jews.
> (T. 10203–04)

No co-defendant could survive the fallout from such activities, and the government made the most of a large universe of documents obtained from the wiretaps of Sattar's phone and the search of his home. Also, as detailed in the following section, no limiting instructions had enough power to overcome the prejudice arising from evidence involving bin Laden, which the government liberally exploited to enormous advantage at every opportunity.

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[97] The visit was considered a provocation and gave rise to the second Intifada.
[98] Sattar is referring to 12-year-old Muhammad Al-Durrah, who allegedly was caught in the crossfire between members of the Israel Defense Forces and Palestinians in the Gaza Strip on September 30, 2000.

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Limiting Instructions

Inadmissible or partially admissible information enters a trial in a variety of ways, including in-court statements, written documents, audio and video, or physical objects. To safeguard against such potentially bias-producing submissions, the Court issues limiting instructions (LIs). These instructions are oral and come in two forms: admonitions that instruct jurors to completely disregard evidence and not use it for any purpose whatsoever, or instructions that "admonish jurors not to consider evidence for a particular purpose, although it may be considered on other issues" (Tanford, 1991, p. 77).[99] Especially in trials that join multiple defendants with varying offenses, LIs are used to instruct the jury to apply evidence only to the person(s) against whom it was offered. Empirical research has repeatedly demonstrated, however, that such LIs are unsuccessful at controlling the cognitive processes of jurors and may actually backfire in that jurors are more likely to use such information after having been specifically directed to restrict or exclude it (Lieberman & Arndt, 2000). Various social-psychological theories—among them hindsight bias (Casper, Benedict, & Perry, 1989), belief perseverance (Anderson, Lepper, & Ross, 1980), reactance theory (Brehm & Brehm, 1981), and mental-control models (Wegner, 1994)—offer explanations for such behavior. In addition, recall and comprehension issues, among other factors, may account for the failure of such judicial admonitions.

Over the course of the trial, the Court admitted evidence that required the issuance of more than 750 LIs.[100] These instructions suffered from a number of flaws that either restricted or quashed their curative purpose. For one, their sheer volume made it impossible to remember

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[99] There is much confusion as to the classification/nomenclature of jury instructions, and usage varies across jurisdictions (Tanford, 1991). In this dissertation, limiting instructions that are issued throughout the proceedings are also referred to as *admonitions* and *curative instructions*, while jury instructions that are given at the close of trial are alternatively called *charge to the jury*.

[100] No tally of LIs from other court cases was found that surpassed the number issued in this trial.

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which instruction applied to which piece of evidence and to which defendant. What's more, the instructions differed in character: Many of them were complicated and confusing; they varied in length; they were often repetitive, possibly causing listeners to tune out; and there were differences in the manner and timing with which they were introduced. They also engendered two types of impact: the impact caused by an individual LI as well as the cumulative impact brought about by the aggregate of LIs. In the following, select examples are given to illustrate the LI problematic.

Defendant allocation.

There were three defendants on trial, and, depending on the particular piece of evidence, its author, where it was seized, etc., an LI could apply to Yousry, Stewart, or Sattar individually; to a combination of two defendants, i.e., Yousry and Sattar, Yousry and Stewart, or Sattar and Stewart; or to all three together. Thus, at a minimum and not taking into account any of the factors listed hereinafter, the jurors had to wrangle with seven possibilities for each LI issued and were expected to remember and allocate the respective content to the proper defendant(s).

Depending on the exhibit, allocation often switched rapidly within the same day. Just on the morning of, say, October 7, 2004, it changed eight times for a total of 15 LIs: Chronologically, the first LI referencing defendants or counts pertained to exhibits admitted against Yousry and Stewart; the second LI to Sattar; the third and fourth LIs to Yousry; the fifth, sixth, and seventh LIs to Yousry and Stewart; the eighth LI to Yousry; the ninth LI to Sattar; the tenth and eleventh LIs to Yousry; and the twelfth, thirteenth, fourteenth, and fifteenth LIs to Stewart.

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Compounding the difficulty of allocation was the fact that the Court addressed LIs not just to the defendants present in the courtroom but also to unindicted co-conspirators, such as Rahman. For instance, the text of such an instruction read:

> THE COURT: Ladies and gentlemen, I gave you the instruction to consider on [Government Exhibits] 2077 and 2079. The exhibits are admitted only against Mr. Sattar and not against Ms. Stewart or Mr. Yousry. They are admitted solely with respect to the knowledge and intent and state of mind of Mr. Sattar and Omar Abdel Rahman and you may consider them solely for that purpose. (T. 3810)

Including Rahman in such instructions not only made the LIs more challenging but had the effect of essentially placing him at the defense table.

Counts.

Jurors also were required to retain which counts from a total of seven counts applied to which defendant(s) and infer as much from a given LI. In this regard, they were faced with four options: Count 1 pertained to all three defendants; Counts 2 and 3 pertained only to Sattar; Counts 4 and 5 pertained to Stewart and Yousry; and Counts 6 and 7 only to Stewart.

For example, in the following LI, the jurors were expected to remember what Counts 2 and 3 were and that they only pertained to Sattar:

> THE COURT: You just heard Government Exhibit 1072X. Government Exhibit 1072X is offered only with respect to Counts 2 and 3 of the indictment.
>
> And the next two exhibits, Government Exhibits 1074 and 1075, are also offered only with respect to Counts 2 and 3 of the indictment. (T. 4696)

Even assuming that by the end of the trial the jurors were familiar with the various counts, as suggested by the backfire theory, the slew of LIs issued for exhibits relating to Sattar's Counts 2 and 3, both of which involved violence, could well have had the opposite of their intended effect for Stewart and Yousry:

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> THE COURT: Ladies and gentlemen, you are to follow the same limiting instruction. This is received only with respect to Counts 2 and 3 and not for the truth of any of the matters asserted with respect to Ms. Stewart or Mr. Yousry. It cannot be considered for the truth of any of the matters asserted with respect to Ms. Stewart or Mr. Yousry. (T. 10870)[101]

Temporal factor.

While extraordinary mental dexterity is required to remember which exhibits go with which defendant after a day has passed, from morning to afternoon, or even only an hour later, having to recall in February 2005 a specific LI accompanying an exhibit submitted in the summer of 2004 borders on the impossible. For example, it is doubtful that during deliberations jurors remembered the specifics of the following LI issued by the Court on July 20: “Ladies and gentlemen, this [exhibit] was offered against Mr. Sattar with respect to his knowledge, intent and state of mind. It’s also admitted against Ms. Stewart” (T. 4101).

In general, the demands placed on the jurors’ memories were never-ending. Frequently, the Court simply said: “I’ve already given you limiting instructions with respect to this exhibit, ladies and gentlemen” (ibid), thus expecting the jury to remember the content of the LI and to whom/what it applied. Or the Court kept repeating: “Same limiting instructions” (T. 4100; passim), or “Ladies and gentlemen, as I told you, this is subject to the same limiting instruction I gave you at the beginning of the afternoon” (T. 5465), optimistically assuming that the jurors were able to recall all the associated details and properly channel their attention. In another variant, the Court instructed:

> THE COURT: This is a transcript, ladies and gentlemen, of an Arabic recording, so it is received in evidence, and you should apply the same limiting instruction that I have been giving you with respect to this series of exhibits, MY-1701 through MY-1730. (T. 9310)

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[101] See also T. 4749, T. 4752, T. 4836–37, T. 10883, T. 10906, T. 10916, T. 10960–61, T. 10966, T. 10999, T. 11012–13, T. 11065–66.

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Here the jury was supposed to remember which LI (out of the many that were given) applied to which exhibits by number and apply them to the submission at hand.

To further complicate the task of recalling, some LIs contained the special provision "subject to connection," or what Tigar termed "unfair cognitive preloading (T. 5405). Here, the jurors were expected to keep in mind that some exhibits were only conditionally admissible because the Court was unsure about their relevance at the time of their submission. An LI illustrating this scenario read:

> THE COURT: Government Exhibit 1083 X is offered only as to and received only as to Counts 2 and 3. They're received, and it is received subject to connection against Mr. Sattar, and it cannot be considered against Ms. Stewart and Mr. Yousry for the truth of any of the matters asserted in the transcript. (T. 4752)

The sheer number and repetition of LIs on a given day further stretched the jurors' memories. On October 6, 2004, for instance, multiple LIs were issued, such as:

> THE COURT: All right. Government Exhibits 2312-47A and 47B and 2312-47AT and 2312-47BT are received in evidence, but not for the truth of any of the statements in the article. (T. 6999)
> …
> THE COURT: All right. Government Exhibits 2312-54 and 2312-54T are received in evidence but not for the truth of any of the statements in the letter. (T. 7055)

So, before lunch the jurors had to contend with 22 LIs referencing a multitude of exhibit numbers and after lunch with 19, for a total of 41 LIs that applied to different types of evidence and various combinations of defendants. Amidst this jungle of numbers, they also had to recall the LI for Government Exhibit 2201AT from the end of the day before, October 5, because the prosecution was unable to read the entire exhibit to the jury and had to finish it on October 6. To make matters worse, the exhibit pertained to an interview with a prominent figure in the IG (who had been nominated to succeed Rahman as leader) and contained inflammatory statements such as "We refuse the democratic experiment and will not abandon Jihad" (T. 6906). And while this

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particular exhibit only pertained to Sattar and was not received for the truth of the matters asserted therein, when its reading continued on October 6, the LI was not repeated, even though the content involved the Luxor massacre and referred to Taha's extremist views. All in all, it seems the jury was expected to have an extraordinary power of recall.

Conversely, the Court at times issued or supplemented LIs the day after the respective exhibits were read. For instance, after the jury exited the courtroom, the following exchange ensued:

> THE COURT: I didn't want to stop in the middle. So the limiting instruction with respect to Exhibit 2313-6 was that it was admitted solely against Mr. Yousry and Ms. Stewart. I would think that there should be another limiting instruction which says that Mr. Fitzgerald's letter and the enclosure is not offered for the truth.
> MR. MORVILLO: The government agrees, your Honor.
> MR. RUHNKE: We agree, your Honor.
> THE COURT: I'll say that first thing tomorrow. (T. 7076)

So the next day the Court duly issued the instruction, assuming that the jury would remember the content of the exhibit based solely on the exhibit number and type of document.

Length.

Even further taxing the jurors' memories (and, most likely, their patience) was the length of some of the LIs as well as other instructions[102] that flooded the trial. While many consisted of only one to three sentences (which, however, could be long), others ventured into essay territory. Two examples of lengthy instructions (one an LI, the other not) are reproduced below: The first, referring to an Arabic/English phone call, contained a whopping 483 words and ran over three transcript pages, while the second, pertaining to Yousry's notebooks, totaled 342 words and spanned five solid paragraphs:

[102] While this section focuses on LIs, these other instructions were included to convey the difficulties associated with audio-related exhibits (of which there were many during the trial).

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THE COURT: Okay.

Ladies and gentlemen, let me give you an instruction. The government has offered evidence in the form of recordings of telephone calls, specifically Government Exhibits 1000 and 1015 which are now in evidence. You have heard disputes over the authenticity and accuracy of the recording. Therefore, I caution you that you should scrutinize this evidence with care.

The reliability and weight of this evidence, as with all issues of fact, is for you, the jury, to determine. Some of the recordings contain portions that are in English. The government will be permitted to display documents which it prepared containing the government's interpretation of what appears on the recordings which have been received as evidence. Those are displayed as an aid or guide to assist you in listening to the recordings which are in evidence. However, the typed documents are not in and of themselves evidence. Therefore, when the recordings are played I advise you to listen very carefully to the recordings themselves. You alone should make your own determination of what appears on the recording based on what you heard. If you think you hear something differently from what appears on the transcript, then what you hear is controlling. Let me say again, you, the jury, are the sole judges of the facts.

Some portions of the recordings are in Arabic. It was necessary for the government to obtain translations of those conversations into English so that you, the jury, could understand the recordings. The transcripts or portions of transcripts of those conversations that are in Arabic embody the testimony of the Arabic translators as to what appears in the recordings. These transcripts were admitted into evidence. To the extent that you accept or reject the testimony of those witnesses, you may accept or reject the transcripts themselves of the Arabic conversations.

Remember that the jury is the ultimate fact finder and, as with all evidence, you may give the transcripts such weight, if any, as you believe they deserve.

Now, at this point, ladies and gentlemen, a recording will be played and you will be asked to listen to the recording, and I believe that the recording is in English and so you should take my instruction with respect to transcripts of what is in English being an aid to you in listening to the recording which is in evidence. And to listen you should put on the earphones when the recording is played. And there is a little dot on the front of the earphones. You should make sure that that dot is pointing out so that you can receive what comes through the earphones, and there is a little knob on the earphones in which you can adjust the volume. It should be turned down now so that you don't hurt your ears, but you can turn it up if you think that it's necessary to do that.

All right. (T. 3680–82)

Comparable instructions were issued when any recording was submitted into evidence, and the following analysis applies to all instructions relating to audio evidence. While at first blush it would seem that the content was straightforward, there were enormous challenges both in terms of comprehending and properly applying it: For one thing, the jurors had to listen to an English/Arabic recording of a rapid and at times unintelligible conversation among call

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participants with unfamiliar speech patterns. At the same time, they had the "benefit" of the government's interpretation of the conversation on the screen before them. Thus, the Court's directive to "scrutinize this evidence with care" based on the original audio (at least for the English segments) was flawed for the following reasons: (a) To listen to/understand a call in its entirety often takes several attempts and is hardly ever accomplished in the first round (particularly when it involves audio with significant background noise and/or conference calls);[103] (b) the fact that the jurors were aided by a transcript, which they were reading as they simultaneously listened to the call, basically meant that the written text was governing and, consequently, the interpretation of the submitting party prevailed; (c) the English translation of the Arabic was underscored in the transcript on the screen. It is doubtful that the jurors were able to perform the demanding task of listening only to the English and then referring to the translation on the screen for the Arabic portions, especially in cases where the switches occurred quickly (i.e., one sentence in English, the next in Arabic, etc.); (d) listeners tend to tune out the audio of a bilingual call if they don't understand one of the languages. This is all the more true when the non-familiar language segments are dominant.

The second example of an outsized instruction refers to an LI given with respect to Yousry's notebooks, i.e., the notes he took while consecutively interpreting during attorney-client calls:

> THE COURT: And there's a limiting instruction, ladies and gentlemen. You've heard that these are notes that were taken.
>
> Now, Exhibits MY1000 through MY1006 contain written statements. Some of those written statements assert that Sheikh Omar Abdel Rahman, his lawyers and Mr. Yousry said certain things. You may consider those written statements in Defense Exhibits MY1000 and MY1006 as evidence that Sheikh Abdel Rahman, his lawyers and Mr. Yousry actually said the things reflected in the written statements. However, the

[103] This assertion stems from the professional experience of the author, whose agency transcribed/translated tens of thousands of FBI surveillance calls and other audio material.

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contents of what Sheikh Abdel Rahman, his lawyers and Mr. Yousry allegedly said is not admitted for its truth.

You may consider the content of the statements allegedly made by Sheikh Abdel Rahman and his lawyers only for its effect, if any, on Mr. Yousry's knowledge, intent or state of mind. And you may consider the content of the statements allegedly made by Mr. Yousry only as evidence of Mr. Yousry's knowledge, intent or state of mind at that time.

Other written statements in Exhibits MY1000 through MY1006 assert that certain news articles or other documents were read to Sheikh Abdel Rahman. You may consider those written statements as evidence that the news articles or other documents reflected in these exhibits were actually read to Sheikh Abdel Rahman. However, the content of the news articles and other documents that were allegedly read to Sheikh Abdel Rahman are not admitted for their truth.

As I previously instructed you, newspaper articles contain out-of-court statements by reporters about what happened. Those statements may or may not be accurate, and in turn, may contain even other statements being reported by reporters. So the articles are not being received for the truth of anything that is said in them, but solely with respect to the knowledge, intent and state of mind of Mr. Yousry.

And the same instruction applies to any other documents contained in Defense Exhibits MY1000 through MY1006. The documents are admitted not for the truth of anything that is said in them, but only with respect to Mr. Yousry's knowledge, intent or state of mind.

All right. (T. 9081–82)

Hardly all right. The effectiveness of such a lengthy instruction is debatable, especially considering the complexity of its content and the evidence to which it applied, regardless of which party requested it. For starters—assuming one could even remember the LI at all—it would require an Einstein-like jury to distinguish among the many actors appearing in the 1000+ notebook pages of this particular series of exhibits and selectively apply the LI to whatever content was associated with the respective actor. Aside from Rahman, his family members, his attorneys (four stateside and one in Egypt, i.e., Muntasir Al-Zayat), and his paralegals, these actors included a veritable grab-bag of people and entities from across the globe, among them King Hussein of Jordan; IRA activist Bobby Sands; then-USDA Patrick Fitzgerald; the Muslim *ummah;*[104] journalists from *CNN* to *Al-Hayat*; diplomatic personnel such as Egypt's then-consul in New York, Suhair Zaki; President Bush and Taliban leader Mullah Omar; the Red Cross and

[104] *Ummah* is the Arabic word for community and generally denotes the Islamic community.

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Al-Qaeda; the U.S. Department of Justice; Jewish victims from the Achilles Lauro; and Monica Lewinsky. This content varied greatly and shifted rapidly from page to page; it consisted of short phrases indicating that the attorneys approved the reading of a specific newspaper article; discussions about world affairs, Rahman's health, American and Egyptian politics, and prison conditions; legal strategizing and decision-making; biographical details of Rahman's life; dissertation questions, etc.

After initially issuing the above LI, the Court referred to it several more times, admonishing the jurors to continue to apply it.[105] In so doing, the Court assumed—rather unreasonably—that the jurors comprehended as well as remembered it.

In addition to the above-cited reasons for the overall counter-productivity of LIs, especially long ones, there is another issue with respect to the preceding example: The mere fact that an LI was given for the notebooks implies a certain responsibility on Yousry's part for the statements of others, at least insofar as those statements had a supposed effect on his "knowledge, intent or state of mind." In so doing, the issuance of the LI tainted the fact that these notes are simply the work product of an interpreter, i.e., the consecutive notes from attorney-client calls spanning about six years. Thus, a standard practice of the profession, whereby an interpreter jots down notes as a memory aid in faithfully rendering the statements of the parties he interprets for, has been redefined in such a way that the content can now be used against the linguist.[106]

While some LIs were extraordinarily long and contained a great deal of detail, others were the complete opposite, such as this minimal LI: "Government Exhibit 2313-2 received in evidence. Solely against Mr. Yousry" (T. 7065–66). After the exhibit—a *Reuters* article about a

[105] See also T. 9092, T. 9144, T. 9151–52.
[106] This comment does not apply to the notebook sections with dissertation questions.

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Taliban statement regarding the issue date of taped threats by bin Laden to free Rahman, i.e., not exactly non-biasing content—was read into evidence, the prosecution itself intervened and asked for remedial elaboration:

> MR. MORVILLO: Your Honor, I believe that the limiting instruction that you gave was that it is only admissible against Mr. Yousry. I also believe it would be appropriate—
> THE COURT: It is not offered for the truth.
> MR. MORVILLO: Yes, your Honor. (T. 7067)

The Court subsequently proceeded to remedy the shortcomings:

> THE COURT: Ladies and gentlemen, Exhibit 2313-2 is received only against Mr. Yousry. It is not offered for the truth of any of the statements in the exhibit and it is being received solely with respect to the knowledge, intent and state of mind of Mr. Yousry. (T. 7067–68)

Assuming the jurors were actually able to retain the LIs, throughout the trial the Court issued many LIs that did not contain sufficient detail, thus leaving open the possibility of jurors' misallocating/misusing certain exhibits.

Having exhibits lumped together in a winding LI and then having one specific exhibit singled out must have been equally challenging for the jurors. For instance:

> [TRANSCRIPT:] (Government's Exhibits 2628, 2626, 2612, 2611, 2627, 2619, 2622, 2666, 2620, 2671 and 2634 received in evidence)
> THE COURT: And the Exhibits 2628 through 2671 are received in evidence but not for the truth of any of the matters asserted in those exhibits, but solely with respect to the knowledge, intent and state of mind of Ms. Stewart.
>
> I understand that many of those exhibits are newspaper articles and I've previously instructed you about newspaper articles. And those, of course, are not being received for the truth of any of the matters asserted, and none of those exhibits are received for the truth of the matters asserted, but solely with respect to Ms. Stewart's knowledge, intent and state of mind.
>
> And with respect to Exhibit 2634, that exhibit is not received for the truth of any matters asserted by Sheikh Omar Abdel Rahman that are contained in that exhibit.
>
> All right. (T. 6726)

For whatever reason, LIs for Yousry tended to be longer than those for the other defendants, especially when his defense attorneys put on their case:

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> THE COURT: Hold on just one moment.
>
> Ladies and gentlemen, you have heard that this is an English language call so the transcript is only an aid to your listening to the recording.
>
> The recording is in evidence and I have explained to you that when it is an English language recording, the transcript is an aid to your listening to the recording. If you think you hear something differently on the recording, of course it is your understanding of what you hear that governs the transcript as an aid to your listening to the recording.
>
> Further, Mr. Yousry's statements on the recording are not admitted for their truth but only as evidence of his knowledge, intent or state of mind, and any statements by any other people on the recording are not admitted for their truth but only for their effect, if any, on Mr. Yousry's knowledge, intent or state of mind. (T. 9191)

The fact that many Yousry defense exhibits were accompanied by such lengthy admonitions[107] could have caused the jurors to perceive these exhibits as especially dubious. In particular, the oft-repeated instruction that Yousry's own statements were not admitted for their truth may have prompted some jurors to suspect that the content of his statements and recollections was questionable or false. This concern was borne out with respect to Yousry's testimony, and even the prosecution alerted the Court to the issue. In fact, there was much discussion about what, if any, LI should be given when he testified about his dissertation and historical events in Egypt.

> MS. BAKER: Your Honor, my concern, it's a little puzzling—I'm afraid the jury may find it a little bit puzzling to have the Court use the word "truth" in an instruction about testimony because it almost seems like it could have some relation to the assessment of the credibility of a witness, which is why I'm proposing what I think is an instruction that accomplishes the same goal with that word, which is an instruction. (T. 9490)

Basically, the prosecution was concerned that any gains they hoped to make during their cross-examination of Yousry would be counteracted by an LI that might induce the jury to construe Yousry's entire testimony as untruthful. However, by the time the prosecution raised the issue, the horse was already well out of the barn due to the prior issuance of many "not-admitted-for-the-truth" LIs.

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[107] See also T. 9194–95, T. 9197–98, T. 9235, T. 9238–39, T. 9248, T. 9281, T. 9294–95, T. 9308, T. 9346–47.

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Conceptual difficulty.

One hundred thirty-eight documents were admitted "not for the truth" but for some other purpose, for instance, the effect they may have had on the knowledge, intent, or state of mind of the defendant(s). This applied particularly to media reports. An illustrative LI in this category read:

> THE COURT: Oh, yes.
> The press reports, ladies and gentlemen, are not received for the truth because you have no way of determining [whether] what the reporter writes in a newspaper is in fact accurate or not accurate. And the press report is being admitted solely for the effect, if any, that it has on what this witness did. So, again, I instruct you that you cannot consider it for the truth of what appears in the newspapers. (T. 2346)

The instruction sounds simple enough on its face, since it is general knowledge that newspaper reporters may not always get their facts right. So the jurors surely understood this particular explanation. But then the jurors must have asked themselves: What is the evidence offered for exactly? What kind of effect are they talking about? How can we assess the effect of something on the defendant's knowledge or intent or state of mind, or all three combined, when it may or may not be the truth? Moreover, the Court said, "effect, if any, that it has on what this witness did." Thus, the jurors were not only expected to assess the effect that stacks of newspaper articles had on the defendant(s) but also on assorted witnesses. And depending on who was on the stand, other influencing factors might come into play. The witness referred to above was Patrick Fitzgerald, who, as previously noted, had negotiated the SAMs with Rahman's legal team in the nineties, and at the time of his testimony, was the U.S. Attorney for Chicago. So it stands to reason that the jurors accepted the "effect" of the press reports on him and his subsequent decision-making more readily in view of his professional standing and position of authority.

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The following LI posed a different challenge:

> THE COURT: Ladies and gentlemen, let me give you some instruction with respect to these exhibits.
>
> First, you will see that certain portions of Government exhibits 508, 508T and 508T3 have been "redacted," and that is a term which you have heard before in the course of the case. That simply means that parts have been taken out or removed. That is done for legal reasons that do not affect your consideration and you should not be concerned about that. That concerns legal matters that don't affect your consideration.
>
> These exhibits are admitted only against Mr. Sattar and not against Ms. Stewart or Mr. Yousry and you cannot consider these exhibits against Ms. Stewart or Mr. Yousry for any purpose.
>
> With respect to Mr. Sattar, the exhibits are admitted only as to Counts 2 and 3 and you may assign to these exhibits whatever weight you consider appropriate in your consideration of Counts 2 and 3. However, I instruct you that Exhibit 508T, which is redacted, is received subject to connection with respect to the truth of any matters asserted in the article. What that means, ladies and gentlemen, the term subject to connection, and you may hear that subsequently in the course of the trial, and it means that you can consider in this case the article for the truth of any statements made in the article unless at some point I instruct you to disregard them for that purpose. (T. 4107–08)

This multipart LI relating to a newspaper article expected that the jurors would assign a weight to the redacted segments and their correspondingly redacted translations, and direct that weight only to Sattar. What's more, unlike the majority of newspaper articles submitted during the trial, which were accompanied by LIs admonishing jurors that said articles were not offered for the truth, this particular exhibit asked the jurors to consider the non-redacted portions for the truth of the statements contained therein subject to connection. Of course, the government might not make such "connections" until days, weeks, or months later. So the suspicion arises that the jury may have disregarded such LIs because of their bewildering complexity and the impossibility of realistically applying them, instead assigning the submitted exhibits to all three defendants.

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Abundant confusion.

At times, confusion reigned supreme in connection with the LIs—whether because their content/phrasing was unclear or convoluted, or because the Court, prosecution, and/or defense experienced confusion with respect to certain LI-related issues.

In terms of content/phrasing, one must keep in mind that LIs are issued orally and that jurors generally do not have the benefit of a written copy, a circumstance that renders comprehension even more challenging. Below are some examples of LIs that could have been perceived as confusing. A case in point occurred during Morvillo's redirect examination of Patrick Fitzgerald:

> THE COURT: Ladies and gentlemen, this testimony is received only to explain the testimony that was given on cross and to clarify what the basis for the witness' testimony was that was given on cross examination. It's not being received independently for the truth of what the witness read in a newspaper. (T. 2641)

And another representative gem:

> THE COURT: Ladies and gentlemen, the question is whether something was said, and what is being asked about is not being asked about for the truth, the underlying truth of what was said, but simply whether a proposal was raised with this witness.[108] (T. 2688)

Or, consider the following confusing content in a longer LI:

> THE COURT: Ladies and gentlemen, when we left off, the government was about to publish Government Exhibits 2050A to L, and that was in a series of exhibits that I gave you the limiting instructions for, and those limiting instructions will apply to all of the remaining exhibits that you will see today. Remember, those exhibits are being offered only against Mr. Sattar, and not against Ms. Stewart or Mr. Yousry. They're being offered solely with respect to the knowledge, intent and state of mind of Mr. Sattar.
>
> And there are two exhibits or proofs of exhibits that are offered additionally with respect only to Mr. Sattar, also for background and context, and that is 2050A through L which you're about to see; and also Government Exhibit 2072.
>
> Remember also that if there are any newspaper articles in this group of exhibits, apply my instructions, my limiting instructions with respect to newspaper articles. They're not being received for the truth of anything that's said in the newspaper articles.
>
> And apply the remainder of my instructions, also. (T. 3329)

[108] The *proposal* referred to Tigar's asking Fitzgerald if Clark had ever suggested to him that it would be a good idea to transfer Rahman from his American prison to an Egyptian facility.

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At times, the Court, prosecution, and defense were themselves perplexed with regard to the LIs, despite the fact that they had multiple aids at their disposal, including paralegals, clerks, laptops, etc. The mishaps came in a variety of forms. For instance, the Court issued an LI for an exhibit that did not require an LI and then, prodded by the prosecution, hastily retracted it (T. 5908). In particular, July 8, 2004, illustrates the broad confusion that surrounded LIs throughout the trial. On that day, the Court, prosecution, and defense discussed at length which exhibits were being submitted against which defendant(s), and therefore which exhibits required which limiting instructions:

> THE COURT: I gave a limiting instruction with respect to all of the exhibits that were coming and when I saw 2050 on the screen I asked myself why there was a limiting instruction because I didn't think there was a limiting instruction when these photographs were originally entered into evidence. (T. 3323)
>
> MR. BARKOW: I was just corrected by Mr. Morvillo as well.… I misunderstood for a moment. (T. 3324)
>
> MR. RUHNKE: I will confess I lost track of what is admitted for what purpose at this point but obviously I will take Mr. Barkow's word offering it only as to Mr. Sattar and therefore the jury should be told that. (Ibid)

But taking the prosecutor at his word may not have been a good idea, since he himself was somewhat befuddled. Barkow admitted as much during arguments over whether evidence in support of Count 2 could be used against Stewart and Yousry for Counts 4 and 5, and which LIs that would entail:

> MR. BARKOW: I have a bit of a headache from doing the reading and I was a little discombobulated at the beginning. (T. 3340)
>
> MR. BARKOW: I overstated. What I just said overstated.… I didn't mean to say—I think I overstated. I didn't mean it to say anything different or change the position of what I said yesterday. So I should not have said what I said a moment ago. (T. 3339–40)

But when uttering his apology, Barkow was again unclear about the matter and

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Ruhnke had to interject that he is “a little lost” (T. 3340).

Thus, at different times in the course of the case—though altogether understandably in view of the staggering number of exhibits and LIs—the various parties became confused and “lost track” as to what was what.

Unduly prejudicial content.

The fact that it was necessary to issue such a vast quantity of LIs is a clear manifestation of the overwhelming volume of highly volatile information that entered the courtroom. As described in the “Evidence” section of this chapter, such information encompassed testimony from a man who witnessed the Luxor massacre, a video of bin Laden and other high-ranking members of terrorist organizations, and terrorism-related newspaper articles that the government had seized from the defendants or simply pulled from public sources.

Referring to Mr. Hassels-Weiler, who had survived the Luxor massacre huddled in a temple side chamber, Tigar, for instance, argued that certain testimony can have an emotional impact and that LIs can remedy this effect only to a certain point, if at all:

> MR. TIGAR: The killing of tourists, the killing of civilians, is hot stuff.… [I]t seems to us that we get to the margin and when we get to the margin of the efficacy of limiting instructions, we then are in 403 territory if I am making myself clear.[109] (T. 4287)

The Court, however, had infinite faith in the jurors’ cognitive and emotional skills and believed that LIs were sufficient, even in the case of bin Laden and other high-profile terrorists. So, throughout the trial, it issued a plethora of LIs to accompany exhibits that featured America’s Enemy No. 1 and other notorious terrorists. But while asking the jurors to ignore evidence relating to bin Laden may meet the standard of a 403 balancing analysis, such a request

[109] In a 403 analysis, trial courts balance the probative value of relevant evidence against negative factors, such as undue prejudice, jury confusion, unjustified delays, needlessly presenting cumulative evidence, etc. (Federal Rules of Evidence 403: Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons).

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constituted an intellectually and emotionally daunting if not impossible task, especially since, during voir dire, the Court had assured prospective jurors who expressed hatred for bin Laden that the trial had nothing to do with him or 9/11. Below is a sampling of LIs given in this connection:

> THE COURT: Ladies and gentlemen, just to remind you, as I instructed you when the videotape was played last week, I remind you that neither Mr. Bin Laden or Mr. Al-Zawahiri are alleged to be members of any of the conspiracies charged in the indictment in this case. (T. 5827)
> …
> THE COURT: I also remind you, ladies and gentlemen, that Osama bin Laden is not alleged to be a member of any of the conspiracies that are charged in this case. (T. 7111)
> …
> THE COURT: All right. I have already instructed you, ladies and gentlemen, with respect to Bin Laden, and you are to apply that instruction here. You will recall that Mr. Bin Laden is not alleged to be a participant in any of the conspiracies alleged in this case. None of the defendants is alleged to have conspired with Mr. Bin Laden. (T. 8539)

Inasmuch as all the jurors resided in the city and state of New York, they all were presumed victims of bin Laden and his *Al-Qaeda* consorts. Thus, it is hard to imagine that they were able to fully suppress their emotions relating to 9/11.

Further, in an attempt to combat the biasing effects of exhibits relating to Rahman's conspiracy trial, the Court issued instructions stating that the "conviction and the subsequent appellate review is not evidence of the guilt of Sheikh Omar Abdel Rahman and none of the defendants is bound by those determinations because none of the defendants was a party in that case" (T. 2249–59). But considering that the prosecution essentially retried Rahman by deluging the jury with exhibits from his trial—which suggested that the defendants should have known he was a violent man and therefore should not have engaged in the alleged conspiracies—such LIs appeared rather hollow and non-curative. Indeed, the jurors almost had to be schizophrenic to suspend their judgment and keep an open mind.

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The Court was equally confident in the jurors' ability to parse things out when it came to Rahman's speeches or sermons that were submitted into evidence:

> THE COURT: The speeches by Omar Abdel Rahman received during the trial are available for Ms. Stewart's knowledge and intent, state of mind, having heard those speeches. These speeches are… can reasonably be segregated by the jury as to the intent and state of mind of Mr. Sattar, so subject to limiting instructions, 2042, 2046, C and E, are admissible. (T. 3217)

In reality, though, the Court's belief in the efficacy of LIs may have been flawed. The government's recitation of these speeches, including portions advocating jihad, took many hours, and no LI, no matter how carefully worded, could counteract the cumulatively inflammatory content.

The Court thus overruled a number of 403 objections and allowed the submission of a great deal of prejudicial material, which became subject to LIs:

> MR. RUHNKE: Your Honor, just to weigh in for the third defendant, yes, it is not being offered against us and our issue and the 403 issue is that the risk that the jury would not follow the limiting instruction we think because of the nature of these materials is simply too great for Mr. Yousry to risk. (T. 2942)

In the course of the trial, the Court also issued LIs instructing the jurors that newspaper reports were not offered for their truth but for some other effect they may have had on the defendant(s). Many of these reports referred to universally publicized terrorist attacks and their perpetrators, that is, events the jurors knew to have occurred. This further challenged the effectiveness of such LIs in that the jurors were told that the content might not be reliable even though they knew it to be true. It is thus conceivable that the jurors may have disregarded the stream of respective LIs wholesale and, judging by the verdict, concluded that reading and being in possession of such articles must have put Yousry in a conspiratorial, terrorist state of mind.

Overall, on various occasions throughout the trial, the Court professed an absurd faith in LIs, no matter their quantity, length, or complexity: "There is nothing to believe that the jury

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cannot follow the—these instructions" (T. 3700). And in the understatement of the trial, the Court declared:

> THE COURT: I've been very careful with respect to 403 in considering 403 with respect to each of the defendants, and these are not—these individual 403 issues I've considered with respect to each of the defendants, and it is not reasonable that the jury could not follow these limiting instructions. This is not so big in terms of the number of defendants and the number of conspiracies that the jurors cannot follow limiting instructions. (T. 3217–18)

The government, for obvious reasons, seconded the Court's position:

> MR. BARKOW: [A]s the Court, I think, can probably discern, as between the government and Ms. Stewart (and her co-defendants), there is a fundamental disagreement here as to whether juries follow their instructions. And because we think they do in virtually all circumstances and they think that they don't, I don't think we are going to reach an agreement that satisfies them as to the evidence that's not offered against them, but we will try. (T. 2946–47)

Even if one were to assume that the jurors had the best intentions and wished to follow all the instructions, the possibility of this happening was highly unlikely for the above-cited reasons, making the prosecutor's statement simply expedient.

The defense, in an effort to address the shortcomings of LIs, fought a losing battle:

> MR. TIGAR: You know, at some point the jurors' ability to absorb and apply limiting instructions is—you know, too long a sacrifice can make a stone of the heart. (T. 3217)
> …
> MR. RUHNKE: [A]nd there comes a point where the ability of the jury to ignore something they have been told to limit becomes almost impossible. (T. 5528–29)
> …
> MR. RUHNKE: Your Honor, I don't know who the Supreme Court justice was who said something to the effect that the idea of juries—the idea of juries following limiting instructions, all practicing lawyers know to be other [sic: utter] fiction. We indulge the presumption and we indulge—and the cases say so—there are rare cases such as Bruton which say that the risk that the jury not be able to follow limiting instruction[s] under certain circumstances are too great to risk. (T. 2945)

Ruhnke may have called it "utter fiction" and Tigar might have waxed poetic on the subject, but the Court held steadfast in its belief that the jury would be able to follow the LIs—all 750+ of them. Unaware of or ignoring a body of literature that provides abundant empirical

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evidence to the contrary,[110] the Court took pains to slowly and methodically issue one LI after another, which for all of the above reasons turned due process into undue process for Yousry and his co-defendants.

Jury Instructions

To arrive at a verdict, jurors must combine the evidence submitted at trial with the law embodied in the jury instructions (JIs).[111] In a criminal trial, the judge instructs the jury on procedural law, substantive law, and the requirements of proof (American Law Institute, 1962). Derived from statutes and appellate decisions, these instructions generally hew closely to the language of the underlying texts, primarily due to fear of reversal (McElhaney, 1995). A substantial body of research on juror comprehension, however, indicates that jurors have difficulty understanding such instructions and that their grasp of the law is relatively poor (Smith, 1991; Tanford, 1991; Diamond, 1993; Cho, 1994). Overall, jurors have an “alarmingly low comprehension of the most fundamental aspects of their roles,” and studies suggest that jurors who did not receive instructions understood the law better than those who did (Cronan, 2002, p. 1188).[112]

On January 12, 2005, after the deputy clerk’s traditional request for the jury to remain quiet throughout the entire charge, the Court embarked on the reading of a 139-page document that lasted several hours and covered everything from scheduling items to complicated legal

[110] These references are cited at the beginning of this section. Also, research has shown that LIs to disregard are more readily followed than LIs to use evidence for a limited purpose (Eichhorn, 1989), the latter being the vast majority in the case at hand.

[111] A number of the items and issues contained in the charge to the jury had been addressed in the course of the trial.

[112] These studies were conducted with pattern instructions.

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issues.[113] It stands to reason that even if they were drafted in the simplest language, such book-length jury instructions would present a challenge to any juror's cognitive capacity with regard to comprehension and recall, not to mention proper application. With that in mind, various items of concern arising from these JIs are addressed below, among them the functions of the Court and jury, issues regarding translation and legal language, and matters relating to application of the instructions.

In terms of the structure of the JIs, there were a total of 75 headings: some bearing short titles such as "Role of Judge and Jury" (p. 7), "Stipulations" (p. 25), and "Uncalled Witnesses" (p. 32); others that were lengthier, such as "*Count One*[:] CONSPIRACY TO DEFRAUD THE UNITED STATES[,] Second Element (cont'd): Conscious Avoidance of Knowledge of the Objective of the Conspiracy" (p. 61) and "*Count Three*[:] SOLICITATION OF CRIMES OF VIOLENCE[,] First Element: Soliciting, Commanding, Inducing, or Persuading" (p. 108); and mouthfuls such as "*Counts Six and Seven*[:] FALSE STATEMENTS[,] False, Fictitious, or Fraudulent Statements: Fourth Element – Matter Within the Jurisdiction of the United States Government" (p. 122). And these were just six of the headings. What's more, the individual counts were further divided into elements of offense, with Count 1 having four elements, Count 2 five elements, Count 3 two elements, Count 4 four elements, Count 5 three elements, and Counts 6 and 7 (which were combined) four elements, for a total of 22 elements.

In order to convey a sense of the challenge connected with such a massive charge to the jury, a sampling of minor and major issues is provided below.

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[113] During deliberations, the jurors were able to consult a written copy of the JIs as well as of the superseding indictment if they chose to do so (T. 12410). When instructing on the counts, however, the Court elected to follow a sequence different from the indictment, presumably to facilitate comprehension. The judge first instructed on Counts 1 and 2, followed by Count 5, then Count 4, then Count 3, and he concluded with Counts 6 and 7.

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Role of the judge and jury.

The Court made several statements as to its and the jury's functions. Some were directives asserting the Court's unequivocal authority:

> THE COURT: It is to instruct you on the law.… It is your duty to accept the law as I state it to you in these instructions and apply it to the facts as you decide them. (T. 12272–73)

Others put the ball more in the jury's court:

> THE COURT: Other than the facts of which I have taken judicial notice, nothing I say is evidence. If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. It is your recollection that governs. (T. 12281)
>
> THE COURT: You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or any party in the case, by reason of any comment, question, or instruction of mine. (T. 12282)
> …
> THE COURT: During the trial, I instructed you that I had taken judicial notice of certain facts which I believe are not subject to reasonable dispute. I have accepted those facts to be true, even though no evidence has been introduced proving them to be true. You may but are not required to agree that these facts are true. (T. 12280–81)

Depending on the category, i.e., rulings, judicial notices, or the Court's comments on evidence, the instructions alternated from conveying the Court's clear position of authority to noting "nothing I say is evidence" to issuing hybrid judicial notices that permitted the jurors to accept or reject the stipulated facts (although the term "judicial notice" itself carried a certain weight). Thus, even if the jurors actually remembered the myriad rulings, judicial notices, and comments delivered throughout the trial, the variations in the messages with respect to the Court's position and the value to be accorded to such statements must have been daunting.

Recall.

After completing the instructions on Count 1, throughout the remainder of the reading of the JIs, the Court often asked the jurors to simply rely on and apply all the explanations that had

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been given earlier with respect to concepts it had already addressed. For instance, when instructing on Counts 4 and 5:

> THE COURT: I have previously read the statute to you and explained the elements of Section 956(a)(1) in connection with Count Two, so I will not repeat that explanation here. (T. 12336)
> …
> THE COURT: I have previously set forth the elements of Section 2339A in connection with Count Five and you should apply those instructions here. (T.12345)

Perhaps some jurors were able to remember individual, particularly salient instructions. However, the expectation that all 12 jurors comprehended and recalled the entirety of specific instructions, especially when those instructions are only mentioned by reference throughout the lengthy reading, is extreme.

The Court also had a tendency to cite long-winded passages from the indictment. The example below is a single sentence containing 151 words:

> THE COURT: 41. From in or about September 1999 through in or about April 2002, in the Southern District of New York and elsewhere, Lynne Stewart and Mohammed [sic] Yousry, the defendants, together with others known and unknown, within the United States, provided material support and resources, to wit, provided personnel by making Abdel Rahman available as a co-conspirator, and concealed and disguised the nature, location, and source of material support and resources, to wit, concealed and disguised the nature, location and source of personnel by concealing and disguising that Abdel Rahman was a co-conspirator, knowing and intending that such material support and resources were to be used in preparation for, and in carrying out, a violation of Section 956 of Title 18, United States Code, to wit, the conspiracy charged in Count Two of this indictment and in preparation there—and in preparation for, and in carrying out, the concealment of such violation. (T. 12334)

The jurors were likewise expected to know and distinguish between different standards of proof, as well as remember what went with which evidence. While “beyond a reasonable doubt” applied to the majority of the evidence, when it came to venue issues, i.e., where the acts in furtherance of the alleged crimes allegedly occurred, the Court expected the jurors to apply the

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civil standard of "preponderance of the evidence" (T. 12366).[114] Considering that numerous studies suggest that jurors are prone to conflate the two concepts (Cronan, 2002), this need to distinguish just added another layer of complexity.

High-level vocabulary/legal concepts

By and large, the Court attempted to instruct in an understandable manner, in particular by speaking slowly. However, some language it employed likely was not part of an ordinary person's daily vocabulary, and some jurors must have gotten lost in the thicket of legal explanations. For instance, without further elaboration as to meanings, the Court used terms and phrases such as "adduced" (T. 12280), "impeachment evidence" (ibid), "confederate" as a verb (T. 12304), "affirmative act of termination" (T. 12313), "affirmative proof" (ibid), "ambit of the conspiracy" (T. 12311), "imminent lawless action" (T. 12320), "subjective intent" (12330), "to wit" (T. 12334), "predicate criminal offense" (T. 12335), etc.

Also, phrasing that may not be readily comprehensible at first hearing was pervasive, such as "canons are statements of axiomatic norms" (T. 12319), "susceptible to proof by direct evidence" (T. 12278), "ethical considerations are aspirational in character" (T. 12319), "a lawyer shall not intentionally fail to seek the lawful objectives of the client" (ibid), and the like.

But even when clear explanations were painstakingly provided, the enormous quantity and variety of legal concepts that the jurors—laypersons generally unfamiliar with such jargon—were exposed to must have presented an enormous challenge. These concepts included "substantive law" (T. 12273), "material facts" (T. 12278), "stipulation" (T. 12287), "substantive count" (T. 12302), "malice aforethought" (T. 12330), "wanton conduct" (ibid), and many more.

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[114] The venue for the alleged crimes was the Southern District of New York.

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By way of example, the Court's explanation of a single one-word concept, i.e., "willfully," in the instructions on Count 1, Offense Element 2,[115] which reads "that the defendant you are considering knowingly and willfully became a member of the conspiracy" (T. 12307), had either not been understood or been misunderstood, forgotten, or disregarded:

> THE COURT: Willfully means to act with knowledge that one's conduct is unlawful and with the intent to do something the law forbids, that is to say, with the bad purpose to disobey or to disregard the law. (T. 12309)

However, as had been amply established in the course of the trial, Yousry lacked the intent to violate any laws and consistently and in good faith discharged his translating and interpreting duties according to the procedures established by Rahman's lawyers. In this context, the instruction on the concept of "good faith," which accurately described Yousry's conduct, went equally unheeded, even though plenty of exhibits attested to his good faith, for instance, when he followed the lead of Rahman's lawyers:[116]

> THE COURT: Good faith is an absolute defense to the charge of conspiracy to defraud charged in Count 1 of the indictment. If the defendant you are considering believed in good faith that the defendant was acting properly, even if the defendant was mistaken in that belief, there would be no crime, and you must find the defendant you are considering not guilty of the crime charged in Count 1. (T. 12316–17)

Last but not least, when rendering the verdict on Count 1, the jurors failed to remember or misapplied the Court's unambiguous instruction that *all* elements had to be satisfied beyond a reasonable doubt to find a defendant guilty:

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[115] Count 1 had four offense elements: "First, that two or more persons entered into the unlawful agreement charged in the Indictment starting in or about June 1997; Second, that the defendant you are considering knowingly and willfully became a member of the conspiracy; Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the Indictment or one which is substantially the same as one explicitly charged, in the Southern District of New York; and Fourth, that the overt act or acts which you find to have been committed was or were committed to further some objective of the conspiracy" (T. 12307; *United States v. Sattar*, 2005, January 12, p. 53).

[116] It is unlikely that pre-9/11 any interpreter would have questioned procedures established by a group of lawyers that included the former Attorney General of the United States.

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> THE COURT: In order to satisfy its burden of proof with respect to Count 1, the government must establish *each* of the following four essential elements beyond a reasonable doubt as to each defendant. (T. 12307; emphasis added)

But one cannot reasonably blame the jury. It was unrealistic to expect them to remember a lengthy oral tangle of complex legal explanations with respect to the multiple elements of, in this case, Count 1,[117] connect all the legal requirements stipulated in each element with the respective proof for each of the three defendants, and then properly weigh such proof. And bear in mind, this intellectual exercise was required for each of the seven counts.

Mental acrobatics.

For a variety of reasons, be they grammatical complexities, the length of individual explanations, or the quantity and difficulty of legal concepts, the jurors were subjected to extreme cognitive demands, as attested to by the following examples:

> THE COURT: You have heard testimony from witnesses who have given their opinion about good character and good reputation. His testimony is not to be taken by you as the witness' opinion as to whether the defendant as to which the witness testified is guilty or not guilty. (T. 12294)

The construction of the second sentence, i.e., the triple usage of "as," renders the instruction confusing.

> THE COURT: You may, of course consider the evidence adduced by any lawyer in considering the evidence or lack of evidence with respect to each defendant. You must consider the charges against each defendant separately and the evidence or lack of evidence with respect to each defendant and each charge separately. But, in doing so, you may consider the evidence adduced by any of the parties. Thus, for example, you may

[117] The jurors' non-application of the concept of *willfully* as regards Yousry continued in Counts 4 and 5. For instance, in connection with Count 5, the Court explained the concept of *aiding and abetting* and instructed that in order to qualify as an aider and abettor, it is necessary that the defendant *willfully*, that is, voluntarily and intentionally, disregarded or disobeyed the law (T. 12340). In fact, the entire *aiding and abetting* concept appears to have presented some difficulty:

> The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or the mere acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting. An aider and abettor must have some interest in the criminal venture. (Ibid)

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> consider any impeachment evidence adduced by one lawyer in considering the evidence or lack of evidence with respect to the charges against each of the defendants. (T. 12279–80)

While each sentence is comprehensible on its own, the instruction in its totality is far from clear.

> THE COURT: I instruct you that it is no defense to a prosecution for soliciting a crime that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution. (T. 12353)

At first hearing, the jurors might confuse the person that is soliciting and the person being solicited.

> THE COURT: The third element which the government must prove beyond a reasonable doubt to establish the offense of conspiracy is that at least one of the overt acts charged in the indictment, or one which is substantially the same as one explicitly charged, was knowingly committed by at least one of the conspirators, at or about the time and place alleged, in the Southern District of New York. (T. 12314–15)

Here the jurors were expected to know all the constituent parts of what makes someone a conspirator, as well as recall the specified element from the JIs and the overt act(s) from the indictment (or some similar act that was not expressly stated in the indictment) for the Count in question, in addition to the Count itself.

> THE COURT: Keep in mind that you cannot rely on conscious avoidance to support a finding that the defendant intended to join the conspiracy. Conscious avoidance may apply only to the defendant's knowledge of the specific objective of the conspiracy, not to whether the defendant joined the conspiracy in the first place. (T. 12314)

While the Court did point out that intending and agreeing to join a conspiracy is logically impossible if one is not aware of it, absorbing the concept of conscious avoidance may have proved elusive.

> THE COURT: The "material support" that triggers Section 2339(a) must be given in furtherance of one of the enumerated criminal offenses set forth in the statute. In Count Five of the indictment, the predicate criminal offense is a violation of Title 18, United

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> States Code, Section 956(a)(1), namely the same conspiracy to murder or kidnap persons outside the United States that is charged in Count Two of the indictment. (T. 12335)

Aside from the challenge of mastering legal jargon, the jurors in this instance were expected to remember the content of § 2339(a) and § 956(a)(1), in addition to the various crimes listed in the statute.

> THE COURT: In order for the government to satisfy this element, it must prove beyond a reasonable doubt that at least one overt act was knowingly and willfully done, by at least one conspirator, in furtherance of the object of the conspiracy, as charged in the indictment. In this regard, you should bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme. You are therefore instructed that the overt act does not have to be an act which in and of itself is criminal or constitutes an objective of the conspiracy. (T. 12316)

This instruction required an on-the-fly analysis to determine if a conspiracy occurred, based on whether the defendants all agreed to do something that was illegal, even though they didn't all have to do something illegal, only one of them; and that one defendant didn't even have to do anything illegal—it could have been legal—but if there was an agreement to do something illegal, the legal act in the context of that agreement becomes illegal.

In view of the difficult vocabulary, semantically complex phrasing, and multitude of legal concepts, understanding and recalling as well as properly applying any of the above instructions would appear impossible save for minds well-versed in such legal tasks.

Hollow instructions.

Closer examination of the 139-page behemoth that represented the jury instructions reveals that the proper application of their constituent parts was highly unlikely if not actually unachievable. For instance, instructions advising the jurors that whatever they hear with their own ears when listening to an audio exhibit is "controlling" are not realistic unless the audio was

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crystal-clear, there was no background noise, and the parties spoke exceedingly slowly and never simultaneously (T. 12284).[118]

With respect to witness testimonies:

> THE COURT: You should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you decide the truth and importance of each witness' testimony. (T. 12287)

The Court continued over eight pages to give an exhaustive list of what the jurors must consider when assessing a witness's testimony. These instructions ranged from expecting the jurors to conduct psychological evaluations ("[Y]ou should specifically consider evidence of resentment or anger which any witness may have toward any of the defendants" (T. 12289)); uncover hidden bias ("[Consider] evidence that a witness is biassed [sic], prejudiced" (ibid)); act as lie detectors ("Did the witness appear to be testifying honestly, candidly?" (T. 12288) and "[W]hat you must try to do in deciding credibility is to size a person up in light of the witness' demeanor, the explanations given, and in light of all the other evidence in the case" (T. 12290)); detect vested interests ("[Y]ou should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case" (T. 12289)); assess a witness's memory ("Consider the strength and accuracy of the witness' recollection" (T.12288)); take into account who-knows-what issues ("Consider whether any outside factors may have affected a witness' ability to perceive events" (ibid)); look out for inconsistencies and gauge their importance ("If a witness made statements in the past that are inconsistent with his or her testimony during the trial concerning facts that are at issue here, you may consider that fact in deciding how much of his or her testimony, if any, to believe" (ibid)); evaluate expert witness qualifications and opinions ("[Y]ou may consider the expert's qualifications, the witness' opinions, the reasons for testifying" (T. 12291)); or undertake the challenging task of comparing

[118] For a more thorough discussion of this issue, see "Limiting Instructions."

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testimonies with the myriad relevant exhibits ("How does the witness' testimony compare with other proof in the case?" (T. 12288)). Considering the overall length of the trial during which witnesses took the stand, the fact that some witnesses testified for days and others ever so briefly, and the wide variety of testimonies ranging from expert opinions on recording authenticity to character witness statements, it was a truly gargantuan undertaking to diligently execute the Court's checklist.

One of the most important instructions addressed "reasonable doubt." In articulating the meaning of this concept, the Court explained that "[it] is a doubt that a reasonable person has after carefully weighing all the evidence" (T. 12297). While this explanation is in and of itself plain and simple, in the context of this trial the phrase "all the evidence" rendered it hugely problematic. In fact, for the ordinary person, it was humanly impossible to properly weigh the many testimonies and vast number of exhibits submitted in the course of the trial, as well as take into account all the requisite LIs and JIs.

The Court's instructions that "[t]he law presumes the defendants to be innocent of all the charges against them" (T. 12296) and that "[e]ach defendant begins the trial here with a clean slate" (ibid) may also have been rather optimistic. This was evidenced by the aforementioned letter Juror 39 sent to the Court after the verdict in which she complained that her fellow jurors "had an agenda" and "talked of terrorist attacks and their desire to teach the defendants a lesson" (Powell & Garcia, 2006, p. 2). The conviction rate in U.S. terrorism trials also suggests that jurors do not satisfy the presumed-innocent standard to the extent they do in non-terrorism cases. According to the Terrorist Trial Report Card released by the Center on Law and Security of the New York University School of Law (2008), the national conviction rate under terrorism statutes

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in jury trials is 37% as opposed to 15% for other felonies.[119] And in New York City, the site of the 9/11 attacks, the conviction rate in terrorism prosecutions is even higher than in the rest of the United States (ibid).

After summarizing the indictment, the Court gave an equally idealistic instruction:

> THE COURT: You may not draw any inference favorable or unfavorable towards the government or the defendants on trial, from the fact that certain persons were not named as defendants in the indictment or that certain persons were named as coconspirators, but not indicted. (T. 12301)

Of course, this instruction was rather hopeful in view of the terrorist Who's Who that figured in the indictment.

Spillover potential.

The spillover and compacting of defendants was evident in the Court's misspeaking. For instance, in the instruction below, defendants Sattar and Stewart were lumped into one:

> THE COURT: The statute that defendant Ahmed Abdel *Stewart* [emphasis added] is charged with violating in Count Two is Section 956(a)(1) of Title 18, United States Code. (T. 12328)

Similarly, even if specific JIs were not directed at Yousry and contained a female pronoun, the danger existed that the jurors might fail to distinguish between Yousry and Stewart:

> THE COURT: The first element that the government must prove beyond a reasonable doubt is that the defendant used a writing or document. In this regard, the government need not prove that the defendant personally prepared the writing or document. It is sufficient to satisfy this element if you find that she caused the writing or document charged in the indictment to be used. (T. 12361)

Here, the Court stated that any action resulting in the creation of a document that the jury connects with guilt makes someone guilty. Therefore, by extension, being the translator of a document that is perceived as "dangerous" and could result in violence if implemented would

[119] Time frame for the statistics: September 11, 2001, through September 11, 2008.

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render you guilty. This confusion could also extend to Yousry's dissertation, a document he created and that the government used against him.

Jury questions.

One indication of the level of difficulty of the JIs is the types of questions the jurors posed during deliberations (see also "Trial Complexity"). For instance, their request for a copy of all the summations gives an inkling of the trouble jurors had in understanding certain legal concepts; apparently, they were unaware or did not remember that summations do not constitute evidence (T. 12390–91).[120] They also sent notes asking if they should consider Count 4 before 5, possibly not understanding how one count affects the other (T. 12731; T. 12735)[121]; if "the law" refers to U.S. law in connection with the third element of Count 5 (T. 12732)[122]; how to deal with the legal doctrine "aiding and abetting" (ibid); for clarification of the Court's instructions on Counts 4 (T. 12731) and 5 (ibid; T. 12786; T. 12827) by just listing chunks of the JI, i.e., pages 84–95 and 100–101; etc. With respect to the latter request, of note is that the Court responded by asking the jurors to be more specific, which is necessarily difficult to do when a concept is not fully understood (T. 12740; T. 12787). But it wasn't just the jurors who had difficulty understanding. At times, the prosecution and defense could not even agree on the interpretation of the questions asked and dueled at length as to the intended meanings (see, for instance, T. 12836–38). In response, the government requested that copies be made of some of the juror notes and distributed to the parties for inspection (T. 12733).

[120] This request also opens a window into the considerable weight the jurors may have given the closing arguments during their deliberations. Since summations recap trial evidence albeit from a partisan perspective, going over them would have refreshed their memory of forgotten evidence.

[121] The Court instructed in reverse to the sequence in the indictment.

[122] *Count 5*[:] PROVIDING AND CONCEALING MATERIAL SUPPORT[,] Third Element: Knowledge or intent (*United States v. Sattar*, 2005, January 12, pp. 90–91).

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The most telling proof of the difficulty of the JIs, however, came at the end of the deliberations. While the parties were still wrangling over various juror inquiries and the Court had not yet answered a juror's question about Count 5 but only returned a note to the jury room asking that the question be clarified, the jury adjourned and returned with the verdict (T. 13115). This despite the fact that they had just received a substantial number of exhibits—many of which related specifically to Yousry and some of which were very lengthy—and, more importantly, the specific juror's concern about Count 5 was still pending. It appears he/she just gave up on trying to understand, deciding the process of obtaining an answer was too cumbersome or the decisional framework of the JIs was too complex, or perhaps succumbing to a host of other possible factors.

Trial Complexity

Two U.S. appeals court decisions have disagreed on the need for a complexity exception to the Seventh Amendment right to a jury trial.[123] Arguments for such an exception contend that juries are not qualified to sit on "lengthy and complex suits both because of the size of the action and the jury's lack of experience in an area requiring great intellectual effort" (54 A.L.R. Fed. 733; as cited in Krcmar, 2008). Lempert (1981) notes that there is scant research on the capacity of juries to grapple with complex disputes, the dimensions of which he defines as complex legal standards, trial length, and voluminous evidence. MacCoun (1995), one of the foremost experts on trial complexity (TC), points out that while minimum educational requirements would most likely enhance jury performance, such "education requirements and complexity exceptions may

[123] Litigation that questioned the right to a jury trial was drawn from the business realm: In *In re U.S. Financial Securities Litigation* (1979), the Supreme Court denied *certiorari* for *Gant v. Union Bank* (1980) in which the Ninth Circuit Court decided that the Seventh Amendment protects the right to a jury trial in complex civil litigation, while in *In re Japanese Electronic Products Antitrust* (1980), the Third Circuit Court held that there may be such an exception based on due process considerations (Heuer & Penrod, 1994).

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pose a tradeoff between fact-finding competence and community representativeness" (pp. 3–4) in that the perceived legitimacy of the justice system would suffer. To get a handle on TC, he proposes three basic categories, i.e., "dispute complexity (which includes the number of disputants and issues), evidence complexity (including quantity and consistency of evidence and reliability and technicality of evidence), and decision complexity (including legal complexity and complexity of inferential chains)" (as cited in Heuer & Penrod, 1994, p. 31). No matter what the taxonomy, scholars skeptical of complex jury trials would find much support for their position in the case at hand. In fact, as illustrated by the seven legal factors described and analyzed in the foregoing, *United States v. Sattar* (2003) may well be one of the most complex criminal cases in U.S. legal history, with a trial length of more than eight months that resulted in a trial transcript exceeding 13,000 pages. Additionally, the Court issued a total of nine opinions as well as a wide range of orders ruling on the various issues that arose during the proceedings. In terms of dispute complexity, there were three defendants, multiple interlocking counts with 22 offense elements, three counts of conspiracy, several unindicted co-conspirators, and numerous multipart issues involving transatlantic occurrences. With respect to evidence complexity, the trial comprised a stream of expert as well as character witnesses; law enforcement testimony; a large quantity of foreign-language material—including surveillance audio and video files as well as other audio- and videotapes—and the corresponding translations; and voluminous documentary evidence, for a total of 917 government exhibits and 193 defense exhibits.[124] And the decision complexity warranted a profusion of jury instructions throughout the trial, 750+ limiting instructions, and 139 pages of instructions on the law.

The average duration of a criminal trial in the United States is five days (U.S. Department of State, 2009). By this standard, *United States v. Sattar* (2003) was extremely long. Although

[124] This figure may vary slightly due to record-related issues.

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the Court anticipated and informed the jury that the trial was scheduled to last four to six months (T. 4953), the estimate was off by several months: voir dire proceedings lasted from May 19 through June 21, 2004; the trial itself began on June 22, 2004, and continued to mid-January 2005; the jury started deliberating on January 12, 2005; and the verdict was handed down a month later on February 10, 2005. During that time, there were adjournments for holidays and other circumstances along the way, the longest lasting from July 27 through August 15, 2004, and necessitating a specific instruction (T. 4362–63).[125] Of course, breaks of any length may have exacerbated the enormous demand placed on the jurors' ability to remember and retrieve information. In fact, the government was rather alarmed about a long recess scheduled during the presentation of its case:

> MS. BAKER: Your Honor, the government is not happy about having to take any time off. Obviously, we view it as detrimental to the jury's understanding of our case to have an interruption in the flow of our evidence. We are concerned that by the time the jury returns they will have forgotten much of the evidence that they have heard up to this point. So we are not in any way desirous of an adjournment of any length greater than what we truly think or fear is necessary under the circumstances due to the volume of material and the translator resources that the government has available to draw upon to accomplish this task. (T. 4349)

Aside from the risk that pertinent subject matter will be forgotten when trials are lengthy and adjournments are many, such trials pose a number of other challenges: For one, the longer the duration, the greater the danger that prejudicial material will be introduced. This undoubtedly was the case in *United States v. Sattar* (2003), as evidenced by the abundance of exhibits relating to bin Laden and other sundry terrorist activities across the globe. Another major risk was juror confusion due to the welter of information, compounded by the fact that the information was not always presented in chronological or other rational order because of witness scheduling issues, pending legal issues, etc. In that regard, all the parties alerted the jury to the trial's overall

[125] In its instruction, the Court asked the jurors to return on August 9, 2004, but the trial was readjourned to August 13, with the jury sitting again on August 16.

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complexity. For instance, in its opening statement, the prosecution acknowledged that things would become complicated but attempted to downplay the situation:

> MR. MORVILLO: I am going to mention a lot of names and dates and words and places, and during the trial you will hear even more. Please don't worry about that. (T. 2128)
> …
> MR. MORVILLO: This is going to be a long trial and chances are there are many times when it's not going to be particularly exciting. There will be a lot of reading, and when I say "a lot," I mean a lot. Because, as you know, the principal witnesses to these defendants' crimes are audio tapes and video tapes. (T. 2158)

For his part, Yousry's attorney explained to the jurors that despite the complexity of the trial, they must maintain tunnel vision when deciding guilt and innocence:

> MR. RUHNKE: Everyone has told you, the judge has told you, the government has told you, Mr. Tigar told you a few minutes ago and I am going to tell you, too, although there are three people in this room all standing trial together, there are simultaneously going on here three separate individual trials so far as you are concerned. (T. 2209)

Ruhnke was rightly concerned that the jurors would be confused, particularly with respect to 403 evidence,[126] such as the ghostwritten *fatwah*. In an attempt to remedy some of this confusion, the parties agreed on a mechanism (cover sheet, stickers) that alerted the jury to the limited purposes and defendants of a given piece of evidence (T. 2929–30).

Another aspect of evidence complexity involved the voluminous foreign-language evidence, the multilayered difficulties of which were reviewed under the heading "Length" in the "Limiting Instructions" section. The government fully acknowledged these difficulties in connection with its evidence on the prison visits, albeit with an ulterior motive:

> MR. MORVILLO: It's difficult to both watch and read at the same time, particularly given the type of conversations that are going on here. There are very long articles that are being read, quick conversations going back and forth. I have difficulty following it both by watching and reading and I'm very familiar with these transcripts. (T. 4917)

Morvillo continued to object heatedly to Ruhnke's request to the Court that the government's presentation of the prison visit tapes dispense with the prosecution's reading of the

[126] See explanation in Footnote 109.

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transcripts to the jurors after the latter had watched and listened to the tapes while simultaneously reading the transcripts. On one hand, Morvillo's assessment of the difficulty of the task was on target; however, as the defense rightly recognized, the government's reading of the transcripts would amount to presenting what they perceived as the core of their case against Yousry and Stewart not once but twice.[127]

One of the most vexing and opaque TC issues, especially in relation to dispute and decision complexity, arose from the Count 2 conspiracy and how it related to Counts 4 and 5. The government argued that evidence offered against Sattar to prove Count 2, to the extent that Count 2 was a predicate for Counts 4 and 5, might also be used against Yousry and Stewart. Ruhnke, in turn, angrily countered the prosecution's attempt to take advantage of lack of severance and TC to have extremely prejudicial evidence applied against his client:

> MR. RUHNKE: Your Honor, the government just told you they are not offering it against Mr. Yousry and if they are not offering it against Mr. Yousry, they are not offering it against Mr. Yousry. This idea that because they have to prove the Count 2 conspiracy doesn't mean that evidence is [sic] offered on the Count 2 conspiracy is admissible against Mr. Yousry. They have to establish it as if, as your Honor pointed out in your order, the government quotes, even if it were a separate trial they would have to prove the Count 2 conspiracy, but it doesn't mean that evidence is admissible against Mr. Yousry because he is not named in Count 2. So I am not sure if the government is trying to have it two ways or three ways but they stand up and say it's not offered against Mr. Yousry and I understand that to mean simply it's not offered against Mr. Yousry. (T. 3274)

The prosecution, however, prevailed. This meant that some kill-and-kidnap exhibits, although accompanied by LIs, applied to Yousry and Stewart at the point during deliberations when the jury determined that the conspiracy alleged in Count 2 actually existed. Or, as Ruhnke put it in his concession statement:

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[127] Originally, the government only wanted to read certain portions of the transcripts. The defense objected to this method of presentation for fear that the government's excerpts would deprive the jurors of context and make innocent actions sound worse than they were. Ultimately, the two parties agreed on specific longer selections because the reading of the prison visit transcripts in full would have taken too much time (T. 4918–19). However, Ruhnke complained that he had not agreed to "they're longer, so therefore they should be longer twice" (T. 4919).

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> MR. RUHNKE: The existence, ultimate proof of the existence of a Count 2 conspiracy may become relevant at some point as a sub-element of Counts 4 and 5. Not the complete elements of 4 and 5, but as [a] sub-element of Counts 4 and 5. Proof of Count 2 does not equate to proof of Counts 4 and 5, certainly. Because Count 2 is established doesn't mean therefore they are guilty of Counts 4 and 5. Obviously. (T. 3664)

Due to its inherent intricacy, this issue was vehemently and lengthily debated by the parties outside the jury's earshot, with much of the argument focused on the content of certain LIs accompanying Count 2 (and Count 3) exhibits. While the government preferred them to be as vague as possible and wanted the Court simply to instruct that the evidence related to Count 2 (and Count 3, if applicable) without mentioning Sattar's name (see, for instance, T. 3666–67), the defense wanted the LIs to be specific and state that the respective exhibits were not being admitted against Yousry (and Stewart). However, they did not succeed: "Your Honor—your Honor has obviously objected to the requests we've made and I would rest on that" (T. 3667). And thus, accompanied by what the Court considered "legally correct" LIs (ibid), an abundance of dramatic Sattar evidence was submitted to prove the alleged existence of the Count 2 conspiracy, which in turn proved harmful to Yousry.

However, while the parties may have reached some consensus on how to understand and deal with the conspiracy linkage, the jury—even after the Court's final lengthy JIs—was unclear how the conspiracies were connected and how to treat the associated offense elements. They sent a note asking several Count 5-related questions (T. 12731–32); however, the parties were having a hard time formulating a simple, definitive answer. Differing on the interpretation of the questions, they agreed to file written replies with the Court (T. 12743). Below is an abridged version of Tigar's understanding of the issue in which he refers to the instructions:

> MR. TIGAR: And the clear admonition of the law that although a conspiracy is charged in Count Two and the charged conspiracy alleges several dozen overt acts, that if the jury

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> finds the Count Two conspiracy to have existed it is thereafter restricted when it turns to Count Four and Five to the conspiracy it found to exist.
> And they can't start all over again and pick and choose among the overt acts that are alleged in order to satisfy the element of the offense. (T.12771–72)

If interpreted correctly, Tigar appears to be saying that if Sattar committed any of the overt acts alleged in the indictment, then the Count 2 conspiracy existed. However, Counts 4 and 5 must be decided on the same overt act chosen for the Count 2 conspiracy and not any others. Formulated differently, the jurors must make the following extremely nuanced distinction between conspiracies in order to convict Yousry and Stewart on Counts 4 and 5:

> MR. TIGAR: They must know of the very conspiracy that the jury has found to exist and none other. If they know of a conspiracy consisting of an unlawful agreement but do not know of a conspiracy that contains the overt act found by the jurors, then that defendant is not guilty of the [sic] Count 4 or 5. (T. 12768)

After the parties wrangled it out, the Court finally responded to the jurors' initial Count 5 questions by broadly stating, inter alia*,* that there is "no particular requirement in the law as to how the government may prove a defendant's knowledge of the Count 2 conspiracy" (T. 12865) and that the evidence could be direct or circumstantial, but that the government must prove that the defendant(s) knew of the specific Count 2 conspiracy (T.12866). In its answer, the Court also redirected the jurors to specific sections of the JIs, sections that included the very pages they were asking about to begin with. This essentially amounted to a legalese roundabout that apparently was insufficiently enlightening, since the jurors kept sending notes containing Count 5 questions. They were clearly struggling with the maze of bewildering conspiracies and legal concepts they had been showered with for many long months (see, for instance, T. 12827, T. 13096).

Understandably, the jurors had great difficulty with the concepts of knowledge and intent.

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They asked, for instance, if a defendant must have explicitly known that their material support would be used to murder and kidnap (T. 12732). Again, the parties could not see eye to eye in terms of how to respond. The government launched into an interminable shades-of-meaning argument about "would," "could," and "were to be used," apparently very concerned that the jury's English-language skills were not up to par, since they employed "would be used" instead of the government's preferred dying subjunctive "were to be used":

> MS. BAKER: [I]t is not necessarily appropriate to respond to a jury on its own terms if the jury is starting from a premise that is inaccurate or incomplete. And in this instance it seems to us that they are, at least being incomplete, if not being inaccurate.… (T. 12759)

The Court disagreed with the prosecution and decided to frame the response using the jurors' language. The government, however, was unrelenting and requested that the Court hold off in sending an answer to the jury until they had an opportunity to confer with the chief of the criminal division (T. 12772–73). Ruhnke energetically objected to the delay, noting that the prosecution had four lawyers present who could contribute to formulating the government's response. He was concerned that these extensive delays in answering jury questions would be damaging to his client's chances during a potentially crucial point in the deliberations (T. 12773). In the end, the Court permitted the prosecution to consult with their expert but ultimately adhered to its prior ruling (T. 12777).

As indicated in the last paragraph of the "Jury Instructions" section, the jurors struggled right up to the verdict with knowledge and intent and how the conspiracies were linked:

> THE COURT: I have a note from jurors. It indicates that one juror, who's listed, wants to know: ["]Is knowingly or intending conspiracy to kidnap—not clear—and/or murder are charges in Count 5?["] (T. 13096)

The Court suggested referring them to the JIs again and asking for a clarification of the

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question, with the government concurring. Ruhnke, however, pointed out that the JIs obviously did not cover the whole universe associated with Count 5 and that the Court also needed to refer to previous Count 5 answers. The government, in turn, objected:

> MS. BAKER: Your Honor, we object to the jurors being referred back to the Court's previous notes.… The juror obviously, the one who has this question, has been present all along. She has access to everything that the jury already has. (T. 13098)

While the government may have had a strategic motive for not wanting to elucidate concepts too clearly to the jury, it was infuriating that with so many bright people present in the courtroom workgroup, no one recognized that Count 5 explanations provided to the jury up to that point evidently had missed the mark because they were too complex, and that the Court needed to adopt much simpler language when responding to jury notes.

Another issue arising from the trial's complexity was that the jurors were required to keep an open mind until the final charge, a requirement the Court referred to frequently:

> THE COURT: It's very important that you continue to keep an open mind until I have fully instructed you on all of the legal principles that you are to apply to the facts as you find them. You will only have that complete picture after I have finally instructed you on the law. (T. 11084)

This basically meant that jurors had to do the impossible—recall a massive amount of evidence and instructions, whether in terms of witness testimony and exhibits or myriad legal concepts and issues, and only form an opinion after the Court's final instructions. This herculean effort at recall was not made any easier by the Court's refusal to provide the jurors with exhibits unless they expressly requested them.

When Ruhnke inquired about the matter, the Court responded:

> THE COURT: The jurors are welcome to ask for any exhibits in evidence, but it would be a cart load of exhibits, if I just sent all of the exhibits in to the jury. And some of them are not conveniently sent in without discussion with the parties, such as the recordings and ways to listen to them. (T. 8993)

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Moreover, in view of the volume of evidence, a multitude of errors were bound to occur when the jurors made specific requests. For instance, when requesting Yousry's WBAI interview,[128] the jurors noted that they had already asked for the exhibit but never received it. The parties could not remember if such a request had indeed been made; the government suggested that most likely the jurors had asked for it by exhibit number only, omitting the MY prefix,[129] and were given a government exhibit instead (T. 12882–83). One can only speculate as to how many times the jury received government exhibits they may not have considered otherwise. In another variant of widespread confusion, the jurors requested exhibits that did not exist (T. 12797–98). When asked to describe the content they wished to see, they were unable to accurately specify (T. 12810). As a result, the Court, prosecution, and defense simply tried to guess what exhibits would be responsive to the request (T. 12811), figuring that if they were not the ones the jury wanted, they would submit another request (ibid). The jurors also asked for exhibits they already had been given earlier (T. 13061; T. 13069), perhaps not recognizing the exhibits per se or believing that they had been provided the wrong exhibit.

> MS. BAKER: Here the jury obviously doesn't know which calls meet the description that they have provided, and they literally have dozens of transcripts of calls in there with them at this point. And so we believe it's appropriate under the circumstance to simply cite these exhibit numbers to them and advise them that they already have these exhibits in their possession. (Ibid)

Due to the cumbersome request procedure and the confusion over numbers, the jurors often did not have immediate access to all the evidence, which meant that, at least in part, they had to go by their overall impression from the trial rather than actual facts; in turn, this would suggest that emotions were a major deciding factor in the verdict. Moreover, the Court's ruling on exhibits did not take into account that in order to ask for a specific piece of evidence, one

[128] In this interview, Yousry discussed Rahman's ideology.

[129] All defendant exhibits were designated with the initials of the respective defendant, that is, MY, LS, and AS, followed by the exhibit number.

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actually has to remember it. As suggested by the relatively few requests during deliberations relative to the "cartload" of exhibits, evidence complexity took its toll.

In his summation, Stern acknowledged that in a case so voluminous and complicated, the jurors were not likely to look through his client's principal evidence and make factual conclusions, because their patience had already been tried to such a great extent. Thus, with respect to the 1,264 pages of Yousry's notebooks, five days of prison visit transcripts,[130] and approximately six years' worth of legal weekly prison call transcripts, he asked the jury:

> MR. STERN: If you have the patience, go through his notebooks and go through each visit. Go through his notebooks and go through the calls and you will see that they match up. (T. 11587)

Stern's suggestion was largely symbolic, since executing such a task would have consumed many deliberation days. However, if just one juror had taken the time and at least superficially compared the chronologically first and last notebook with the respective prison visit and call transcripts, he/she would have discovered that not only were they consistent but that, unfailingly, Yousry adhered to the translating/interpreting modus operandi requested by Rahman's defense team.

Another side effect of the TC was difficulty in holding the jury's attention over prolonged periods of time. The Court was well aware that the trial's complexity presented a multitude of cognitive and physical challenges to the jurors. For instance, it recognized that it was harder to stay alert through phone transcript readings as opposed to live testimony and reminded the jurors to pay careful attention to all types of evidence (see, for instance, T. 3742–43). To address the physical challenges, the Court suggested brief stretch breaks at irregular intervals during which most everyone in the courtroom rose and stretched his/her limbs (T. 3743). Also, when the judge

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[130] This refers to the prison visits of May 19–20, 2000. To give an idea of the volume of material and corresponding time involved, these two days alone took a week to present to the jury.

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noticed that a juror had nodded off, he jumped up and started flapping his arms. This not only woke the sleeping juror and startled others in the courtroom, but seeing a judge clad in a flowing black robe engage in calisthenics on the bench provided some comic relief. To further improve the jurors' state of alertness, the Court also recommended that they simply stretch in place without getting up from their seats (ibid). This had the jurors and other courtroom participants engaging in various contortions, with the result that the advice may not have had the intended effect of sharpening jury focus.

In addition to the significant and unresolved intellectual challenges, there were many technical issues along the way, such as disputes about the authenticity of recordings, the abrupt cutting off of DVDs, glitches with earphones, confusing forms of transcript display, etc. In the following example, the jurors were expected to digest split-up transcripts, which were accompanied by special instructions and a forest of exhibit numbers:

> THE COURT: Ladies and gentlemen, the government will now play a portion of Government Exhibit 1706 C2, which includes the final lines of the transcript that you saw before the break on Government Exhibit 1706 X.
>
> Government Exhibit 1706 C2 is in evidence to the extent it corresponds to a portion of the transcript Government Exhibit 1706 X. So the portion of Government Exhibit 1706 C2 that you will see and hear is in evidence. All right. (T. 4926)

The jurors also appeared to get irritated with the mandated headphones either because they were non-functional (T. 3722; T. 5230; T. 5437; T. 12582) and required replacement (which caused the government to play its exhibits again from the beginning), or perhaps because it proved too stressful to have male voices excitedly yelling into one's ears at various decibel levels:[131]

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[131] The strain imposed by having to listen to and try to understand phone conversations for extended periods of time cannot be underestimated, especially with audio in which call participants speak rapidly, loudly, and often simultaneously. Also, when participants converse softly and/or at an accelerated pace, listeners tend to turn up the volume to catch what is being said, which is stressful to the ears; then, when the conversation all of sudden turns loud, their listening ability is further compromised.

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> THE COURT: We'll take a break. One juror physically took off her earphones and was beginning to talk, and it was obviously a convenient time for us to take a break. (T. 5438)
> …
> THE COURT: I was more insistent with the jurors, after the break, about using the headphones because I thought one juror wasn't using the headphones. So, I thought it was better practice that they all use the headphones. And I would do that again unless anyone has a problem with that. (T. 12582)

The different forms of transcripts, i.e., paper copy versus screen display, also caused confusion. In fact, when some jurors got lost, fellow jurors jumped in to help and pointed out items on the screen. Below, in its attempt to explain those differences, the Court further complicated an already complex task:

> THE COURT: Because of technical issues with respect to the form in which the transcript is, the transcript is on your screens and on the big screen in one form. All of the words are the same in the written transcripts that the parties are following along with, but that was the reason for the difference that you just heard, to identify for the parties where in the written transcript they should follow along as compared to the transcript on the screen. (T. 6247–48)

In view of the utter complexity of the trial—from the sheer impossibility of digesting the avalanche of evidence, host of minutiae, and associated instructions; to the difficulty of the legal concepts, which may have been beyond a legal amateur's grasp; to the stress from many long months of close focus and intense deliberations; as well as the frustration with technical issues—the author suspects that some jurors simply gave up at the end and tossed all three defendants into the same guilty pot. However, it was not only the legal factors that rendered this trial an enormous challenge; the following extralegal factors may have played an even more significant role in subverting Yousry's chance of obtaining a fair verdict.

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Chapter 7: Extralegal Factors

The extralegal factors are informed theoretically by several bodies of literature. The section on the translator-traitor mentality includes texts from the field of translation and interpreting, among them interpreting in situations of conflict and, in line with the extended case method, other linguist persecutions and litigation; the section on Islamophobia draws on social (in)justice writings; and the section on moral panic is shaped by cultural criminology. While an effort has been made to allocate relevant trial observations and occurrences in the record to the corresponding extralegal factors, not surprisingly, these categories sometimes intersect due to common causality and characteristics.

The Translator-Traitor Mentality

The accusation "traduttore, traditore" (translator, traitor) was first leveled at the French translators of Dante Alighieri's *Divine Comedy*. The critics were concerned with fidelity to the Italian original and frustrated with a translation that some considered an annihilation of one of the greatest works in world literature. Dante and his translators, though, only dealt with hell on paper, while some actors—state and non-state—have taken the translator-traitor maxim a step further and created their own very real circles of hell for linguists.

One of the root causes for these "circles of hell" is the translator-traitor mentality (TTM), a concept that captures the historic continuum and spectrum of distrust, discrimination, and threats T/Is have been experiencing throughout time.[132] Manifestations of TTM run the gamut. At one end lies apprehension about linguists born out of unfamiliarity with another speech community and its associated culture; at the other end are severe human rights abuses such as

[132] The term *translator-traitor mentality* (*TTM*) was conceived by the author based on the Dante anecdote.

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abduction, torture, and killing. The middle of the spectrum holds T/I persecutions, prosecutions, and imprisonments.

The extent of TTM depends, inter alia, on the era, the political climate, the power differential between the parties, and the nature and setting of the communicative event. For instance, an interpreter who sits in a booth at the United Nations has little or no exposure to TTM, whereas a host nation linguist working for an occupying power in a conflict zone must cope with an enormous degree of TTM. While the role of the T/I may arouse suspicion even under peaceful conditions, this suspicion intensifies during more tension-filled periods so that linguists are occupying "an increasingly dangerous interstitial space" (Apter, 2007, p. 69; see also Apter, 2005 and 2006) in which the simple act of practicing their profession makes them vulnerable to loss of life, limb, and freedom.

The increase in recent scholarship on the role and positioning of T/Is in such dangerous spaces and conflict-ridden settings is an indication of the topic's urgency and complexity. For instance, Inghilleri (2010) examines the dual interpreter-combatant role that emerged in the Iraq war, Stahuljak (2010) explores interpreter activism and agency in the 1991–92 war in Croatia, Baker (2010) demonstrates how conflict zone linguists are narrated by other parties and how they themselves influence the emerging public narratives of a conflict, while Rafael (2009) investigates issues of interpreter loyalty and identity in Iraq, revealing how linguists are subjected to verbal attacks by the very parties that contracted them. One common strand running through all this research on the role of T/Is in conflict settings is that TTM has seen a pronounced rise in recent years, which is further compounded by social anxieties about Islam and Muslim cultures. The phenomenon itself, though, reaches far back in history.[133]

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[133] For a comprehensive history of the roots and development of translation and interpreting, see *Routledge encyclopedia of translation studies* (Baker, 2001).

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From ancient to modern times, in war and in peace, T/Is[134] have served as linguistic bridge and socio-cultural negotiator between speakers of different languages. In colonial and other contexts, they often inhabited a wide range of roles that would generally go beyond mere linguistic mediation (Baker, 2001).[135] Overall, their role and status fluctuated throughout history, and distrust was frequently part of the mix. Hermann (2002) reports that while the Egyptians viewed T/Is as a life form slightly below humans,[136] the Romans generally held them in high regard, and the Greeks went so far as to put them on a pedestal and ascribe to them demigod status. The Spaniards were not quite as respectful, but Christopher Columbus clearly recognized their value, allegedly taking along on his seminal voyage an interpreter who had been in Guinea as well as one conversant in Middle Eastern languages (Bastin, 2001). Bastin further relates that once Columbus landed in the Americas, he faced "about 1,000 languages from around 133 language families" (p. 505) and quickly realized that his interpreters' languages were of no use. In response, he packed up some natives and shipped them back to Spain, where they were given Spanish lessons and brought along on future expeditions (p. 506). Of course, capturing humans and force-feeding them a language and culture is not a sound basis for establishing a mutually trusting relationship, which is why their linguistic services may have been eyed with suspicion.

One early, specific incident that reveals a distrust of T/Is involved the Spanish explorer Hernán Cortés. Bastin describes how Cortés had been gifted a noble Aztec family's daughter, named La Malinche, who subsequently became his interpreter, confidante, and, as the story goes, his lover. However, since Cortés's negotiations with the natives often involved a chain of

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[134] The emphasis here is more on interpreters and interpreting, which specifically refers to the spoken language; as indicated earlier, though, translator and interpreter roles are often fluid, as was the case with Yousry's assignments.

[135] These roles included "guides, explorers, brokers, diplomats, ambassadors and advisers" (Baker, 2001, p. xv).

[136] In Ancient Egypt, only Egyptians were considered "fully human" (Hermann, 2002, p. 15); foreign races were "wretched barbarians" (ibid), and an interpreter was "the speaker of strange tongues" (p. 16).

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languages, such as Spanish to Maya to Nahuatl and vice versa, he had to use several interpreters. Apparently not too trustful of Malinche, he used a Mexican boy to check her interpretation from Maya into Nahuatl and compare it to what he had originally said (pp. 505–06). But misgivings about La Malinche ultimately went beyond Cortés's attempts to verify the accuracy of her interpreting. In fact, some historians today label her a national traitor for having employed her linguistic abilities to further Cortés' conquests (Cypess, 1991).

Back across the Atlantic, the "twelfth and thirteenth century common-law oral pleaders, narrators or *conteurs* who literally told a tale" (Morris, 1995b, p. 269) perhaps also contributed to the belief that linguists are shady figures who could not be trusted. Morris points to research showing that when interpreters are positioned next to non-English-speaking witnesses, the audience experiences difficulty in accepting "the interpreter's 'alter ego' role, believing instead that a 'story' is being concocted" or "that the interpreter is giving his or her 'version' of the 'story,' or putting his or her own 'interpretation' on the facts" (ibid).

Another historical forerunner that undoubtedly informed the image of the interpreter is the dragoman, an early form of interpreter/diplomat. The original profession of dragoman arose from the fact that Islamic law prohibited the learning of a Western language; as a result, the Ottoman imperial administration was forced to hire non-Muslims to interpret at political events (Özdalga, 2006). Of course, it was precisely the religion of these dragomans, i.e., Christianity, that caused unease, which was only heightened by the substantial influence they often acquired through their political role. In the end, this dual identity of language provider and diplomat, compounded by a different religious background, garnered them praise or infamy depending on which side told the story.

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One of the most notorious dragomans was the Irishman Andrew Ryan, who traumatized the Turks to such an extent that the Ministry of Culture and Tourism of Turkey still titles a section on their current website "An Anti-Turk Intriguer," referring to Ryan as Turkey's "most hated man" ("The Deportees," n.d.).[137] Ryan earned these condemnations because of his role as a dragoman at the British Embassy prior to World War I, an assignment that contributed to the deportation of many prominent Turks to Malta to be tried for war crimes.

Nor has the profession's standing been improved by linguists who work for murderous regimes, particularly if they do so in an SS uniform. Paul Schmidt, one of Germany's most accomplished linguists in his day, was Hitler's chief interpreter at the League of Nations talks and a trusted member of the upper echelon of the Nazi party. After the war, he was banned from working as an interpreter because of his past associations, notwithstanding his protestations to the contrary. Schmidt managed to resurrect himself a few years later by writing an apologetic book and co-founding a well-respected interpreter training institute in Munich (Pöchhacker, 2005).

To be shunned is one thing, to be abducted, tortured, and killed is another. Particularly in conflict zones, TTM incidents multiply exponentially. For instance, in the Iraq and Afghan wars, local civilian linguists contracted by military forces were, and continue to be, denounced as traitors by insurgent groups and singled out for kidnapping and slaughter in retaliation for their collaboration. They wear face masks during assignments in an effort to hide their identities, often to no avail (Hawksley, 2008). In Iraq, interpreters were "dying by the dozens" ("Translators dying,"2005), and as per the Index of Abandonment of The List Project to Resettle Iraqi Allies (2013), by spring 2013 roughly 1,000 host nation linguists had been killed since the first tanks

[137] The Ryan exposé can be found in the history section entitled "The Deportees of Malta and the Armenian Allegations" (http://www.kultur.gov.tr/EN,32736/an-anti-turk-intriguer.html).

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rolled into Baghdad (The List, 2013).[138] In fact, Kelly and Zetzsche (2012) write that interpreters in Iraq were "ten times more likely to be killed than were U.S. troops" (p. 39). To cite one powerful example, in 21 days 21 interpreters working for the British military in Basra had been kidnapped and shot by insurgents, 17 of them in a "single mass killing" (Sands, 2006). Commenting on this particular case, an Iraqi police officer confirmed the systematic targeting: "'This is not a general threat against Iraqi security forces; interpreters are specifically being killed'" (as cited in Sands, 2006). A young linguist corroborated the extent of TTM, noting that he and his colleagues are now openly called traitors and spies (ibid). And a defense contractor chart tallying T/I casualties brings this reality graphically home with entries such as "Beheading," "Abduction," or "Death caused by multiple injuries sustained during torture" (Miller, 2009).[139]

Linguists working for the International Security Assistance Force (ISAF) in Afghanistan are equally marked—as one conflict zone linguist put it, "'I'm a dead man walking'" (Zavis & Baktash, 2013, p. 1). Aside from braving the usual dangers associated with war such as roadside bombs, ambushes, or sniper fire, they are high-priority targets for the Taliban. Threats against them are delivered in a variety of ways: Some T/Is are terrorized over the phone, others receive ominous "night letters" that are slipped beneath their doors under the cover of darkness warning them and their next of kin of their impending fate, and some suffer both. These threats are often

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[138] Accurate figures are hard to come by and will always be incomplete, in part because U.S. private employers are not mandated to publicly report employee/subcontractor fatalities, although they must notify the U.S. Department of Labor (Nordland, 2012). Reporting of interpreter deaths by the U.S. coalition in Iraq and ISAF forces in Afghanistan also varies greatly, and these figures are frequently subsumed under private contractor deaths. Moreover, interpreters who were killed after their assignments ended and/or after troop withdrawal most likely remain uncounted.

[139] T. Christian Miller, a reporter writing for *ProPublica*, managed to obtain L-3 documentation on interpreter casualties in Iraq. L-3 is a New York-headquartered defense contractor that has the unfortunate distinction of being "the biggest contractor in terms of war zone deaths" in Afghanistan and Iraq (Nordland, 2012, p. 2). According to Miller (2009), "[a]t least 360 interpreters employed by Titan [acquired by L-3 in 2005] or its successor company were killed between March 2003 and March 2008, and more than 1,200 were injured" (p. 1).

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carried out quickly and with utter brutality. A linguist who worked for the German troops had received such phone calls and was subsequently found strangled in Kunduz (Käppner, 2013); body parts of interpreters were shipped to a U.S. army base as a gruesome warning to other Afghan T/Is of things to come (Bhatti, 2013); six U.S.-military-affiliated T/Is, kidnapped while shopping for fruit, were discovered the next day on the outskirts of Kandahar, their bodies decapitated and each man's head placed on his chest with the tongue cut out (Amoore, 2010).[140] Unfortunately, these examples are but a few from a long list of such incidents.[141]

While linguists in war zones are generally in the crosshairs of insurgents, many TTM persecutions and prosecutions are at the hands of state actors. For instance, China recently sentenced an Uyghur translator to 11 years in prison for inciting Uyghur separatism by translating Chinese-language news that the state authorities saw as undermining their policies (Kurban, 2013); Thailand incarcerated a Thai-born U.S. citizen who was seeking medical treatment in his native country for translating and disseminating excerpts of an unauthorized biography of its king, acts that were considered a royal insult under its *lèse majesté* law (Smith, 2012)[142]; and Iran has the serial habit of tossing translators into prison for a variety of drummed-up reasons.[143]

But TTM is no longer just the hallmark of repressive regimes on distant shores—America has joined their ranks. In fact, in U.S. federal and military courts, the government has been launching heavy moral panic artillery in the guise of legal actions, which construe translation and interpreting work as spying and providing material support to terrorism. Aside from the case at

[140] There were eight T/Is but two escaped.

[141] Red T is building a database of such incidents.

[142] The Thai authorities pressured Yale University Press, the publishers of Paul M. Handley's *The King Never Smiles: A Biography of Thailand's Bhumibol Adulyadej*, to refrain from publishing the book and banned it in Thailand prior to its publication (Perlez, 2006). Joe Gordon, the translator, received a two-and-a-half-year prison sentence but was granted a royal pardon after pressure from U.S. officials (Smith, 2012).

[143] See, for instance, Open Letter to Ayatollah Sayyid Ali Khamenei on behalf of translator Mohammad Soleimani Nia (http://red-t.org/openletters.html).

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hand, the prosecution of Airman Ahmad Al-Halabi is a particularly outrageous example in this category, especially since it involved the death penalty. Al-Halabi, a naturalized U.S. citizen of Syrian descent, started serving in 2002 as a prison linguist at Guantánamo Bay, translating inmate mail into English and facilitating communication among detainees, guards, and medical personnel. Shortly thereafter, when he was set to leave for Syria for his wedding, he was arrested and charged with a total of 30 crimes, ranging from espionage and aiding the enemy[144] to improper handling of evidence[145] and having improper contact with prisoners[146] (U.S. Department of Defense, 2003, September 12). In the course of a year, most of which Al-Halabi spent in solitary confinement, the case unraveled and the government dropped all but four minor charges to which he pled guilty. One of those charges was taking pictures of the guard towers in violation of military rules; however, the military admitted that a number of (non-Middle Eastern) soldiers had been doing the same. Moreover, photos of the naval base towers were all over the Internet. Al-Halabi, however, was the only one singled out for a full-throttle espionage investigation ("Spy ring at Gitmo?", 2004). All this strongly suggests that TTM (coupled with Islamophobia) was a major, if not the key factor in the U.S. Defense Department's overreach,

[144] In the espionage charge, Al-Halabi was accused of sending emails to Syria, although the government's computer expert had determined within weeks that there was no evidence of any emailing whatsoever. With respect to aiding the enemy, this charge refers to Al-Halabi's storing 180 documents on his personal computer. He did so because the camp had a computer shortage and translators had been instructed by their command to use their personal laptops until more computers arrived ("Spy ring at Gitmo?", 2004).

[145] The irony is that some of the charges in fact should have been brought against the government. In his pretrial motions, Donald G. Rehkopf, Al-Halabi's defense lawyer, provided numerous examples of government misconduct, ranging from improperly handling evidence by failing to use gloves, to withholding exculpatory evidence in that the authorities were aware of translation errors—made by government linguists—that formed the basis for some of the espionage charges, to attempts to cover up sloppy investigatory and linguistic handiwork ("Military may be bungling," 2004).

[146] This charge referred to Al-Halabi's alleged distribution of pastries and radical literature to inmates. In terms of the baklava, the evidence showed that Al-Halabi was out of the country on a mission when they arrived at the base and that they had been consumed by fellow linguists prior to his return. The radical literature accusation turned out to be a mistake by government translators, who misinterpreted a common Islamic symbol ("Spy ring at Gitmo?", 2004).

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which set in motion the legal rollercoaster that took Al-Halabi from death penalty to dishonorable discharge.

In the Yousry case, TTM manifested itself less obviously. One among many contributing factors, it took the form of subtle threads that wound and wove through all the trial phases to form a tight blanket of distrust from which there was no escape. In the following, these various threads are described and analyzed.

Speaking and not speaking Arabic.

The defense table was a tableau of ethnic and linguistic differences where Yousry, an Arabic and English-speaking Arab man from Egypt, was seated next to Stewart, an English-speaking white woman from Brooklyn. This visual differentiation was reinforced at every opportunity by the government as well as by Stewart's defense. Tigar, for instance, employed the I-don't-speak-Arabic variety of TTM, which carried the implication that sinister things take place in Arabic. Thus, since Stewart "doesn't speak the language" (T. 2184), she certainly could not have participated in those sinister "things that happen in Arabic" (T. 2186).

> MR. TIGAR: The only time you will hear Lynne Stewart's voice on those calls is when she is talking to somebody else and, of course, if two other people are talking in Arabic and she doesn't speak the language, and most of that evidence is not going to be offered as to her anyway. (T. 2183–84)
> …
> MR. TIGAR: Some are going to be English language translations of things that happen in Arabic where Lynne Stewart was not present because she doesn't speak Arabic. (T. 2186)
> …
> MR. TIGAR: Very, very few words in this case on these recordings are Ms. Stewart's words. And, yet, under various rules of evidence the words of others, uttered sometimes in other languages are sometimes attributed to her.[147] (T. 6559)
> …
> MR. TIGAR: This is a case in which the calls are in a language Ms. Stewart doesn't speak. (T. 7190)
> …

[147] Tigar made this particular statement outside the jury's presence.

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MR. TIGAR: The overwhelming majority [of the 93,000-plus intercepts] are in a language that she does not speak, Arabic. (T. 11944)

In fact, Tigar emphasized the fact that Stewart neither spoke nor read Arabic so many times that it essentially became a refrain when he questioned her on the stand:

Q. Now, the word Rahman, spelled R-A-H-M-A-N, such as it is, that's an Arabic word that means God?
A. I assume so. I don't speak Arabic. (T. 7515)
…
Q. Do you speak Arabic?
A. No.
Q. Do you read Arabic?
A. I do not read Arabic. I know three or four words. I think, as anyone who is associated with a language, you pick up a word here or a word there. But, no, I don't speak it and I don't read it. (T. 7578)
…
Q. Now, you don't speak Arabic?
A. No. (T. 7696)

And to top it off, he sprinkled his summation with comments such as "[i]t is a statement in the Arabic language. We get it, therefore, through the filter of translators" (T. 11898), or, "I know you won't make the mistake of thinking just because the translation was in English that must mean that Lynne Stewart must possibly know what's in there because the original was in Arabic" (T. 11945), insinuating that the information cannot be trusted because it came through translators.

All such statements and answers to questions were innocent enough on the surface, and one couldn't really protest since they were factual. Tigar was a brilliant strategist and master of the English language, and he knew to tread carefully in fighting for his client, because the defense strategies for Stewart and Yousry were, in part, inextricably bound due to three identical charges. However, many of Stewart's responses ("I don't know what he [Yousry] is reading because I don't speak Arabic" (T. 7764), or, "I didn't know what they were talking about" [since I don't speak Arabic] (T. 7778)) revealed the intent to shift culpability to Yousry by repeating

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that she did not know Arabic. In that same vein, during Stewart's direct, Tigar picked at length through prison visit transcripts, constantly mentioning Yousry's name (see, for instance, T. 7764) and referring to Arabic. In one such instance, he started his question with "the transcript in evidence shows an Arabic conversation at page 50" (T. 7779) and ended it with "[t]hat was in Arabic?" (T. 7781) to which Stewart answered, "[y]es" (ibid).

During Stewart's resentencing hearing on July 15, 2010, a particularly disgraceful example of this distancing strategy came courtesy of Elizabeth M. Fink, a member of Stewart's legal team.[148] In an affidavit submitted to the Court, Fink squarely pointed a finger at Yousry as a mastermind of the conspiracy, not least because Stewart did not speak Arabic. But as it turned out, the content of this defense submission was so egregious that even the government could not stomach it and rallied to Yousry's defense during the hearing. In addressing the Court, Dember practically foamed at the mouth as he angrily expressed disgust with Stewart's attempt to rewrite history by accusing her linguist:

> MR. DEMBER: All of a sudden, despite what your Honor has sat through, a nine-month trial, [a] great deal of evidence, all of a sudden, according to [the] defense, now Mr. Yousry is one of the masterminds behind all these crimes.
>
> The evidence as the government saw it, and we believe your Honor saw it at the sentencing of Mr. Yousry, is that he was the least culpable of the three defendants.… But the arguments made on the defendant's behalf, essentially by the defendant, was, uh-oh, no, I'm just sort of an innocent bystander here, wasn't paying attention. It was Sattar and Yousry who were the masterminds. (*United States v. Stewart*, 2010, July 15, pp. 22–23)

In perhaps the most shameful incidence of TTM in this case, Stewart, when facing 10 more years in prison, had no qualms about throwing Yousry under the bus by making false claims and hiding under the I-don't-speak-Arabic mantle, as if not knowing Arabic makes you innocent.

[148] Fink is a civil rights and criminal attorney. A member of the National Lawyers Guild, she is best known for the 1974 Attica class action suit that was settled in 2000 (http://fkolaw.com).

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The government and government witnesses made their own share of intentional or unintentional Arabic-language innuendos, among them Morvillo's declaration that "[t]he crimes were committed to a large extent in a different language" (T. 2159), which automatically included Yousry. Or, when Stern asked Fitzgerald if he was familiar with the history and goals of the Islamic Group, Fitzgerald first responded, "[f]airly," but immediately added that "I'm not as familiar—I'm not speaking Arabic" (T. 2553), as if anyone with knowledge of the language is more informed about terrorist affairs.

The fact that Yousry served as a linguistic expert witness and testified about Arabic translations at Rahman's conspiracy trial was also used against him. Intending to make it appear that Yousry was close with Rahman and biased in his favor, the prosecution stripped any and all context from that particular assignment. Ruhnke, however, picked up on their effort to reduce his client's role to that of a witness in defense of a terrorist and filled in some details:

> MR. RUHNKE: It is one of the few things I can say that I agree with Mr. Morvillo that is absolutely true, that Mr. Yousry testified as a defense witness at the Sheikh's trial. There is more to the story than that sort of broad headline. He testified as an expert in Arabic. He testified for several defendants in the case in his role as an Arab interpreter on the meaning of various Arabic words and Arabic phrases. To draw the conclusion that he was a defense witness for the Sheikh, that may be technically accurate to say that's true, but it is about as accurate as saying that the person from the weather bureau comes in to say it was raining that day as a witness for the defense in a case in all but most the [sic] technical sense[.] (T. 2225)

To further counter the government's strategic minimization of Yousry's role, Ruhnke submitted a stipulation attesting to the fact that Yousry had been "called by Lynne Stewart and several of the other defense attorneys to testify regarding issues of translation and interpretation of the Arabic language" and that "Yousry's testimony at Abdel Rahman's trial was entirely in his role as a translator" (T. 9064), while Stern reiterated the issue during summation (T. 11572–73).

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Smuggling messages.

In the government's opening, Morvillo stated:

> MR. MORVILLO: Mr. Yousry was Abdel Rahman's translator. You will learn that Abdel Rahman speaks primarily Arabic. He is also blind. As a result of those two facts, and because of the prison restrictions, Yousry was one of the only people in the world who could communicate directly with Abdel Rahman. (T. 2125)

Aside from the fact that Yousry was not Rahman's translator but the T/I for Rahman's attorneys, an inaccuracy designed to group Yousry with Rahman, the message to the jury was that if Yousry had not provided the language link, Rahman would not have had access to the outside world and none of the alleged criminal activities would have taken place.[149] The government thus accorded Yousry strategic importance by implying that his translating/interpreting provided the linchpin in the conspiracy. To correspondingly enhance Yousry's position, Morvillo reversed the attorney-interpreter hierarchy by pronouncing, for instance, "Yousry was accompanied by a third Abdel Rahman attorney" (T. 2139).[150] As the evidence abundantly showed, Yousry played a subordinate role to all of Rahman's attorneys (T. 9077), and it was Stewart who decided to ignore the SAMs after consulting with the other lawyers. But while the government presented Yousry as a key player in their opening statement, after all the evidence was in, at trial's close they had to turn him into a minor figure, informing the jurors that a "single act," such as Yousry's translating and interpreting at attorney-inmate conferences, met the threshold for conspiring:

> MR. BARKOW: But, Mohammed [sic] Yousry doesn't have to have the job of being a front man to the media to be found guilty because Judge Koeltl will instruct you that a defendant's guilt is not measured by the extent of his or her participation. Some people

[149] This, of course, is a fallacy, as evidenced by the fake *fatwah*, which clearly demonstrated that no communication with Rahman was needed to disseminate statements written in Rahman's style.

[150] Not paying attention to nuances, Yousry's own defense lawyer was guilty of the same reversal by asking Yousry:

> Q. And when you made the prison visits, generally speaking, was it one, two, three, four attorneys who accompanied you? (T. 9083)

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> play major roles, other people play minor roles, co-conspirators don't have to play equal roles, and a single act can be sufficient to make a defendant guilty of a conspiracy. Mohammed [sic] Yousry knew his role and he played it. And without Mohammed [sic] Yousry, it never could have happened. (T. 12116)

The government thus masterfully reframed Yousry's work as a T/I at attorney-client meetings as the actions of a terrorist agent. Formulated differently, they construed translating and interpreting as smuggling messages. This was clearly reflected in the cloak-and-dagger lingo that pervaded the trial: the content of attorney-client conversations was referred to as "messages" (T. 8261; passim) or "terroristic messages" (T. 11110); Yousry's performing his T/I duties was seen as "smuggling messages" (T. 2155; passim), "pass[ing] messages" (T. 2141; passim), functioning as a "message pipeline" (T. 2136), and "carrying the messages back and forth (T. 12115); or the government claimed that the defendants "shuttled secret messages" (T. 2135).

Ironically, in an attempt to prove their "smuggling messages" theory, the government pointed to Yousry's failure to smuggle a message. Based on an incident that occurred during the February 2000 prison visit with Jabara in which Rahman refused to dictate a certain letter to Yousry in Jabara's presence, the government expediently took this to mean that Rahman did not trust Jabara with his terrorist directives. Specifically, when Jabara left the meeting room to get coffee, Rahman told Yousry that he did not wish to write anything with Jabara around. Yousry acknowledged Rahman's demand, but upon Jabara's return and as soon as Rahman went to the bathroom, Yousry informed Jabara what Rahman had said. As Ruhnke explained, there was a simple explanation for Rahman's decision:

> MR. RUHNKE: The truth is this. The Sheikh wanted to dictate a letter about the sale of certain property that he had. However, he had not paid Mr. Jabarra [sic] for several years and he realized that [if] he started dictating a letter and Mr. Jabarra [sic] speaks Arabic and Mr. Jabarra [sic] might very well say, Sheikh, by the way, as long as you're selling this house, why don't you start paying some of the attorneys['] bills.… (T. 2227)

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In the government's eyes, however, Rahman's decision not to dictate constituted an aborted attempt to smuggle a message. Tigar built on this "smuggling messages" theme in his direct of Stewart, during which he rehashed segments of an interview Stewart gave to Greta Van Susteren on the Fox News program *On the Record with Greta Van Susteren—Ties to Terror* about a month after the indictment. Unfortunately, Van Susteren's interpretation of the indictment was pure TTM:

> "Q. All right. Let's, let's talk about, I mean, it seems to me I have taken a look at the indictment. One—one of the charges against you, and correct me if I am wrong, is that the government claimed that you allowed information to be passed from your client, who is in a prison in Minnesota, Federal Prison, to be passed from him to an interpreter on to someplace in the Middle East. To Egypt, right?" (T. 8667)

According Stewart a passive role, Van Susteren's question implied that the communication pipeline basically bypassed Stewart and that she simply "allowed information to be passed" from Rahman to Yousry to the Middle East. Although Tigar knew that it was his client who had done the passing by issuing a press release, the interview provided too good an opportunity to implicate Yousry:

> Q. Do you remember being asked this question:
> "Q. Is there, is there any allegation that you distracted—distracted the guards or the correctional officers so the, so your client could have a conversation with the interpreter that's not part of this press release but which may have been, at least the government thinks, there is terrorism?
> "A. Well, that, I don't know what that is about. I mean, the guards were not in the room with us so it's hard to understand how did we distract them." (T. 8673–74)

In this exchange, Stewart made no effort to correct the journalist's perception that Yousry was having a conversation with Rahman to receive terrorism-related messages; her answer to Van Susteren only addressed the issue of distracting the guards. By reading this passage and others like it, Tigar sought to shift blame away from his client and remind the jury of the government's allegation that Yousry was smuggling messages to Sattar.

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As borne out by an intercepted conversation from Yousry's home phone that Ruhnke introduced into evidence, Yousry was unaware that he was part of a conspiracy to smuggle messages:

> Q. Mr. Yousry, in reviewing this call which took place on June 15, 2000, do you understand that you have been charged with being in an ongoing conspiracy with Mr. Sattar at that very moment?
> A.Yes, I do.
> Q. If you're in an ongoing conspiracy with Mr. Sattar, why are you trying to talk him out of it?
> A. I didn't know there was a conspiracy going on. I just wanted Sattar to stop what he's doing working on the case for the Sheikh; take time off, take care of his family and his kids.
> Q. If there was a conspiracy involving Mr. Sattar, how would that conversation help it?
> MS. BAKER: Objection.
> THE COURT: Overruled.
> A. It wouldn't help.
> Q. What if he took your advice and didn't work on the case for two years?
> MS. BAKER: Objection.
> THE COURT: Overruled.
> A. That's even better. I didn't know there was a conspiracy going on. (T. 9055–56)

As indicated in Chapter 6, "Evidence," throughout the years Yousry had ample opportunity to smuggle messages—whether during prison visits or during the many legal weekly prison calls.[151] In that regard, Ruhnke questioned him about a call from October 11, 2000, which had been supervised by Clark, except for the fact that Clark was about "90 percent" (T. 9340) not physically present in the room where the call took place:[152]

> Q. Mr. Yousry, during this entire 25- or 30-minute conversation, you and Mr. Rahman were conversing in—Sheikh Rahman were conversing in what language?
> THE COURT: I'm sorry. Keep your voice up.
> Q. You and Sheikh Rahman were conversing in what language?
> A. The Arabic language.
> Q. You were conversing in the Arabic language?

---

[151] Yousry testified that he participated in 350–400 legal weekly prison calls (T. 9086; T. 9605).
[152] Schilling left Yousry equally unattended. He admitted as much in his cross-examination by Morvillo:
Q. Let's just say that you never left Mr. Yousry alone during the telephone calls, right?
A. I would—I would walk out of the room occasionally, sure.
Q. So you did leave Mr. Yousry alone during the prison calls?
A. I wouldn't call it leaving him alone but, yes, if there was a need for it I would walk out. (T. 8906)

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A. Yes, we were.
Q. And during the conversation is there any point where Mr. Clark comes into the conversation that you can recall—
A. No.
Q. —and asked you to interpret?
A. No.
…
Q. And to your knowledge does Mr. Clark speak Arabic?
A. No, Mr. Clark does not speak Arabic.
Q. If you had wanted to pass messages to the Sheikh or receive secret messages from the Sheikh during that 25 minutes, was there any way Mr. Clark would have known what was going on?
MS. BAKER: Objection.
THE COURT: Sustained. (T. 9328–29)

Ruhnke methodically adduced a great deal of evidence to show that Yousry had not passed any terrorist messages. In fact, there was not a single instance in any of the legal weekly prison calls entered by the defense in which Yousry did, said, or read anything to Rahman that deviated from the protocol established by the lawyers.[153] The same applied to the visits. So, faced with proof that Yousry had done his job as T/I, the government took the position that he should have refused to do his job as T/I. Specifically, he should not have taken Rahman's dictation of a response to Taha's request for the cleric's position on the ceasefire and translated that response for Stewart (T. 11559). Incidentally, the response at issue here had been addressed to Rahman's attorney in Egypt, Al-Zayat; as such, it represented a communication between an inmate (Rahman) and two of his lawyers (Stewart and Al-Zayat) (T. 2197–98). Regardless of the ultimate recipient, however, whether speech is addressed to Satan incarnate or Santa Claus, a T/I is expected to translate that speech for the attorney, who then decides what to do with it.

In his summation, Stern pointed out the absurdity of the government's position:

MR. STERN: There was a letter which Sattar writes to the Sheikh in which he says: I'm in semiconstant contact with IG leaders. And you know what happens with that. Mohammed [sic] Yousry tells Lynne Stewart the contents of that letter. He says there are

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[153] Out of several hundred phone calls, the government recorded 63 conversations, with Yousry participating in 46. Ruhnke submitted all 46 transcripts into evidence (T. 9342–44).

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> things in here from IG leaders. Lynne says: Okay. Read it. And he does. That's his job, after all. Is this another place where the government says you must say no? You know, lawyers do all kinds of things and lawyers at the highest level do even more of all kinds of things. They negotiate to get people transferred from one country to another. Ramsey Clark told you: They get a treaty done sometimes in a week.
>
> Mohammed [sic] Yousry is not supposed to say: What do you intend to do with this? What is the legal function of this? Tell me now before I translate. If he does that, every visit will have to take a year. He says this is what it says, should I read it? Yes. I read it. Here is what the Sheikh says. (T. 11568–69)

Stern also illustrated, albeit confusingly, how expediently nuanced the government's position was. In their eyes, by simply adding the phrase "the Sheikh said," the words that followed became illegal to translate:

> MR. STERN: Now, the government is going to say, well, these other lawyers, Abdeen Jabara, Ramsey Clark, when they issued statements after affirmations and the SAMs were changed, their statements were about jail conditions and that wasn't forbidden, or about the Sheikh's condition, and that wasn't forbidden. But they weren't statements that the Sheikh said, and there is a distinction. There is no question about it. But is it a distinction that Mohammed [sic] Yousry, a nonlawyer, an interpreter, is obliged to make? Is he the one who is supposed to say, wait a minute, wait a minute, wait a minute, you're asking the Sheikh how he feels, but are you going to tell the press the Sheikh says this is how he feels, or are you going to say, he is not well?
>
> You're asking the Sheikh if he is allowed to go to prayers. But are you going to say to the press, the Sheikh says he is not allowed to go to prayers, or are you just going to say, he is not allowed to go to prayers? If it is the first thing, I told you, no, I can't do it. If it is the second, let me review the law as [it] applies to [the] SAMs and affirmations. I'll get back to you tomorrow to see if I can answer your question or not. I'll get back to you tomorrow to see if I will translate or not. It can't possibly happen that way. He is not a decision maker. He is not a line drawer. He is an interpreter. People say words to him and he relates them and then the lawyers make decisions, what's appropriate or inappropriate, not him. (T. 11564–65)

In sum, even if Yousry knew what the legal implications were, it was not his responsibility to apply that knowledge when performing his job. The government's construal thus criminalized the very job description of the T/I. And the jury, perhaps not fully foreseeing the implications of accepting this Kafkaesque framing, agreed that translating and interpreting equaled smuggling messages.

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Translation and interpreting issues.

In his opening, Ruhnke alerted the jury to the government's language of guilt. At issue was how Yousry addressed Rahman during the prison calls and visits. Wanting to portray him as one of Rahman's followers, the government linguists made Yousry sound as if he revered Rahman by translating "*afendm*" as "Your Eminence," when the word simply meant "Mr." or "Sir" (T. 2224).

Aside from producing intentionally slanted translations, the government took the position that context was of no relevance when the parties could not see eye to eye on the translation of a given passage. For instance, the prosecution objected to the defense's translation of the Arabic word *alqabiliyya*, i.e., predisposition, and what it referred to in a particular conversation, on the grounds that it was not translation but opinion. In his redirect of the defense's linguistic expert witness, Muhammad Muslih, a Columbia University Ph.D., Professor of Political Science, and Arabic linguist, Sattar's lawyer Paul rebutted the government's attempt:

> Q. At the top, the attribution to Mr. Sattar where he says he had the predisposition and the readiness to the, to the, to the point where I—I mean I felt that he was going to open up, you have testified that predisposition, the use of predisposition in this translation that you listened to, this conversation when Sattar was stating the redisposition [sic] and the readiness to, what was he referring to, sir?
> A. He was referring to the predisposition of someone to talk.
> Q. That someone who wished to talk he was trying to cut him off. Is that what you understood?
> A. Exactly.
> Q. And what did you base that on? How did you come to that conclusion that when Sattar is stating he had the predisposition and the readiness to talk, how did you come to that conclusion, that he wasn't talking about the predisposition to hit, for example?
> A. It is clear from the context of the discussion, the other party was trying to complain about the performance of two lawyers. One is called Ali Rida and one is called Montasir Al-Zayyat. And the other participant, not Sattar, the other one, was complaining, wanted to complain about the behavior of those two lawyers.
> MR. BARKOW: Objection, your Honor. This is not translation.
> THE COURT: Well, overruled. (T. 9985–86)

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Thus, in an attempt to tailor their narrative, the government wanted translations of words removed from their context, in essence suggesting that a translator could magically turn one Arabic word into one English word in a vacuum and that any other approach went beyond the purview of translation. When this tactic didn't work, Barkow recrossed Muslih and made it seem as if Muslih's translation had been the government's version all along:

> Q. Is it correct to say that what Mr. Sattar is saying there is that he is referring to another person and saying that that person was predisposed to say something and he cut him off? Is that accurate?
> A. Yes.
> MR. BARKOW: Nothing further, your Honor. (T. 9986)

As mind-numbing as such linguistic hairsplitting may have been to the jury, it further added to the notion that translations and translators could not be trusted. The Court's frequent instructions to the jury as to how to handle Arabic-to-English translations did not help matters either, especially since they constituted a large portion of the exhibits. For instance:

> THE COURT: In evaluating the translations, you should consider the credibility and the qualifications of the translator witnesses who testified to the accuracy of each of the transcripts because each of these translations is, in effect, the testimony of the translator witness as to what is on the recording and what the statements on the recording mean in English.
>
> To the extent that you accept or reject the testimony of those witnesses, you may accept or reject the transcripts themselves of the Arabic conversations. (T. 12285)

The Court's instructions essentially implied that jurors' instincts trump translations, that translations should be second-guessed, and that jurors should consider a translator's character in evaluating his abilities. This is problematic since a translator's credibility is reflected in his testimony, which in turn reflects his personality and the image he projects on the stand. Consider, though, that a translator with substandard translating ability can have a great personality and good character, and make an eminently credible witness; conversely, a translator with exceptional foreign-language and wordsmithing skills can have a lousy personality and second-

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rate character, and make a poor witness. Thus, to judge a translation by criteria other than linguistic quality can lead to erroneous assessments. Also, since the jurors were not in a position (nor was there time) to conduct such a linguistic evaluation, it is more likely that they intuitively put greater stock in the testimony of the government translations and translators. Moreover, since the latter are employees of the FBI, an agency instrumental in the war on terror whose primary function is to protect the public, the jurors may have felt the need to trust these linguists over their defense counterparts in order to feel safe and secure. Regardless of who produced a given translation, however, the Court's instruction implied that translated transcripts should not be trusted, thus catapulting them into TTM territory.

The large number of LIs issued by the Court throughout Yousry's direct examination only added to the default distrust surrounding T/Is. Jurors were constantly reminded that evidence "is not admitted for the truth of any of its contents" and that "Yousry's statements are admitted only as evidence of his knowledge, intent or state of mind" (see, for instance, T. 9021), thus sowing further doubt in the jurors' minds about the truthfulness of his statements and recollections.

The jury may also have trusted the government's linguists more based on title hierarchies. FBI linguists were not simply called translators but had important-sounding titles conveying authority beyond mere translating, as evidenced during Dember's direct of Amira Soliman:

> Q. And do you have a specific title?
> A. Language specialist.
> Q. Why don't you just speak into the microphone.
> A. Language analyst. (T. 5136)

Tigar cross-examined Soliman with respect to the translation of a videotape (GX 370T) in which another government linguist translated the SAMs to Rahman. In this context, Soliman

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assertively offered up a legal conclusion, giving the impression that T/Is are supposed to know intricacies of law:

> Q. Now, is that an accurate translation, in your opinion, of the English?
> A. Let me read it, okay?
> Q. Of course. Please, take your time.
> A. No, not accurate, but he—in the ballpark, he hit.
> Q. I'm sorry, did you finish your answer?
> A. Yeah.
> Q. The translator says, The possibility in doing some violent things, and the English is, You may solicit violent acts, correct?
> A. Correct.
> Q. So the translator missed that idea about solicit, correct?
> A. Correct.
> Q. And in Arabic as well as in English, it is possible to express the idea that there's a difference between doing something and asking someone else to do it, correct?
> A. I think when you solicit someone to do something [it] is as bad as doing it.
> Q. That would be a legal conclusion. I was asking you the question whether if you—if there's a difference between expressing the idea in Arabic, of the difference between asking somebody to do something and doing something.
> A. There is a difference, yes. (T. 5169–70)

Ignoring the fact that the government was providing inmates with "ballpark" translations of important legal instruments (T. 5169), the government linguist implied that translators should draw legal conclusions. This idea was further strengthened by the Court's ruling that allowed Soliman's answer to stand despite objections by the government (T. 5172). Another unfortunate occurrence during this cross was the potential confusion of Yousry with the prison linguist responsible for the translation of the SAMs. While Tigar crossed Soliman extensively on the inferior quality of the SAMs translation, neither ever referred to the (government's) prison linguist by name or identified him otherwise, leading the jury to think that it may have been Yousry. In fact, Ruhnke had to recross the witness to clarify and prevent a mix-up (T. 5180).

In terms of harming Yousry, though, Tigar's cross of Banout was in a league of its own. Without being explicit so as not to upset Yousry and his lawyers, Tigar pointed out the possibility that the FBI translator could have misheard and confused Stewart with Yousry when

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translating recorded conversations due to the similarity of the Arabic word for "lawyer," i.e., "*muhamiya*," and Yousry's first name:

> Q. Now, we've got this word which is in the masculine gender, right?
> A. Yes.
> Q. And what is the feminine gender of that?
> A. *Muhamiya*.
> Q. Would you spell that for the court reporter, please?
> A. Yes, it's *M-u-h-a-m-i-y-a*. Sometimes you can say "yh", *Muhamiyh*. *Muhamiya*.
> Q. Now, looking at these two transliterations, the difference is that the female letter has the "ya" at the end?
> A. Exactly.
> Q. And so that if you were listening to someone and the last syllable dropped out or became unintelligible, a person listening would not know whether it was a male lawyer or a female lawyer being referred to, correct?
> A. But how can the last syllable be dropped?
> Q. Pardon?
> A. How can it be dropped?
> Q. If it was unintelligible, if a syllable was unintelligible, if the "ya" syllable [w]as [sic] unintelligible, there could be a similarity between the first word you gave me and the second word you gave me, correct?
> A. Correct.
> Q. And there are other Arabic words that have the "muha", the first part, correct?
> A. Yes.
> Q. The name Muhammed, correct?
> A. Yes. (T. 4507–08)

While the above exchange was a rather overt attempt by Tigar to shift agency from his client to Yousry, other efforts were less obvious. For instance, Rahman's attorneys had tasked Yousry with buying Arabic-language newspapers to be read to their client. Routinely, Yousry then translated news items to the lawyers so that they could screen what was appropriate for reading. Once they made their selections, Yousry subsequently wrote "approved" on top and proceeded to read these to Rahman. Tigar, however, presented this procedure as follows:

> Mr. TIGAR: And then if there was a question could I [Yousry] read this to the client? Could I transmit this on behalf of the client? He would make a note as to whether the lawyers approved it or not. And often times they didn't. They said, no, you can't do that. (T. 2185)

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Of course, “no, you can’t do that” made it sound as if Yousry wanted to read illicit material that the lawyers then rejected.

Tools of the trade likewise were imbued with new uses. For the defense, Yousry’s notebooks, i.e., his consecutive interpreting notes from prison calls and visits, were records of calls and meetings in his capacity as a T/I (T. 2218), whereas the government repurposed them as conspiratorial aids. For instance:

> MR. MORVILLO: Your Honor, the 2415–6 are handwritten notes in Arabic and English taken by Mr. Yousry during the March 1999 prison visit, at least that’s what it appears to be, and would be offered as statements of coconspirators in furtherance of the conspiracy charged in Count 1. And, therefore, they would be admissible against all of the defendants. (T. 6824)

Even the fact that the notebooks were falling apart, with some of the notes on loose pieces of paper and the whole held together by a rubber band, was seen as a deliberate conspiratorial act according to the government’s summation:

> MR. DEMBER: Now, what’s interesting is Mr. Yousry has this famous notebook he keeps, or notebooks he keeps of the visits and the legal calls that he helps translate for the attorneys. Well, when it came to the message for, the message in response to Taha’s message that Abdel Rahman dictated, he didn’t put it in his notebook. He didn’t put it in his notebook. He put it on a separate piece of paper. Why did he do that? For obvious reason. It is a highlighted item. It is a prohibited item. He certainly doesn’t want to holding [sic] on to it at any point in time and be caught with it. (T. 11253)

Dember’s interpretation was disingenuous and pure fiction; nevertheless, consecutive note-taking, and how you organize those notes, just had become an indictable offense. The convoluted nature of the case also left room for the prosecution to make contradictory statements at the same time. In his rebuttal argument, Barkow argued that the jury should not take Yousry’s notebooks as a verbatim account:

> MR. BARKOW: Mohammed [sic] Yousry has more than just a pen and notebook. He has his ears and he has his brain and he and Lynne Stewart bring out the bad stuff with the withdrawal of the support of the ceasefire in their heads, not in his notebook. (T. 12203)

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So while Dember was complaining that the most incriminating evidence relating to the ceasefire was on a loose sheet of paper, Barkow argued that the really "bad stuff" did not get written down.

Distrust everywhere.

Characteristic of TTM, Yousry in his capacity as a T/I encountered distrust from all sides—whether from Rahman himself, from the government, or from the defense. Rahman, for instance, distrusted him because he was not sufficiently Muslim and, as a result, by late 1996 no longer wanted Yousry to work on his case (M. Yousry, personal communication, n.d.). In mid-1997, however, Clark approached Yousry and asked him "to please resume serving as an interpreter on the Sheikh's case on an as-needed basis" (T. 2211).

The government's distrust came in many shapes and forms, and the language of the SAMs affirmation for attorneys was no exception. During his direct examination, Morvillo asked Fitzgerald to read aloud what Stewart had to sign:

> Paragraph 2: I also understand that during any visits to inmate Abdel Rahman at any prison facilities, I shall again employ only cleared translators/interpreters and shall not leave such translator/interpreter alone with inmate Abdel Rahman. (T. 2340)

Aside from the fact that the phrase that attorneys "shall not leave such translator/ interpreter alone with inmate Rahman" is rather illogical, since a T/I could say anything he wanted to the inmate in the foreign tongue in the presence of the attorney (as Ruhnke attempted to elicit during Yousry's direct), the passage plainly conveys that the linguist must be viewed with suspicion. This is ironic in the situation at hand, considering it was the attorney, i.e., Stewart, who could not be trusted to follow the rules. In fact, all the attorneys on Rahman's legal team broke the rules, whether by talking to the press, leaving Yousry unsupervised, or, in

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Jabara's case, occasionally falling asleep (T. 9411). However, the prosecutors, with much help from Tigar, did their best to paint Yousry as untrustworthy and a rule-breaker.

Among the many witnesses the government put on was Cynthia McGrath, a special agent with the foreign counter-intelligence and counter-terrorism squad at the FBI's Minneapolis field division. Together with a colleague, McGrath had been assigned to record the prison visits with Rahman. Morvillo questioned her in excruciating detail as to the monitoring procedure to establish, inter alia, that procedures were properly followed. This lengthy and tedious direct examination, however, created the impression that translators must be monitored at all times. Her cross by Stewart's defense only added to the unfortunate impression:

> Q. Now, in addition to that, you observed what Mr. Yousry was doing during the morning hours, correct?
> A. Yes.
> Q. And you saw that he was reading to the client, to Sheikh Abdel Rahman, from Arab newspapers, correct?
> A. That is what it appeared to be, yes, sir.
> Q. And you made a note of that fact, correct?
> A. Yes.
> Q. And during how much of the time that the reading was going on were you listening to it to be able to form that conclusion?
> A. We weren't listening to it, sir. We were watching it on the monitor.
> Q. Well, if you are watching it on the monitor what led you to the conclusion they were Arab newspapers?
> A. Because we could see the print.
> Q. And it didn't look like English letters, right?
> A. Right.
> Q. You don't speak Arabic, do you?
> A. No, sir.
> …
> Q. Was it a part of your job there to listen to what was going on and make observations in addition to doing the taping?
> A. We felt that the New York office needed to know what was going on; that newspapers were being read in violation of the special agreement or rules. That is why we put those observations down.
> Q. Your conclusion was there was a violation of the rules, right?
> A. The rules said you cannot read a newspaper. (T. 3913–15)

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Listening to Tigar's cross-examination of McGrath's observations during the February 2000 prison visit, jurors would necessarily conclude that Yousry had violated the rules. However, as Ruhnke demonstrated through a government wiretap and respective transcript later in the trial, when the lawyers informed Yousry of the rule change—that the reading of foreign, i.e., Arabic-language, newspapers was no longer permitted—he immediately stopped (T. 9187–93). The evidence also established that Yousry had not been told of the change until on or about August 28, 2000 (T. 9193), which date would make sense, since by all indications the government changed the rule after Stewart issued the press release in June of 2000. Notwithstanding this curious timeline, Tigar's cross of McGrath and the latter's statements made it appear that Yousry had read forbidden newspapers to Rahman during the February 2000 prison visit, even though he had not been apprised of any change until the end of August.

Tigar and Stewart were a skilled duo at stoking distrust of Yousry's character as well as his performance as a T/I. Throughout Stewart's direct examination, Tigar prompted her to verify that Yousry had provided her certain information, for instance, inquiring, "Now, do you remember this as being what Mr. Yousry conveyed to you in substance about this newspaper article, this Arabic newspaper article?" (T. 7824). And when Tigar elicited his client's opinion on how, before she learned that the October 2000 *fatwah* was fake, she thought Rahman managed to get it out of prison, she blatantly pointed the finger at Yousry in classic TTM fashion by exclaiming that "[p]eople who are incarcerated are sometimes able to gain a friendly ear that will sometimes do things for them that, I guess, are not strictly within the rules, a guard, a medical worker, perhaps a translator in this case (T. 7895).[154]

In his cross of Stewart, Dember similarly attempted to inject TTM:

[154] Even after this manipulative blame-laying on Stewart's part, Yousry remained unable to fathom that Stewart and her defense did not have his best interest at heart and steadfastly believed in her loyalty (M. Yousry, personal communication, October 28, 2004).

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Q. So he was essentially part of you because without him there was no communication, is that right?
A. I don't know about the part of, but he was acting at my request and behest and he was an extension of what we considered to be the legal team. Yes.
Q. Did you consider him part of the legal team?
A. Yes; as interpreter.
Q. From your conversation with Mr. Yousry, do you believe he thought himself as part of the legal team (objected to and sustained). (T. 8052)

Ever so subtly, Dember tried to fuse Yousry with Stewart to make him equally responsible for her actions, followed by the opposite, namely, attempting to distance Yousry from Stewart and the legal team to imply that Yousry may have engaged in activities that were not sanctioned by the lawyers. Stewart, for her part, added fuel to the fire by painting Yousry's interpreting work as separate from her involvement as attorney:

Q. Now, was it the second day [of the May 2000 prison] that Abdel Rahman responded to both of those letters?
A. Yes.
Q. Did you participate in any way when Abdel Rahman was giving his response to Mr. Yousry to those letters?
A. No, I don't think so. I—that was pretty much—I was completely doing something else.
Q. Now, during the first day I think you told us last week you handed Mr. Sattar's letter to Mr. Yousry so he could read that to Abdel Rahman the first day, is that right?
A. Yes.
Q. And when he was doing that on the first day, did you participate in any way in that conversation of Mr. Yousry reading to Mr. Sattar [sic: Rahman]?
A. I don't really recall.
Q. Obviously that was all done in Arabic, correct?
A. All done in Arabic, yes.
Q. Same thing with Mr. Ahmed's letter and his wife's letter, all done in Arabic?
A. Except as you mentioned a few moments ago, I did say you [Rahman] should think about this because you will respond to it tomorrow, or something like that.
Q. But in terms of the substance of what was in Mr. Sattar's letter, did you engage in a conversation with your client and Mr. Yousry as to the substance of the correspondence when Mr. Yousry was reading it to Abdel Rahman?
A. Not that I recall.
Q. Now the next day you, Mr. Abdel Rahman responded to Mr. Sattar's letter, is that right?
A. That's correct.
Q. And did you participate in any of that part of the conversation when Abdel Rahman was responding to that letter?

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> A. I do not recall participating in that part of the correspondence between Mr. Yousry and the Sheikh.
> Q. Do you remember at any point during that two-day visit engaging your client, Abdel Rahman, through Mr. Yousry, in any conversation about Mr. Sattar's letter and in [the] substance of the letter? I'm sorry.
> A. I don't recall doing it. May be there but at this moment I don't recall having any discussion. (T. 8270–72)

Stewart's lack of recall and shifting of agency to Yousry was astounding. She knew fully well that reading letters to Rahman and taking down his responses were part of her legal instruction to Yousry and in line with the working protocol the lawyers had established. But because chunks of conversation were in Arabic and she did not "participate," she and Dember made it sound as if Yousry was operating independently and conspiring with Rahman.[155]

Barkow, for his part, had become an expert in interpreter conduct. Mocking Stewart's and Yousry's concern that the guards might have been listening to privileged attorney-client conversations, he threw in spy lingo when describing Yousry's response:

> MR. BARKOW: And Lynne Stewart says: "I wonder if she [the guard] can hear anything from outside." And Yousry says: "Not outside. But you hear everything when you're in the bathroom. You hear everything. And Lynne Stewart says: "We will have to keep an eye of [sic] who is in there. Well, is there a recorder in there?"
> Mohammed [sic] Yousry says: ["]No. I am sure of it.["] Typical interpreter behavior. Sweeping the bathroom for bugs. (T. 12107)

As an Arab-American linguist working in the terrorism arena after 9/11, Yousry was simply in a no-win situation. This was particularly evident when he testified that one or two days after the World Trade Center attacks, FBI Special Agent Kimberly Whittle and Detective Louis Napoli of the New York Police Department[156] had approached him and demanded that he keep them updated about Rahman's calls (T. 9088). Declining their offer of money, Yousry complied

[155] Angelelli and Osman (2007; see also Osman and Angelelli 2011) conducted discourse analyses based on selected FBI-translated transcript segments to explore the extent of Yousry's role as co-participant in attorney-client conferences.

[156] Detective Napoli had been deputized as a federal agent and worked for the FBI (T. 2896).

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with their request for patriotic reasons or, as he put it, because "[o]ur country was attacked" (T 9089). In this context, Ruhnke asked him about his state of mind:

> Q. Did you believe that you were doing anything improper, in your own state of mind at that time; that there was anything improper going on with those telephone calls?
> A. I was confident that the lawyers were not doing anything wrong, I was not doing anything wrong. There was nothing wrong going on. Everything was above board. I was just glad to help, to put this matter to rest. (T. 9113)

Nevertheless, he had misgivings:

> Q. How did you react to the agent[s] showing up on that particular day? What was your reaction?
> MS. BAKER: Objection.
> THE COURT: Overruled.
> THE WITNESS: I basically, in the beginning, did not trust them as much. I was somehow very concerned about the climate in the country at the time.
> Q. Let me stop you there for a second. When you say you were very concerned about the climate of the country at the time, what do you mean?
> A. Well, I'm an Arab American who works for lawyers that are representing a major figure in the Islamic movement that was just accused of blowing up the World Trade Center. So, it was a time that I was extremely concerned, yes. (T. 9901)

His concern was justified. In the ultimate betrayal, Baker used the FBI's interviews with Yousry against him. By nit-picking through issue after issue, she did her best to show that he may not have been fully forthcoming or accurate in some of the details he told the FBI (T. 9863–75). On redirect, Ruhnke stemmed some of this brutally unfair damage:

> Q. How clear is your recollection of the first interview you had with Agent Whittle and Detective Napoli?
> A. Not clear. I have to read all the notes in order to remember what happened that day.
> Q. Was it your intent to be cooperative or was it your intent to be deceptive?
> A. No, my intent was to tell them everything that I remembered at [sic] that day.
> Q. And in retrospect, did you remember everything that they asked about?
> A. No. And I believe I called them back and I said I remember a few other things and I updated them about what I remember, yes (T. 9901–02)

Being ambushed by FBI agents two days after 9/11 would rattle anyone of Arab origin. Recalling every detail of conversations that, in some cases, took place a year prior would be difficult if not impossible under such circumstances. Moreover, the agents did not record the

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interviews but simply took notes and then wrote up summaries later—a method not exactly free from errors and bias (T. 9895). Consider, for instance, that Whittle, Yousry's case agent, had indicated the wrong address for Yousry's search warrant, requiring the search team leader who executed the warrant to send a team member back to the judge to obtain a corrected warrant (T. 6419–20). Despite everything, Ruhnke's redirect showed that Yousry had been candid with the government, a fact that was corroborated by its own surveillance.[157]

The FBI episode is complex and messy, born of a war-like, fear-laden time. In terms of TTM, though, it crystallized that the government uses a heavy hand to compel linguists to serve as their watchdogs. And then, when they do, they get sold down the river.

Overall, the government presented T/Is as all-around suspicious figures whose degree of separation from their terrorist clients was zero to zilch.[158] In fact, Dember, in his summation, turned Yousry into Rahman's proxy. Dramatically describing what happened in the context of the fake *fatwah*, he made it seem as if Yousry had crossed the line from merely translating Rahman's wishes to being a Rahman follower who will tell the lawyers what to do:

> MR. DEMBER: And then Abdel Rahman says to Yousry that he is directing Yousry to tell the lawyers not to negate the *fatwah* or what's written in this article, that he had issued a *fatwah*. Not to negate it. Abdel Rahman, having heard Yousry read the article to him, obviously likes what he hears. Killing of Jews everywhere, that's a good thing for Abdel Rahman. And so he's telling Yousry directly, the lawyers, Clark, Jabara, Stewart, don't let them say to the media or anybody else that Abdel Rahman didn't issue this *fatwah*.
>
> He's essentially—not essentially, he's adopting it. He likes it. Kill Jews everywhere. That's something Abdel Rahman likes. That's what he favors. He likes it. Not only does he like the message, he likes the fact that it's published and his name is on it. And he says to Yousry, make sure nobody negates it. (T. 11359–60)

And so it went, on and on. In spite of evidence to the contrary—after all, almost every interaction had been recorded—the government (with the help of Stewart's defense) craftily

[157] The telephonic interceptions of the prison calls started June 23, 2000 (T. 9030), the recording of the visits February 19, 2000.

[158] As indicated earlier, Rahman was not Yousry's client; Yousry had been hired by Rahman's lawyers.

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strung together pieces of information that, by the end of trial, formed a powerful TTM chain of distrust. Nothing was safe, anything and everything was twisted to fit the narrative: Yousry's mother tongue became an unfortunate handicap invoking 9/11; translating and interpreting turned into smuggling messages; tasks assigned by lawyers and executed in good faith were recast as sinister conspiratorial acts; cultural honorifics morphed into reverent followership; and non-action was presented as terrorist machination. All combined, it created a perfect TTM storm, which, at times, was reinforced by Islamophobia, an extralegal factor common in settings involving Middle Eastern languages.

Islamophobia

The term Islamophobia was coined in 1991 by the Runnymede Trust, a U.K. think tank on race equality, which defined it as "unfounded hostility towards Islam" and described the various "practical consequences of such hostility … against Muslim individuals and communities" (Conway, 1997, p. 4). According to the Runnymede Commission report, this hostility may take the form of discrimination, exclusion, prejudice, or violence. Offering a U.S.-focused perspective, Gottschalk and Greenberg (2008) perceive Islamophobia as an "anxiety of Islam" and more expansively identify it as "a *social* anxiety toward Islam and Muslim cultures that is largely unexamined by, yet deeply ingrained in, Americans" (p. 5; emphasis in original).[159] In the context of the Yousry trial, both definitions are useful in assessing the phenomenon based on the source. Thus, when practiced by the American government, Islamophobia is an exclusionary tool that cynically exploits the West's generalized distrust of all

[159] The poll data reveal that Americans are very unfamiliar with the "basic elements of Islam" but exhibit a "growing anxiety about Islam's (especially Islamic fundamentalism's) compatibility with Western values of tolerance, acceptance, and civility" (Panagopoulos, 2006, p. 608).

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things Muslim. When engaged in by the general public, such as the members of a jury, it is rooted in the above-described social anxiety.

In the United States, Islamophobia was promoted from the presidential pulpit soon after the planes hit the towers. Proselytizing a good-versus-evil morality, Bush set the example for the American public to engage in “grouping” (Apfelbaum, 1979, p. 197), a process in which a collectivity is labeled with the same identifying features (in this case, “terrorist”) and each individual risks being marked or branded accordingly and “stripped of the surplus meaning” (ibid) he or she may have attained over time. By all indications, this world view worked. As reflected in the surveys and UCR statistics in Chapter 4, “Theoretical Framework,” the “social anxiety” increased substantially, at times even escalating into hate crimes. Fundamentally, it expressed itself in “lingering resentment and reservations about Arab and Muslim Americans and Islam” (Panagopoulos, 2006, p. 608) and tenacious stereotyping. For instance, when Americans were asked what associations they had with the words *Islam* or *Muslim*, most respondents gave “an almost routine set of answers” (Gottschalk & Greenberg, 2008, p. 3), with names, events, and practices that tended to connote violence, such as Osama bin Laden, 9/11, and jihad.

As will be shown below, the prosecution engaged in a great deal of grouping, and the jury, confronted with an Arab Muslim man, followed their lead. Ignoring the evidence of his innocence, including the government’s concession during summation that their case was factually weak (T. 12074), the jurors emptied Yousry of all redeeming qualities and labeled him a terrorist aider and abettor.

The prosecution blurred the lines between Islam and terrorism at every turn—whether during their opening statement, direct and cross-examinations, or summation. Some of this blurring was subtle. For instance, when discussing the IG and its leaders, members, etc.,

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Morvillo told the jury: "You will learn that by 1997 many of the Islamic members and leaders were in jail in Egypt" (T. 2132). By calling them *Islamic members* and not *Islamic Group members*, the prosecutor shrewdly conflated an adherent of the religion of Islam with a member of a terrorist organization. Sometimes the connection was more direct, as when, a few moments later, Morvillo compounded this conflation by citing Osama bin Laden's 1998 *fatwah* that called on "every Muslim who believes in God and desires to be rewarded to follow God's order to kill Americans and plunder their wealth wherever and whenever they find it" (T. 2135; internal quotes omitted).Relying on the Islamophobic assumption that the word *fatwah* will always conjure up violence in the mind of Americans,[160] *fatwahs* cropped up everywhere in the prosecution's case. For instance, when cross-examining Sattar, Morvillo brought up a *fatwah*, the issuance of which was not only in dispute[161] but the content of which bore no relation to the case:

> Q. When Sheikh Abdel Rahman was in Egypt prior to coming to the United States, you are aware, your understanding is that he issued a *fatwah*, calling for the assassination of Anwar Sadat, right?
> MR. TIGAR: Objection, your Honor.
> THE COURT: I'll sustain that.
> BY MR. MORVILLO:
> Q. It is your understanding that Sheikh Abdel Rahman issued a *fatwah*, calling for the assassination of President Anwar Sadat?
> A. No.
> Q. That is not your understanding?
> A. No, that is not my understanding. My understanding was—
> MR. TIGAR: I object your Honor.
> THE COURT: Sustained.
> BY MR. MORVILLO:
> Q. It is your understanding that Sheikh Abdel Rahman approved the assassination of Anwar Sadat?
> MR. TIGAR: Objection, your Honor.
> THE COURT: All right, sustained. (T. 10431)

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[160] Contrary to the widespread limited understanding that it is a death sentence dealt to some individual or group, a *fatwah* is by definition "an Islamic legal pronouncement, issued by an expert in religious law (*mufti*), pertaining to a specific issue, usually at the request of an individual or judge to resolve an issue where Islamic jurisprudence (*fiqh*) is unclear" (Kabbani, M. H., n.d.). In other words, Osama bin Laden does not have the credentials to issue *fatwahs*.

[161] In 1981, Rahman had been charged with conspiracy to murder Sadat. After three years in prison, he was acquitted but expelled from Egypt (Tucker & Roberts, 2008).

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After three sustained objections, Morvillo finally gave up trying to introduce the Sadat assassination and started on another line of questioning. To further convey some of this relentlessness and the resulting terror-laden, Islamophobic atmosphere, it is worth reviewing what jurors heard, on October 5, 2004, a crisp, slightly breezy fall day. The content is representative of the fare offered on many days over the length of the trial.

The government slowly read to the jury a variety of documents seized during the search of Yousry's house. Among them was the translation of a lengthy Arabic-language newspaper article from July 6, 1995, headlined "The secrets of the conspiracy and the gang of Sudan. Five terrorists incubated by Sudan" (T. 6829). It involved the *Returnees from Afghanistan*, a case in which various individuals had been accused by the Mubarak regime of terrorist activities, tried in absentia before an Egyptian military court, and sentenced to death in 1992. Selecting this particular article from Yousry's extensive trove of newspaper research was no coincidence, as it was riddled with militant references ranging from assassination conspiracies to the handover of a bag with weapons, ammunition, and explosives to talk of secret ink. The article, which appeared to include excerpts from the Egyptian court's indictment/case file, brimmed with words and phrases such as *accused* (31 mentions), *admission and admitted* (19), *Mohammed* (18), *sentenced to death* (7), *assassination* (5), etc. The jury was thus bombarded with violent extremism in Egypt from the early nineties and before, none of which had anything to do with Yousry except that it was part of his doctoral research on extremist social movements in the Middle East and had been seized from his residence. One can only hypothesize about the associations the jurors made when hearing the name *Mohammed* mentioned over and over in connection with the terrorist lingo permeating the courtroom. Also noteworthy is that an article such as this lent itself nicely to the FBI's translation technique, which often uses the language of

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guilt; thus, instead of using the standard legal term *defendant*, as is customary when translating indictments, the FBI linguist chose the more aggressive *accused*. So, one of many sentences read:

> The accused Khilaf Mahmoud Abdel Samie admitted during interrogation that the accused Mustafa Hamza stated that the reason for the return of [Khilaf] Sha'ban Rajab and Mohammad Saad Mohammad Abdu to Egypt was to carry out the assassinations of public figures, such as the Minister of the Interior, the Minister of Information, the Governor of Souhaj, and the Governor of Daqahleya. (T. 6831–32)

While this kind of word choice may not stand out in an isolated sentence, in the aggregate, such selections make the text resemble more a bombing manifesto than a court document.

After this reading, Morvillo proceeded to another article (GX 2406-1, dated July 4, no year) from Yousry's archive that referred to the IG's taking responsibility for an assassination attempt on Mubarak when he visited Ethiopia. It also discussed the IG's operational radius and the associated bloodshed, namely, that

> the Islamic Group has been active inside Egypt battling police and security forces largely in [the] southern provinces of Asyut and Minya since 1992. Its attacks and the reactions of the Egyptian security forces have resulted in more than 790 deaths. Its victims included policemen, militants[,] intellectuals, Coptic Christians and tourists. (T. 6838)

So while it is clear from this passage that the IG operated primarily in Egypt, the reading of the article spilled internal Egyptian politics into a Manhattan courtroom and tied Yousry, a longtime American citizen, to bloody conflicts in Egypt whose victims, among others, were Christians and tourists, two categories to which jurors could relate.

Subsequently, the government published to the jury GX 2415-3, an interview with IG leader Tala't Fouad Qassem (T. 6839–62). Again animatedly reading the text, the prosecutor took the courtroom on an almost hour-long terrorist journey through the Middle East, covering the history of the IG, Qassem's role, his stance toward the United States (which Qassem

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considers his main enemy), and his rationale as to why tourism in Egypt must be destroyed. Among the figures, political groups, and incidents mentioned were the assassination of Egyptian president Anwar Al-Sadat, Sayyid Qutb,[162] the Muslim Brotherhood,[163] Ayman al-Zawahiri, and Osama bin Laden. While the prosecutor indicated that there was a handwritten note that said "[P]olitical Islam, essays from Middle East Report 27. What Does the *Gama'a Islamiyya* want? Tala'at Fouad Qassem interview with Hisham Mubarak edited by Joel Beinin and Joe Stork, 1997" (T. 6839), through oversight or strategic omission, he did not mention that the interview was copied from a widely distributed scholarly book entitled *Political Islam*,[164] which is commonly assigned to students in college classes. Rather, the government's dramatic reading implied that Yousry was not only in possession of a rabid terrorist polemic, but that this polemic surely had fueled his conspiratorial mind. The fact that the government's performance was accompanied by a limiting instruction in which the Court directed the jury that this exhibit be received "with respect to the knowledge, intent and state of mind of Mr. Yousry" (T. 6839) only confirmed and amplified the implication.

Also that same day, the prosecution admitted against Sattar an interview dated July 16, 1999, with Sheikh Mustafa Al-Muqri', an upper-echelon IG member who wrote a book laying out the rules for when it is justified under Islamic law to kill civilians (T. 6905–35). Treating the jury to a Q&A on who has legal immunity (among them "[w]omen, children, the elderly,

[162] Sayyid Qutb was a leader of the fundamentalist Muslim Brotherhood in Egypt. After the 1953 overthrow of the monarchy, he was considered for a government position but subsequently charged with attempting to topple the government and hanged in 1966. His lasting fame came mainly from his prison writings such as *In the Shade of the Qur'an* and *Milestones,* which provided the theoretical basis for today's radical Islamic groups (Berman, 2003).

[163] The Muslim Brotherhood, founded by Hassan Al-Bannah in 1928 in Egypt, is a religio-political nationalist movement that is committed to the Islamic fundamentalist cause ("Muslim Brotherhood," 2013).

[164] Edited by Joel Beinin, a professor of history at Stanford University, and Joe Stork, deputy director of the Middle East and Africa division of Human Rights Watch, the book is a collection of scholarly articles by leading experts on various Islamic political movements/ideologies as well as interviews with leaders and spokesmen of such movements (Beinin & Stork, 1997).

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helpless labors [sic], monks living in cells and monasteries, farmers preoccupied with their farming, workers not involved in acts of killing, slaves, servants and attendants" (T. 6915; internal quotes omitted)) and who it is lawful to kill, the prosecution served up an earful of Islamic jurisprudence as seen through the eyes of a militant. And just when the jurors learned the difference, the judge broke for the day and sent them home to ponder their newfound knowledge.

Thus, the courtroom was contaminated by the free—albeit extremist—speech of others, much of it culled from Rahman's conspiracy trial (*United States v. Rahman*, 1993). As Tigar bitterly complained: "They put on the prosecutor [from the Rahman trial, i.e., Fitzgerald] who left no doubt as to what he thought. They read sermon after sermon after speech after speech to the jury about advocacy of violence. And they put in the opening statements [also from Rahman's trial]" (T. 7241).[165] Of course, introducing these various elements amounted to virtually retrying Rahman in the current trial, with all that that entailed, including constant reinforcement of the link between Islam and violence. In essence, Islam was being put on trial by way of the earlier, more Islam-centered terrorism trial.

Aside from aggressive readings such as those cited above, cultural naming conventions also became Islamophobic targets. For instance, in his examination of the FBI translator Nabila Banout, Barkow inquired whether, in the thousands of calls she had processed, Sattar and the other call participants had used other names. Banout answered that Sattar, for example, used the name Abu Omar, while Taha used Abu Yasir. Even though Banout went on to explain that it was "part of the culture there to be named with your son" and that "'Abu' means father" (T. 4493), the fact that Yousry called Sattar "Abu Omar" and Sattar called Taha "Abu Yasir" folded Yousry into their secretive world. Although Morvillo abandoned his attempt to portray cultural

[165] In addition to Rahman, *United States v. Rahman* (1993) included a number of other defendants charged with terrorist activities related to the plot to bomb New York City landmarks, etc.

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conventions as secret code after Banout's explanation, the theme was later picked up by Baker. When cross-examining Yousry, she devoted 13 questions to the "Abu" convention, specifically the fact that Yousry called Sattar "Abu Hmaid" as opposed to "Abu Omar" (T. 9814–16). Implying code-speak, she wondered why he called him Abu Hmaid when he knew he could properly address him as Abu Omar. Yousry answered simply that he did not address people using Abu so-and-so except in the case of nicknames, and that Abu Hmaid was a nickname for men named Ahmed because "there are millions of Ahmeds in Egypt" (T. 9814–15). But then Sattar made matters worse during his cross, when he confirmed that in one of his conversations he had mentioned an individual whose code name was just Abu (T. 10387). Thus, in a case replete with Abus, the insinuation was that if one person used Abu as code, it must mean that all people using this cultural convention were seeking to conceal their identities.

While plenty of evidence was introduced that portrayed Islam and the Muslim culture negatively, material showing Islam and Yousry in a more objective light was virtually impossible to admit, a difficulty perhaps partially grounded in Islamophobia. For instance, the prosecution strenuously objected when Yousry's defense wanted to submit the across-the-board excellent student evaluations from York College. Citing hearsay and "impermissible character evidence" (T. 8448), the government claimed that these assessments would result in unfair prejudice and cause confusion. However, the real reason for preventing the jury from hearing testimonials that attested to Yousry's impartiality in teaching Middle East-related subjects was because they would reveal that Yousry's knowledge of Islam was merely academic. Moreover, barring such material meant that any contextualization of Islam beyond its association with terrorism was precluded. Thus, over the course of the trial, Yousry's knowledge of Islam was incessantly

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construed as dangerous, whereas anything that cast it more positively was considered unfairly prejudicial (see “Dangerous Knowledge”).

This narrative of a violent Islam was particularly pronounced in Sattar’s cross-examination, when Morvillo explored his understanding of Rahman’s views on jihad (T. 10422–40). Through questions about the cleric’s and Sattar’s views on invading a Muslim country, the Palestinian-Israeli conflict, and self-defense, Morvillo established that Sattar’s personal religious beliefs permitted the use of violence under certain circumstances. In one snippet, Morvillo asked, “You don’t abdicate [sic: advocate] turning the other cheek, right?” Whereupon Sattar answered: “No, I don’t abdicate [sic] turning the other cheek. It is not according to my religion. I don’t turn the other cheek” (T. 10428). This admission, in combination with Rahman’s militant stance, allowed Morvillo to position Islam as opposing the Christian doctrine of reacting peacefully to an aggressor. Of course, although this polarization broadly portrayed Islam as violent and Christianity as peace-loving, history has shown that both religions have violent extremist mutations.

While the prosecution did its utmost to envelop Yousry in its simplistic Islam-equals-terror theme, the defense pursued a more complex strategy. Surely well-intended but in actuality representing a much subtler form of Islamophobia, it attempted to distance Yousry from the religion in every which way out of a concern that some jury members might harbor Islamophobic sentiments. Setting the tone of things to come in his opening statement, Ruhnke addressed the jury:

> MR. RUHNKE: Mr. Yousry, as the evidence will show, as the last item, is not a particularly religious person. He is not a practicing Muslim at all. Indeed, as he will tell you when he testifies, he has never even been in a mosque, not once, not in his entire life. (T. 2207)

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In making such a statement, Ruhnke presented not being a practicing Muslim and never setting foot in a mosque as worthy goals. This strategy also extended to Yousry's family, with Ruhnke emphasizing that the defendant's wife, Sarah, was not a Muslim but a devout Christian, and that his daughter, Leslie, had been raised Christian and had graduated from an über-Christian college in the South (ibid).

Of course, disavowing any connection to Islam/being Muslim implies that there is something patently wrong with it. In fact, Ruhnke's statement that Yousry is "just an overall nice guy who is not, as we say, a radical Muslim, any kind of Muslim at all" (T. 2208) suggests that being a nice guy and being Muslim are somehow mutually exclusive. Even Clark, when taking the stand for Yousry, was questioned by Stern about Yousry's Muslimhood:

> Q. And how about Mr. Yousry, would he always pray?
> A. No. No, you—Mohammed [sic] Yousry didn't pray. I don't remember seeing him pray at all. I considered him secular in—I mean, he's obviously religious, but the Sheikh was always fussing at him about not being—the other—the paralegals were very religious. Ahmed Nasser and Ahmed Sattar—Nasser [,] Ahmed, they would pray regularly. They would stop in the middle of conversation to go pray. Which is good.
> Q. But not Yousry?
> A. I don't remember Yousry ever praying, no. (T. 8749)

Although Clark somewhat contradicted himself by calling Yousry simultaneously secular and religious, Stern had actually been going for testimony that emphasized Yousry's secularity. To prove this point further, he went so far as to ask Clark about Yousry's drinking habits and if he ever had "a glass of wine with him at dinner." Clark answered: "In the evening I would have a glass of wine and Mohammed [sic] would have a glass of wine" (T. 8749). And, to fully ensure the jury understood that Yousry did not follow Islam's prohibition against intoxicants, Ruhnke sought to introduce a photograph showing a young Yousry and some of his friends in Egypt surrounded by beer bottles and cigarettes. With this frat picture, they wanted to convey that "Yousry is not a follower of Islam and unlikely to participate in a plot that calls for installation of

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an Islamic state" (T. 8916–17). The Court, however, sustained the government's objection to the picture on the grounds that it was irrelevant and unfairly prejudicial.

In addition to Yousry's former employer, the defense also called Vincent Sawyer, the pastor of Faith Baptist Church in Corona, Queens, as a character witness. Yousry's wife and daughter were members of the church, and Pastor Sawyer testified that he had known Yousry for 16½ years and that Yousry's wife attended church twice a week. The pastor also testified that, to his knowledge, Yousry had never interfered with his family's ability to practice their Christian faith and that he knew him to be a non-religious man. So, paradoxically, a Baptist pastor was hauled in to attest to Yousry's character and especially to his non-religiosity (T. 9925–28).

The same theme emerged during the brief but heartbreaking direct examination of Leslie, Yousry's 22-year-old daughter. Stern asked the young woman questions about her religion (born-again Christian) and religious practices (regular churchgoer); what college she attended (Tennessee Temple University); if her father had interfered with her choice of a Christian school (no); if her father had ever hindered her from going to church (no); if her father had tried to convert her to Islam (no); if he was religious (no); and, to top it off, Stern asked if her father was a supporter of fundamentalist Islam (no) (T. 9929–31). With all these questions and answers, Leslie was forced to parade her Christianity before the jury in an effort to persuade them that her father was innocent because he was tolerant of her faith and not engaged in any Islamic religious practices.

The defense continued this strategy full force in Yousry's direct examination. The questions were along the same lines and included asking Yousry repeatedly if he was an observant Muslim (see, for instance, T. 9162). When questioned as to whether he had ever tried to convert his wife, Yousry responded: "Absolutely not. I'm not a good Muslim. How can I

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speak to her about being a good Muslim? No" (T. 9172). Even Yousry's deceased father made an appearance, when Ruhnke pointed out a prayer rug in a photograph that the FBI had seized from Yousry's house. Yousry explained that it had belonged to his father, a man who also had not been observant and never prayed (T. 9162).

Not to leave any stone unturned, Ruhnke brought in Rahman's opinion on whether Yousry was a proper Muslim:

> Q. Did Sheikh Rahman ever express his own views to you on your religious practices or lack thereof?
> A. He was, to put it mildly, extremely disappointed that I drank; extremely disappointed that I do not pray; extremely disappointed that I do not know verses of the Koran. (T. 9172)

The defense likewise used Rahman's stance on inter-faith friendship to reiterate that Yousry left much to be desired as a Muslim. Displaying page four of Exhibit 2057T, a discussion of Rahman's views on a variety of issues, among them whether people should have Christian and Jewish friends, he pointed to a paragraph that stated "take not the Jews and the Christians for your friends and protectors. They are but friends and protectors to each other. And he amongst you that turns to them (for friendship) is of them" (T. 9174; internal quotes omitted). Subsequently, Ruhnke asked Yousry whether he had Jewish and Christian friends. And Yousry, with no choice but to answer this depressing question, responded that he had a Christian wife and daughter, and that several of his friends were Jewish (ibid).

In essence, the defense attempted to set Yousry apart from any suggestion of Muslimhood. Their whole approach—establishing that he was a non-practicing Muslim and therefore could not be a terrorist; emphasizing Christianity by prominently featuring his Christian wife and daughter, and showing that he had friends of other faiths; highlighting his drinking—was designed to distance Yousry from his Muslim heritage lest he suffer the

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consequences of Islamophobia. But the sad irony was that this strategy itself amounted to Islamophobia.

Scarry (2000) writes that otherness is “an elaborate sequence of additions and subtractions” (p. 48) and that, depending on the representational strategy, the other is depicted as a monster or becomes invisible. In this case, the government’s strategy consisted of voiding Yousry’s persona of all its essential human aspects, magnifying his Arab ethnicity and Muslim heritage and coupling this with its evil twin, “terrorist.” In doing so, the prosecution succeeded in projecting him as someone deserving of a 20-year prison sentence. In contrast, the defense stripped Yousry of all Muslimhood and thereby created a blank slate onto which jurors could project their anxieties, including those that may have been rooted in Islamophobia. The verdict thus suggests that Yousry was scapegoated to alleviate collective anxieties about anything connected with Muslims and Islam.

Tigar’s cautionary, foreboding comment summed it up well:

> MR. TIGAR: And that is the danger, that this case will, in the juror’s [sic] minds, be a case about them versus us, a case that somehow there is a Muslim conspiracy out there to kill all the Christians and Jews, that Osama Bin Laden is a part of it and that anybody connected in any way with it must be involved. It is the same kind of error that we had to struggle so hard to liberate ourselves from in the 1950s when the rubric was the worldwide communist conspiracy. (T. 7142)

Moral Panic

The rubble of the World Trade Center has proved to be a fertile breeding ground for TTM and Islamophobia, but both phenomena proliferated as a result of the moral panic in the aftermath of 9/11. Outside the courtroom, the dynamics of this panic were uncertain, fluid, frightening, at times deadly, and countered with paramilitary force. Inside the courtroom, they were contained by rows of marshals and channeled by procedural justice. Thus, while “patriots”

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across the country ran amok in defense of the homeland,[166] in the Foley Square courthouse "[c]onservative othering" (Young, 2007, p. 203) took place in the language of the law.

Evil and fear in the air.

Young writes that "[c]onservative othering evokes images of evil, of rationalities which pursue unspeakable ends with unpardonable means" (p. 203). The trial had no shortage of such images of evil. On the contrary, the government turned the courtroom into a Ground Zero of moral panic by liberally exploiting violent extremist rhetoric, graphic descriptions of terrorist attacks, and terror-related verbiage. For instance, in the rebuttal summation alone, the prosecution used the words *terrorist* and *terrorism* 112 times, *violence* and *violent* 167 times, *kill* 189 times, *murder* 49 times, and *bin Laden* 23 times. In fact, Barkow managed to pile on the T-word seven times in the span of half a minute:

> MR. BARKOW: Taha is a terrorist. Atia was a terrorist. Abdel Rahman is a terrorist. Osama Bin Laden is a terrorist. Ayman Al-Zawahiri is a terrorist. The Islamic Group is a terrorist group. And killing innocent people and killing tourists is terrorism under any definition of the terms [sic]. (T. 11982–83)

Later in the summation, when discussing Sattar, Barkow shrewdly tied in 9/11 despite the Court's frequent instructions that the trial was not related to 9/11:

> MR. BARKOW: You can't go kill innocent people or agree to have innocent people killed because you're mad about something, some policy or some action by some government. You can't go kill innocent Jewish people because you're mad about Israeli policy or a visit to a Holy cite [sic] by an Israeli politician just like crazy sick people can't come here and attack America because they're mad about some American policy. That's terrorism. That's the cold-blooded murder of innocent people just because you're angry. (T. 12004–05)

When Tigar objected to the 9/11 reference, Barkow turned it around:

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[166] Who can forget, for instance, Frank Roque, who went on a shooting rampage, first killing a Sikh he mistook for a Muslim outside a gas station in Arizona, then targeting but missing a man of Lebanese descent, and finally firing shots into the home of an Afghan family (Lewin, 2001). When he was arrested, the police reported that he yelled, "I am a patriot! I stand for America all the way" (Salisbury, 2010, p. 73).

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> MR. BARKOW: Your Honor, I actually intend to rebut some of the arguments about 9/11 and to embrace the fact that the case is not about 9/11 in a careful way and say, again, that this case is not about 9/11, because it is not. (T. 12037)

This "embracing" strategy, of course, simply allowed Barkow to mention 9/11 several more times:

> MR. BARKOW: This is a case, as Judge Koeltl just instructed you, that is not about September 11th; and the defendants are not involved or charged to be involved in any conspiracy with Osama Bin Laden; and the events of September 11th have nothing to do with this case, nor do [sic] Sattar's reaction to September 11th. (T. 12061)

And, in the very same breath in which he denied that the case had anything to do with 9/11, Barkow connected Sattar to the terrorists of 9/11:

> MR. BARKOW: Now, 9/11 is certainly one of the worst tragedies ever to befall the United States and it devastated all Americans, especially someone in New York. And no one who was here will ever forget that. But, Sattar wants you to think that he is not guilty because he spoke to a co-worker and was sad about 9/11. We are sure that he was sad about 9/11. (T. 12062)

For good measure, Barkow also reminded jurors of the first World Trade Center attack by rhetorically asking: "Did he [Sattar] tell her [co-worker], I send money to the people who bombed the World Trade Center the first time. Of course not" (T. 12065). Morvillo's cross-examination of Sattar was classic conservative othering. In addition to repeated references to Sattar's Muslim faith, he uttered such gems as

> Q. But as far as you know, to carry out a terrorist attack all you need is a gun and a *fatwah*, right?
> A. No, Mr. Morvillo. You don't need a gun and a *fatwah*. Timothy McVeigh did not have a *fatwah*, Mr. Morvillo, when he killed 258 people. (T. 10606)

And, knowing that Sattar was the last witness to take the stand, he ended his cross with a strategic "You are quite a patriot" (T. 11023). Although the Court struck the comment, the prosecutor's sarcastic, contemptuous final remark lingered in the air and, with it, the implication that if the jurors sided with Sattar and his co-defendants, they were unpatriotic.

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Stewart's revolutionary leanings further compounded the violent atmosphere. When Dember explored in her cross which institutions she had in mind when she talked about the use of violence, Stewart responded:

> A. Well, I don't believe in civilian deaths. I don't believe in wanton massacres, such as Luxor. And for that reason it seems to me that at some ultimate point the institutions which perpetuate capitalism—and by that I mean the institutions of government which protect it and make sure that it functions—do have to be attacked. Perhaps [it] could be banking institutions, if they were the—a possible thought, but I'm sure those decisions—we're not in those times yet, Mr. Dember. And I'm sure when time and circumstances occur, as I have had a lifelong belief they must occur, that the people will make the right decisions about which institutions to attack. New York City Board of Education could be such an institution. (T. 8369)

Tigar objected to this line of questioning, especially since it started to veer "perilously close to buildings, bridges, tunnels" (T. 8371), but his objection was overruled (T. 8372). And Stewart's politics kept giving and giving:

> MR. BARKOW: These are her words. Quote: I'm pretty inured to the notion that in a war, or in an armed struggle, people die. They're in the wrong place, they're in a night club in Israel, they're in the stock market in London, they're in the Algerian outback, whatever it is. People die. So, I have a lot of trouble figuring out why that is wrong especially when people are sort of placed in a position of having no other way. (T. 12246)
> …
> MR. BARKOW: Can someone who believes an [sic] armed revolution against banks decide, be the person who makes the decision about whether information should be released from a convicted terrorist leader or to a violent terrorist organization?
>
> Can the gatekeeper for a terrorist's directive to resume violence be someone who believes in violence against the Board of Education?
>
> Can someone who has a hard time figuring out what's wrong with civilians dying in night clubs in Israel or in the stock markets [sic] in London at the hands of terrorists—who she says have no other choice or no other way—I'm sorry, be the person who decides whether it's safe enough or too risky to human life to do something? (T. 12254)

Stewart, of course, is entitled to her political beliefs, and controversial views are not evidence of guilt. However, by expounding on possible targets for violence and parading her hardened outlook on collateral death, she gave grist to the government's mill and did Yousry a huge disservice.

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The defendants and their lawyers were extremely worried about the overall atmosphere and the government's strategic deployment of the language of fear. Acknowledging how hard it was to prevent the tide of moral panic from spilling into the courthouse, Sattar's lawyer voiced their concern:

> MR. PAUL: [M]y nervousness and fear stems from the reality of today's world, which does not lend itself to people being very objective or fair once they hear some of the words and names, [sic] you are going to hear at this trial.… Quite simply, the mere mention of certain words or names understandably make—cause you to feel such anger or discomfort that you may even flinch when you hear some of these words and names. And you are going to have to fight against those reactions if you are to truly fulfill your oath as a juror and evaluate the evidence in an impartial, fair, and objective way.
>
> Words, places and names you will hear in no particular order throughout this trial, words such as Jihad, Muslim, terrorist or terrorism, the Islamic Group, *fatwah*, Sheikh, Abu Sayyaf, the U.S.S. Cole, Luxor terrorist attack, World Trade Center, Osama Bin Laden. Given the daily events of terrorism around the world, which is all we read and hear about in the papers and on TV, certainly since 9/11, you must not allow the mere mention of these words and names to impair your ability to be fair and impartial. We live in fear that something dreadful might happen again to us here in the United States. This is only normal.
>
> However, as normal as that may be, you cannot allow that fear to cloud your ability to objectively evaluate this case. (T. 2257–58)

Tigar likewise spoke words of caution, imploring the jury not to take a simple legal construction, such as an indictment, and view it as a grand conceptual war between two ideologies:

> MR. TIGAR: Of course, the indictment in this case says United States of America against Lynne Stewart. Well, the judge will instruct you that the indictment is just an allegation, a charge, a way to bring things. United States of America isn't against Lynne Stewart. Lynne Stewart isn't against the United States of America. (T. 11783)

At times, though, the defense teams' vocabulary only jangled nerves more, since they had to first invoke terrorism before they could disavow their clients' connection to it. For instance, when pointing out that Yousry's home phone had been tapped since 1999 but there had not been a shred of evidence of any "outreach to this shadowy world of terrorism," Ruhnke said, "[t]hat's because he is not a terrorist. He is not a supporter of terrorists. That's because he does not want

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to aid terrorism" (T. 2215). Ruhnke, of course, was defending his client; from a moral panic perspective, however, the effect was the same. In a building that stood in the shadow of the World Trade Center, violent terms incessantly punctured the air.

Despite all admonitions—whether by the defense or the Court[167]—to not be swayed by emotions or give in to fear, the government succeeded in whipping the jurors into such a panic that, as reported by Juror 39 after the trial, one female juror "was in tears she was so scared of terrorism" (Powell & Garcia, 2006, p. 4; internal quotes omitted). In fact, as shown in Chapter 6, "Jury Anonymity," the jurors felt nervous, stressed, threatened, and unsafe throughout the trial.

Outside the courtroom, a witch hunt was in progress. On February 8, 2005, two days before the verdict, Tigar advised the Court that a note had been affixed to the door of Stewart's home by a right-wing organization (T. 13010–11)[168] and that their leaflets had been popping up all around the courthouse (T. 13014). Concerned about external pressure on the jury, the Court noted that

> the marshals have to be aware of this as part of their responsibilities to assure that they both protect the jurors and assure that there are no outside influences on the jurors. And the second issue then is the investigation of those who were responsible for this. (T. 13016–17)

The situation, however, proved to be so distressing that two jurors asked to speak to the Court. These interviews took place in the robing room, and the Court ordered the 20-odd pages of the trial record sealed (T. 13017–38). Thus, one can only speculate as to what was discussed, what the reactions of the individual jurors were, and to what extent they felt fearful and

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[167] The Court, for instance, stated:
THE COURT: [Y]ou are to decide the case based upon the evidence or lack of evidence and my instructions on the law, coolly, calmly, without emotion, and with fairness to all parties. (T. 12121)
…
THE COURT: I remind you, you must not be influenced by sympathy or by any assumption, conjecture, or inference stemming from personal feelings, the nature of the charges, or your view of the relative seriousness or lack of seriousness of the alleged crimes. (T. 12368)

[168] The note appeared to have come from the Patriot Action Network, a virulently right-wing outfit with a penchant for dark humor (http://patriotaction.net).

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pressured. While the government dismissed the posting of the leaflets as mere First Amendment activity, Tigar proved otherwise:

> MR. TIGAR: The government's position is—perhaps misapprehends the factual showing. The factual showing is that this group, in addition to putting up a leaflet, which I'll get to, has put out a [voicemail] message saying that they're going to put Lynne Stewart out of business, drive her out of the state, and that they admit that they have reached out to the jurors, apparently, and say that['s] what's been done. (T. 13042)

The Court, like the defense, was alarmed:

> THE COURT: Ms. Baker, the situation is one of concern. I did not need defense counsel, actually, to point out that the distinctions between simply the leaflets and the content of the letter was the voicemail, which identifies an address; allegations about posting on the defendant's home, coupled with what appears to be an invitation to reach out to the jurors, which goes beyond simply posting. (T. 13043)

Although the government played the incident down, the fact that an anti-Stewart group had approached members of the jury was a major issue, and individual jurors may well have become terrified about the potential repercussions of their verdict. What's more, the leaflets were not an isolated incident. In fact, the next day, one day before the verdict, Tigar handed the Court a piece of paper on which he had placed "three stickers that were in a phone booth just across the street from the courthouse; more from the JDO with a specific reference to the World Trade Center" (T. 13087–88).[169] The Court informed the marshals, but no further steps were taken.

The increased security presence also contributed to the atmosphere of moral panic. There was a great deal of "obvious security" (T. 5154) inside the building, and the courthouse perimeter was patrolled by security guards in full gear. At times, these guards even strayed into the courthouse, as when a security officer in full camouflage, wielding an automatic weapon and

[169] The Jewish Defense Organization is a radical group that, inter alia, targets lawyers who defend alleged and convicted Arab and Muslim terrorists with threatening recorded messages. See, for instance, its incendiary message to attorney Stanley Cohen after the media reported that he might defend bin Laden in the immediate aftermath of 9/11: http://www.villagevoice.com/2001-09-25/news/homeland-terrorism (Noel, 2001).

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handcuffs, was seen outside the courtroom door (ibid). The overall militarized atmosphere was omnipresent and difficult to escape.

In addition to the terror-infused language and heightened security, one of the more destructive manifestations of moral panic came about when the government launched an attack on Yousry's academic expertise.

Dangerous knowledge.

Yousry was a classic immigrant success story. In 1980, at the age of 24, he had come to the United States from Cairo, Egypt, working his way up from odd jobs like delivering pizza and waiting tables to IBM database administrator (T. 8985), job coach at United Cerebral Palsy, and counselor at the Young Adult Institute (T. 9012–13). A naturalized U.S. citizen, his goal was to provide a better life for his family and to teach at an institution of higher learning. To achieve this quintessential American dream, he sometimes held three or four jobs simultaneously while also attending graduate school at NYU. He worked as a teaching assistant at NYU, an adjunct professor at CUNY's York College and Long Island University, and a linguist for various New York-based translation agencies (T. 9012–18). Unfortunately, this quest for knowledge came back to haunt him when federal agents descended upon his world with a search warrant for his house that, in part, stated:

> Any and all books and records and other documents, including, but not limited to notes, letters, statements, memoranda and other writings, related to, referring to or regarding meetings, conversations, communications which [sic: with] Sheikh Abdel Rahman, Abdel Rahman, Sattar, Stewart, IG or other known IG members. (T. 6440)

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All in all, the FBI removed 26 boxes of books and other materials from Yousry's house,[170] ranging from work-related documents, to books with titles such as *Understanding Cultural Diversity* and *Memory and Modernity in Popular Culture in Latin America*, to condolence letters on the loss of his father (ibid). When cross-examining Christine Monaco, the special agent from the FBI's domestic terrorism division, WMD Squad,[171] who executed the search warrant, Stern questioned her on the scope of the search warrant rider:

> Q. You think it is a possibility anything in popular culture in Latin American fits into that rider?
> A. May or may not.
> Q. A letter from the International Fellowship of Christians and Jews?
> A. May or may not.
> Q. Where do you think that would fit into the rider?
> A. I believe there was one with regard to just general documentation, any and all documents, books, literature, writings or other media, including but not limited to audiocassette tapes, discs, DVD and/or videotapes concerning or relating to IG, *Al-Qaeda*, any other foreign terrorist organization or entity thereof.
> Q. You think Jews or Christians would fit within any other terrorist organization or entity thereof? (T. 6441)

The government objected, but Stern had already succeeded in establishing that the FBI emptied out Yousry's study in a manner that may have been beyond the scope of the search—whether it was willy-nilly because they were overwhelmed with all the foreign-language material present[172] or a curious kind of profiling in that they seized anything that involved other cultures. In any event, the scope of the search and seizure was the first disturbing indication of the government's dangerous knowledge strategy. Nonetheless, the fact that an FBI special agent from the Weapons of Mass Destruction squad and her team hauled away from Yousry's house

[170] In addition to the books, documents, audio, and videotapes, the FBI seized Yousry's laptop as well as his wife's computer (T. 9163).

[171] During Monaco's direct, Morvillo asked her to spell out the acronym WMD – Weapons of Mass Destruction – for extra impact on the jury (T. 6381).

[172] The search team was accompanied by an Arabic-language specialist who reviewed documents in Arabic and assisted in determining whether a particular item should be seized or not (T. 6402).

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his books, newspaper clippings, and papers must have fed the jury's perception that Yousry was maintaining a "dangerous" archive.

In his opening statement, Morvillo laid the groundwork for the idea that there was something wrong with Yousry's academic expertise:

> MR. MORVILLO: In addition, the evidence will show that Mr. Yousry was an expert in Abdel Rahman and his terrorist group the Islamic Group. He had written articles about them and he had collected hundreds of articles about Abdel Rahman and the Islamic Group. He knew all about them. (T. 2125)

With extra emphasis on "[h]e knew all about them," Morvillo started to turn academic knowledge into dangerous knowledge. As discussed in previous chapters and the preceding "Islamophobia" section, the government then proceeded to inundate the jury with terrorism-related newspaper articles seized from Yousry's study in what amounted to, according to Tigar, "guilt by newspaper subscription" (T. 2934).

To counteract the blood and mayhem and show that possessing such material was an integral part of Yousry's scholarly activities, Ruhnke guided Yousry through FBI photographs of his study:

> Q. And just moving the photograph over a little bit, and zooming in on the top book, can you tell what that top book, the title of that top book is?
> A. It's a book published by Stanford University, *Terror in the Mind of God*.
> Q. And looking over to the left, do you see another book?
> A. Yes.
> Q. And what is the title of that book?
> A. *Holy Wars*.
> Q. And looking at the pile of books that are at the top of the photograph, are you able to read some of the titles of those books?
> A. Yes. These are some of the books that I used in teaching my classes. *History of the Middle East*; *Islam, a Short History*; *Faith in the Mind of God*; *Arabic Intellectual Thoughts in the Liberal Age*; *America and Political Islam*.
> Q. Now, why did you possess these kinds of books?
> A. I teach the subject of Islam. I'm also—at the time I was writing about the topic of Islam, so all those books were extremely important and helpful, in order to make me aware of the current scholarship at the time. (T. 9158–59)

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When Ruhnke asked if Yousry owned books on Central and South America, the government objected twice based on relevance, with the Court sustaining both objections (T. 9163–64). Despite having seized such books, the government did not want them introduced so as to keep the jury's focus on Islam, especially on the violence perpetrated by Muslim militant extremists.

Ruhnke ran into the same wall when he tried to contextualize Yousry's dissertation, the working title of which was "Sheikh Abdel Rahman, the *Mujahid* among scholars and the scholar among *Mujahideen*,"[173] … "Sheikh Omar['s] Comprehensive Muslim Revolution, or an alternative to a totalitarian problem or an alternative to totalitarian problems" (T. 2222–23):

> Q. Where did the *mujahadeen*[174] come from who fought in Afghanistan? Was it just Afghanistan? Was it other countries?
> MS. BAKER: Objection, relevance.
> THE COURT: Sustained.
> Q. Do you know what the position of the United States was in reference to the *mujahadeen*—
> MS. BAKER: Objection, relevance.
> THE COURT: Sustained. (T. 9170)

By objecting, the government prevented Yousry from putting Rahman into a context different from that of a terrorist. Specifically, they succeeded in barring testimony that the United States had financed and armed the *mujahideen* during the Soviet war in Afghanistan as well as during the subsequent civil war. Thus, the jury did not get to hear that for more than a decade in the latter part of the 20th century, the United States' interests in that corner of the world had been fully aligned with those of Rahman.[175]

To further explain Yousry's academic work, Ruhnke asked:

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[173] Translated by Ruhnke as "a fighter among scholars and a scholar among fighters" (T. 2223). Yousry explained that "the term *mujahadeen* means different things to different people. But in [the] context of this case and in [the] context of Omar Abdel Rahman's ideas, it means a person who strives for the sake of God" (T. 9169–70).

[174] The court reporters used different transliterations for the same word.

[175] See, for instance, *Charlie Wilson's War* by George Crile (2007). In this same vein, the government had moved to exclude books seized from Stewart's office that pertained to Rahman's having grown up in a repressive society and having suffered torture (T. 9484).

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> Q. Does the fact that an academic writes about a topic, what does that mean about his or her views of—as opposed to endorsing or not endorsing a topic? Do you understand what I mean?
> A. Yes, I do. And if an academic is writing about a topic, that does not mean that that academic endorsed that topic. It's only a question that that academic wants to pursue, try to find regimes of movements, intellectual investments of movement[s], comparing such movements to other parts of the world, social movements in the Middle East, comparing that to Latin America. All of that is very, very helpful and very important for us in order to understand how social movements develop. (T. 9159)

Overall, it was not a good day for academia: A scholar who had been teaching at the college level for approximately seven years was forced to read titles off the spines of his books to justify possession of these books and had to explain that scholarship on a particular subject did not constitute support for that subject (ibid). To reinforce that studying an issue is not synonymous with endorsing it, Stern called Dr. Lockman, Yousry's dissertation chair, to the stand. After going through Lockman's long list of distinguished credentials, Stern questioned him about the contents of his library:

> Q. I want to talk to you some about materials you've collected as part of being an academic, all right? Do you have a personal library?
> A. Yes, I do.
> Q. And what kinds of subjects are covered in the personal library you have?
> A. They cover a pretty broad range of subjects. I teach and do research in modern Middle East history, so I have lots of books about the modern history of the Middle East. I have books about Islam, about Islamic movements, Islamic ideas of various kinds; the politics of the Middle East, U.S. policy in the region, various other topics.
> Q. In your books and articles do you have books that deal with Osama bin Laden?
> A. Yes, I do.
> Q. Do you have books that deal with Middle Eastern terrorism?
> A. Yes, I do.
> Q. Do you have books that deal with Sheikh Abdel Rahman?
> A. Yes, I do. (T. 8851–52)
> …
> Q. Now, I want to ask you about a particular book, a book called *Political Islam*. Are you familiar with that book?
> A. Yes, I am.
> Q. Tell me a little something about it.
> A. It's a collection of articles, mainly scholarly articles by leading—excerpts [sic] about Islam, Islamic movements, Islamic political movements from this country and abroad.

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It's coedited by two people. One of them, Joel Benin [sic], is a professor of history at Stanford University; and the other, Joe Stork, is currently the director of the Middle East division of Human Rights Watch.
Q. Do you ever use that book in either your research or your teaching?
A. I have. I have certainly assigned parts of it in courses, whether the scholarly articles, which I think make up most of the book, or some of the interviews with leading Islamic activists, leaders of Islamist movements[,] to give students some exposure to the actual voices of people involved in some of these movements and what they have to say about themselves.
Q. Would it be fair to characterize that book, *Political Islam*, as a mainstream book in your field?
A. Absolutely. It's a standard scholarly book. Over the last decades, scholars, academics in this country have written hundreds, maybe even thousands of books and certainly thousands of articles about *Political Islam*, about Islamist movements, whether moderate or radical, simply out of an effort to understand, in the same way that scholars have written vast numbers of books about the Nazis, for example; not because they sympathize with Naziism, but simply because this is something as scholars we need to understand.
Q. I am going to show you what's marked MY506, and I want you tell me if you recognize it. Do you recognize what that is?
A. That's the cover of *Political Islam,* the book we were discussing.
MR. STERN: I would offer MY506 into evidence, subject to connection. (T. 8853–54)

At this point, the government objected:

MR. BARKOW: Your Honor, may we be heard on this later.
THE COURT: Yes. (T. 8854)

It was courtroom theater at its best when Stern, sotto voce, demonstrated to what lengths the prosecution would go to achieve its objective, and if that meant attacking First Amendment-protected activity, so be it. By strategically questioning his witness, Stern deflated the prosecution's attempt to lay the interview of Tala't Fouad Qassem from *Political Islam* (see "Islamophobia") at Yousry's feet. He further requested that the entire book be admitted into evidence to contextualize the interview for the jury. Not surprisingly, the government objected, with the end result that the parties agreed on admitting the table of contents. Stern's partial success, though, was short-lived once Baker started to chip away at Yousry's academic career.

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From the onset of the trial, the government had been experiencing difficulty in establishing Yousry's motive for engaging in the activities alleged in the indictment. So, one November afternoon, Baker embarked on an interrogation about Yousry's career ambitions:

> Q. Now, the reason why a dissertation might be important in a person seeking a job in academia is in part because it reflects on a person's qualifications to write and to teach, correct?
> A. In part, yes.
> Q. Also because it is an example of their scholarship, correct?
> A. That is correct, yes.
> Q. And do you agree that generally a better dissertation might result in a better job?
> A. As I said, yes.
> Q. Now, do you agree that a dissertation is one of the things that a selection committee would look at in evaluating a candidate for a job in academia?
> A. One of the things, yes.
> Q. And do you agree that generally academic jobs in the field of history, or at least Middle Eastern history, are competitive?
> A. Not anymore, no. Not after September 11th. After September 11th there are a lot of positions available.
> Q. Let me make my question a little more specific: Obviously you would—
> one would prefer—I'm assuming you would prefer to get a job at a reputable university, or university with a national reputation if possible, correct?
> A. Not really. I was very happy at York College, which is a part of CUNY. And it's a teaching university. I feel very comfortable there. I felt that I connected with the community of the students there, mostly minorities. And I really didn't have any aspiration to go work for Harvard or, you know …
> Q. Is it your testimony that it was your long term aspiration to obtain a tenure track faculty position at York College?
> A. There were actually two attempts at York College to keep me permanent, but there was no budget so …
> Q. I'm sorry, there was no?
> A. There were two attempts to keep me on a permanent basis at York College, but there were [sic] no budget available for that. There's a lot of budget cuts, so I just stayed there as an adjunct.
> Q. My question is a little different though. My question is: What was your desire? If you could have your job of choice in academia, what would it be?
> A. CUNY sounds very good to me. (T. 9596–97)

The apparent rationale for the above line of questioning was that to obtain a job at an Ivy League school, Yousry resorted to providing material support to terrorism to beef up his dissertation. In fact, as the above exchange indicates, Yousry was content at York College, and

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thus Baker's attempt to elicit otherwise fell flat. Heaven forbid, however, if he had harbored ambitions to seek employment at a university with a higher ranking and greater name recognition. After all, in her quest to drum up a motive, Baker did her utmost to turn a positive trait, that is, possessing ambition, into a sinister character flaw.

The prosecution's no-holds-barred approach continued unabated when it came to post-it notes. In the government's eyes, 3M's handy little flags were no longer organizational tools aiding a doctoral candidate with his research but became the colorful symbols of a conspiratorial mindset. At least this is what Baker made them out to be as she hunted for the pink flags through some 1,200 pages of Yousry's notes. The color pink, no longer denoting sweetness and femininity, now had become the marker for ominous content. As far as Yousry was concerned, he simply didn't remember which color meant what and offered the following rationale for his system:

> Q. And you testified on direct examination as I recall that you put colored flags in your notebook pages to—the original notebooks to indicate materials that you would use for your dissertation, is that correct?
> A. I forgot the system of code, yeah, but that is primarily the reason, yes.
> Q. Putting aside the details of the system, is it fair to say that if there is a flag, it was some kind of information for your dissertation but just the different colors might have meant different kinds of information?
> A. The different colors, I believe they referred to either a visit or a phone call, some—you know, some other color I used. I believe it was to check something in my dissertation, and that's the page to check. So they served several purposes. (T. 9612–13)

But Baker, a petite spitfire, was not open to any reasonable explanation and relentlessly pointed to pink-flagged passages:

> Q. And am I correct, is there a pink flag on that page?
> A. Yes, there is a pink flag.
> Q. Now, part of what you discussed with Sheikh Abdel Rahman during this February 2000 prison visit was his views on the State of Israel, correct?
> A. That is correct, yes.
> Q. And essentially he told you that Israel was not to be accepted and that it had to be amputated or abolished, correct?

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A. Yeah. He was referring to that institution of the State of Israel, yes. (T. 9615–16)

The above was by far the most extreme content that bore a pink post-it note; other sections referred to issues ranging from Rahman's religio-political perspective as compared to Islamists such as Sayyid Qutb (T. 9616), the Muslim Brotherhood's influence on Rahman's father (T. 9619), Rahman's childhood and family (T. 9627), and queries intended to fill gaps in Yousry's dissertation, including biographical details such as the name of a Rahman relative (T. 9631). Aside from the fact that these were all dissertation questions that had been approved by Rahman's lawyers, any answers given were obviously Rahman's views. Incessantly pecking at Yousry, however, Baker strove to erase the clear ideological boundary between the two men and conflate their views so as to create the impression that Yousry subscribed to the same hard line as Rahman.

But none of the above attacks compared to Baker's grueling cross-examination in which she combed through Yousry's dissertation field notes and various dissertation drafts in search of a smoking gun. Using the fact that Rahman continued to disseminate his views while in prison in Egypt, Baker sought to establish to the jury that Yousry should have known better than to "smuggle messages" by translating Rahman's speech to his attorney during prison visits, especially since, as an expert on the topic, Yousry knew that such words could lead to violence:

> Q. Now, during the time Abdel Rahman was in prison in Egypt, he smuggled out various tapes, is that right?
> A. He did not need to smuggle out anything. He—
> Q. Mr.—
> A. In Egypt there were no restrictions on him preaching in prison and people taping him and giving those tapes out to the relatives when they come and visit. It's not like there was an order not to tape. The word "smuggle" is probably [a] mischaracterization, or maybe it was just used in certain things, but I don't think the word smuggling is very …
> MS. BAKER: Your Honor, may I show a page of Exhibit MY550LT4 in evidence?
> THE COURT: Yes.
> Q. I show you page 8. Mr. Yousry, directing your attention to the top of that page, the

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> second to the third line of that page, it states there, does it not, the Sheikh smuggled out various tapes during the above-mentioned detention?
> A. Again, this portion of the dissertation was not edited. It's a very early version, and those words, I believe, were taken from other sources. And I did not work on them. So I'm just saying, there, there were no restriction [sic] on him at the time to preach in prison and send the tapes out. So even if it's here, a draft of the dissertation is not a final product. (T. 9459–60)
> …
> Q. Mr. Yousry, showing you, again, page eight of Exhibit MY550LT4. Starting on the second line at the top of the page, you wrote—and part of it is quoting someone else, but you wrote the sentence that says "realizing the importance and the power of the word," the Sheikh smuggled out various tapes during the above mentioned detentions calling upon members of *al-Gama'a al-Islamiyya*, their supporters and all honest Egyptians to revolt against the non[-]Muslim, corrupt and oppressive system of Mubarak (p. 9461).

Equating notes quickly jotted down with final dissertation copy that has undergone several revisions is, of course, absurd. Attributing quotes to Yousry that were drawn from other sources is equally unfair. The prosecution, however, made no distinction between unedited thoughts and final drafts, despite Yousry's protestations:

> A. These are rough notes. These are not drafts even. They are mostly notes that I did not use in my dissertation at all. So I do not recall actually most of what's written here. I have to read it, but, yes, it is a rough note—it is not even coherent. Every six, seven pages you have a different topic. But it's a rough note about the *al-Gama'a al-Islamiyya* and how it went through stages. (T. 9662–63)

Ruhnke likewise objected that much of the dissertation material was "the equivalent of rough notes," and "copying down source information that are not Mr. Yousry's words at all" (T. 9545). He explained that there were "thousands of pages of documents, of thoughts, ideas, research, things, that were in, things that were out; suggestions and directions from his academic advisors as to, no, drop that area; don't include it later on in the dissertation" (T. 9546). But, as Baker casually explained:

> MS. BAKER: Your Honor, the government's focus in this line of questioning is not what the final product of Mr. Yousry's dissertation was going to look like. The focus of the government's questioning is what information was in Mr. Yousry's possession at the time he engaged in the conduct with which he is charged. (Ibid)

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With the blessing of the Court, Baker thus cherry-picked through Yousry's thoughts, attempts at thoughts, rewritten thoughts, thoughts of others that were sourced, thoughts of others that were not yet sourced, and so on and so forth. In this way, many bits and pieces of information that Yousry had collected for his dissertation became fodder for Baker's assault. For instance, while Yousry had testified on direct that he considered Taha an insignificant figure for his dissertation (T. 9166), Baker was intent on proving differently, based on a shred of a note she found in Yousry's archive:

> MS. BAKER: Mr. Yousry, directing your attention to the last portion of that paragraph at the top of page six. Do you see where that first full sentence on the page—sorry, the second full sentence on the page ends by saying, the leaders of *al-Gama'a al-Islamiyya*, such as Sheikh Omar Abdel Rahman, Mohammed Abdel, Salam Fareg, Sheikh Abu Talal al-Qassemi and Sheikh Omar's "outside lieutenant," Sheikh Rifa'i Taha?
> A. Yeah, I do see that, yeah. That's outside. I didn't study anybody outside, so it's still insignificant. That's my understanding so…
> Q. This is a portion you drafted as part of your work on your dissertation, correct?
> A. It is correct, yes.
> Q. Now, when you were working on your dissertation earlier, before the focus narrowed to focussing primarily on Sheikh Omar Abdel Rahman, you had actually gathered a fair amount of information relating to Rifa'i Taha and his involvement in the group's early history, had you not?
> A. I do not recall that. Maybe I did. That was about ten years ago or something so I don't recall. (T. 9660–61)

But Baker did not let up and, in bull terrier fashion, dug her teeth into text fragments, even sneaking in footnotes that were not in evidence (T. 9664).[176] Attempting to demonstrate to the jury that Yousry knew "all about them," she placed inordinate emphasis on a word, a sentence, a paragraph, or a footnote that perhaps was written a decade earlier. And when Yousry did not know or did not remember, in large part because his academic focus was not on what the

[176] The tone that Baker took throughout Yousry's cross-examination was one of "Are you saying …?" (see, for instance, T. 9819); "Is it your testimony …?" (see, for instance, T. 9848); "So just to make sure … you're saying …?" (see, for instance, T. 9751); "I'm not sure I'm following your testimony …?" (see, for instance, T. 9819). While her questions rarely went anywhere, they effectively shed doubt on everything Yousry was saying. She even managed to turn his curriculum vitae into terrorist fodder (T. 9856–58). However, as Stern pointed out, "if padding resumes is a reason to go to jail, we need a lot more jails" (T. 11594).

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government considered useful to prove the conspiracy, Baker, with disingenuous tenacity, did her utmost to present him as a liar. Thus, for Yousry, not only knowing everything about his topic was dangerous, but lacking specific knowledge was equally hazardous. The length of time that Yousry had been working on his dissertation—approximately 10 years, as indicated above—also caused suspicion. Juror 39 reported after the trial that one juror "kept asking why it took Yousry so long to finish his dissertation," commenting "that it was suspicious" (Powell & Garcia, 2006, p. 4).[177]

Yousry didn't stand a chance. While the government turned his scholarly knowledge into dangerous knowledge, Tigar, citing Federal Evidence Rule 701,[178] requested that it be viewed as opinion, arguing that Yousry was not qualified as an expert and that if his client were to disagree with "Yousry's characterization of political events in Egypt during that time, then presumably that would open the door to our presenting our expert to talk about these events" (T. 9478). Another reason Tigar may not have wanted the jury to see Yousry as an authority was the latter's balanced view of Egyptian politics and neutral academic approach, both of which made Stewart look radical and incendiary by comparison:

> MR. TIGAR: Your Honor, the difficulty is this, in terms of the jury's perception, Mr. Yousry is clearly a scholar who has studied these issues. And there is this risk that the jurors will accept, much like the testimony about this is how Jamaican drug dealers work, or this is how the Mafia works, or whatever, not because they've been instructed to do so but that's just because that's people's tendencies to value these assertions.
>
> And the difficulty is compounded by the prosecutors having asked question after question, This is [an] interpretation of the Muslim religion. This is [an] interpretation of the Quran.
>
> It is to avoid what I would think of as my duty to my client to explore these things

[177] After the *Washington Post* published the juror's comment, the political blog site *Daily Kos* conducted a multiple-choice poll asking graduate students what it means if a dissertation takes a long time to finish (see http://www.dailykos.com/story/ 2006/01/16/178696/-Truly-horrifying-US-gov-t-attack-on-an-Arab-American-w-poll-for-grad-students).

[178] Rule 701: Opinion testimony by lay witnesses (Fed. R. Evid., 2013).

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> at some length in cross-examination, to pull that string that leads me to suggest that this instruction not for the truth is what's required here to try to head off the misuse. (T. 9487–88)

To "head off the misuse," Tigar requested a limiting instruction that Yousry's dissertation testimony on historical events in Egypt was not offered for the truth. A lengthy argument ensued as to the wording, with the government taking the position that the word "truth" should not be included (see Chapter 6, "Limiting Instructions"; T. 9490). In the course of this argument, the government's dangerous knowledge strategy was revealed once again when Baker told the Court:

> MS. BAKER: Even though the information itself relates to historical events, Abdel Rahman was essentially saying to Mr. Yousry during the conspiracy periods, here's this information about me, I'm telling you this accurate information and it's part of—in the government's view—co-conspirators sharing information and forming the sort of bond that is necessary for the conspiracy to operate. (T. 9495)

Here, Baker construed as conspiratorial behavior Yousry's asking Rahman dissertation questions and writing down the answers, that is, a scholar's interview with his subject in which "accurate information" on historical events was related. Put simply, in the government's world, academic field research involving a terrorist was tantamount to conspiring with this terrorist. Tigar was appalled:

> MR. TIGAR: I equally decry the statement made by the government that there is a conspiratorial bond formed in the academic setting. I mean, that is a statement that puts biographers of controversial subject series [sic] at risk and, in my view, is conspiracy law that undercuts academic freedom. (T. 9499)

It did not matter. Over four days of cross-examination, Baker's dogged approach successfully exposed Yousry's broad scope of knowledge on everything Rahman—from the latter's fundamentalist views and goal of replacing Egypt's secular government with an Islamic state to the history and objectives of the IG. And Baker, availing herself of this knowledge,

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skillfully painted a grim picture of violence that created a thick prejudicial fog through which the jury could no longer distinguish between Yousry and his topic.

The defense, desperately, tried to pry the two apart. Ruhnke, to establish that Yousry did not share Rahman's ideology, offered the jury a dense excerpt from Yousry's dissertation:

> MR. RUHNKE: But what the Sheikh does not recognize is that his anti-totalitarianist, anti-determinist and anti-essentialist alternative project of comprehensive Muslim revolution, which was conceived and practiced within the historical context of colonialism and neo-colonialism is paradoxically centered in Muslim totalitarianism, determinism and essentialism.
>
> In other words, he is exchanging one form of totalitarianism for another. To illustrate this point, a lengthy study is needed. Here, I will mention a few peculiar points about the Sheikh's comprehensive and revolutionary Muslim project: First, it emphasizes the "universality of its Muslim truth," second, it stresses the "imperativeness of the totality of its Muslim knowledge and practice," and finally, it locates its own mode of determinism within "God's will" as opposed to state control or market forces. (T. 8964)

For his part, Stern renewed the effort in his summation, alerting jurors to the government's trampling of academic freedom:

> MR. STERN: Something really kind of frightening happens in this case. The government says to you, I'll tell you how we will prove he is guilty. We are going to go through the books of his home to show his true knowledge, intent, and state of mind. We are going to show you all of the things he has about the Islamic Group and Luxor to prove that he is guilty of these crimes. We are not going to talk to Zach Lockman who we know about from his phone calls. We are not going to listen to his radio interview in which he says to the Sheikh, I don't agree with you. We are not going to read the part of his dissertation that says he is exchanging one form of totalitarianism for another. We are going to go to his house and we are going to look at his books and we are going to bring him to you, and we are going to say, this is why you should find him guilty. (T. 11580)

Pointing out that the government only brought Yousry's books on terrorism and the Islamic Group to court, leaving behind those on Jesus and other subjects, Stern rightly cried out that "[i]t is a frightening day when what we think is judged by the books we have" (T. 11580–81). Lending heft to his argument, he warned jurors that they might have books on their shelves by authors such as Mark Twain (accused of racism), T.S. Eliot (accused of fascism), Ernest Hemingway (accused of communism), Dan Brown (accused of anti-Catholicism), or worse, Karl

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Marx's *Communist Manifesto* or Adolf Hitler's *Mein Kampf*, and that if owning such books were proof of our beliefs, then "we may all be in trouble" (T. 11581).

And we are. In rebutting Stern, Barkow practically chanted to the jury that Yousry knew the role and power of Rahman in the IG, knew the history and activities of the IG, knew the positions of the various factions, knew about Luxor (T. 12117–18), that he knew, knew, knew because he was "an expert on the Islamic Group" (T. 12074); "an expert on Abdel Rahman, on the Islamic Group, Taha, and the violence that they wrought" (T. 12075); "an expert on the Islamic Group on [sic] Egypt and the people involved in it" (T. 12077); and, elevating a doctoral student to the foremost global expert on the topic,

> because Mohammed [sic] Yousry may have known more about the Islamic Group and Abdel Rahman and Taha and the violence wrought by them and that [sic] they were capable of doing than any person in the world because he was an expert about it. (T. 12117)

Thus, by plying the jury with the mantra "he knew because he was an expert," the government successfully defined guilt by academic knowledge.

Timeline.

Another key argument to support moral panic as a major factor in the case is the peculiar timeline of events. The indictment was issued in April 2002, about seven months after 9/11. The prison visits and the SAMs-related violation occurred in the summer of 2000. If Yousry and Stewart were considered terrorist agents, wouldn't it have been safer to cut them off from any contact with Rahman sooner rather than later? And what about Sattar, who had been manning his IG phone bank for many years and continued to do so until his arrest?[179] The government, however, waited almost two years before it saw fit to remove from society what it considered

[179] The discovery contained approximately 93,000 surveillance calls, the majority of which came from Sattar's line.

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grave terrorist dangers—dangers that, in their eyes, warranted prison terms ranging from 20 years to life.

Paul, on behalf of Sattar, who allegedly was the most dangerous of the three defendants, brought the time issue to the jury's attention:

> MR. PAUL: You can be sure, ladies and gentlemen, that if the government really suspected or feared something was about to occur, or there was any concern that my client was a real threat to anyone, they would not have awaited to arrest him until 1–1/2 years later. And you can't just casually sweep this fact under the rug as Mr. Morvillo did yesterday at the very near end of his opening remarks. You can't just say, oh, the reason for the delay in any arrest was really due to national security interests that took precedence over any criminal investigation. Really? Took precedence over someone about to be killed or violence about to happen? I don't think so. (T. 2283–84)

Over the defense's objection, the Court accepted that for reasons of national security the government could not produce the actual decision-makers; instead, it permitted the prosecution to provide some sort of an explanation for the government's long period of inactivity (T. 2370–84). Accordingly, Fitzgerald testified that he had gone to a meeting with the FBI and, after consulting with U.S. Attorney Mary Jo White, decided to stand down and not launch a criminal investigation after Stewart issued the press release (T. 2548–49).

Nonetheless, when you consider that, in the spring of 2002, the DOJ went shopping for prospective indictees to make a case against, it starts to look like the government just wanted to flex its muscles to show the public that it was fighting terrorism at home. Specifically, prior to the indictment, Yousry had been approached by a federal prosecutor, who suggested that he testify "if the government indicted Stewart and Clark" (Powell & Garcia, 2006, p. 4). But Yousry refused, a decision that ultimately brought down upon him the government's wrath.[180] Of course, the fact that, post-9/11, it was far easier to win a case against an Arab Muslim with a historically

[180] Powell & Garcia (2006) report that "[i]n the spring of 2002, a federal prosecutor suggested Yousry testify if the government indicted Stewart and Clark. This was confirmed by a federal law enforcement source. 'They wanted me to entrap Lynne and Ramsey,' Yousry said. 'I said no'" (p. 4).

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distrusted profession than one against an elderly former attorney general with civil rights struggle credentials may have been a factor as well.

The expediency of the government's timeline was also confirmed by Judge Calabresi, one of the Second Circuit Court judges, who wrote in the appeals decision that our attitudes "have inevitably been influenced by the tragedy of that day" and that "to ignore that 9/11 has profoundly influenced our retrospective assessment of the culpability of certain actions related to terrorists and terrorist organizations would be to ignore reality" (*United States v. Stewart*, 2009, November 17, p. 17). While Calabresi conceded somewhat subtly that moral panic played a role, in actuality, the government's conduct deserved a moral panic award.

The stoking of the fires of fear was everywhere. Ashcroft took a special trip to New York to announce the indictment and, by dramatically visiting Ground Zero, indelibly linked the defendants to 9/11; the prosecution riddled the air with violence, inviting bin Laden and consorts into the well, which compelled the Court to issue a ridiculous number of instructions, as if quantity sets things right; the defense lawyers, for their part, ran from Arabic and Islam as far as their words could carry them; and in the jury room, bullies continued the government's work.

Steeped in images of terror inside and outside the courtroom, the jurors found themselves actors in their own threat-filled drama complete with marshals and security cordon. And, in a courthouse that was not too long ago covered with a powdery mix of bodies and buildings, in which facts commingled with unsupported allegations and fantastic conclusions were propped up by due process, they rendered a verdict. Whether convinced of the government's tale, overwhelmed by legal complexity, gripped by emotion, or "having punked out" (Powell & Garcia, 2006, p. 2), they sent Yousry to prison.

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Having arrived at the end of my critical ethnography, from among documentary abundance and personal courtroom observations, my most poignant memory is of a man who sometimes calmly, sometimes angrily faced his accusers but steadfastly believed that, in the end, justice would prevail. It was not to be. The post-9/11 world saw it differently and, in classic moral panic language, decided:

> No doubt the interpreter conveys the impression of being a kindly scholar. But it is one of the facts in the kind of twilight war being levied against our country that not everyone is what they seem and danger comes in disguises. (Editorial, *The New York Sun*, 2006)

True, although for Yousry the danger came at the hands of the state in the guise of the war on terror.

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Chapter 8: Concluding Thoughts and Contribution

This dissertation cuts across many academic disciplines and seeks to contribute in some small measure to each of these fields. It is one of the few ethnographies of a U.S. terrorism trial known to this writer and, as such, adds to the scholarship on terrorism, especially within court contexts.[181] It highlights a moral panic verdict, which places it squarely within cultural criminology. In terms of understanding jury decision-making in terrorism cases, it touches on myriad issues and may serve as a descriptive baseline for any of the legal factors explored. With regard to the interpreting profession, it is the first scholarly examination of the impact of the Special Administrative Measures on interpreters. Moreover, it describes the translator-traitor continuum and spectrum of distrust, which represents the first focused treatment of the translator-traitor mentality in the terrorism arena.

The policy implications of this dissertation are manifold. The journey through the construction of dangerous knowledge serves as a cautionary tale for scholars of terrorism and other fraught topics, and hopefully will help to shift these oppressive winds that erode academic freedom. The extreme nature of the Yousry verdict also signaled that much remains to be done in terms of educating authorities and the public about the language profession. Translators and interpreters are critical to war zones and homeland security, yet they remain a terribly vulnerable population. In the following, the author puts forward policy suggestions for addressing the SAMs' deficiencies as they pertain to translators/interpreters, as well as a macro-level advocacy focused on counteracting the translator-traitor mentality on a more global scale.

[181] Mahmood (2001) conducted ethnographic research with Sikh separatist militants at venues that included the Southern District of New York.

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Special Administrative Measures (SAMs).

The Yousry verdict has sent shivers through the interpreting community, especially among Arabic linguists contracted by attorneys who are defending inmates subject to the SAMs. Offering these professionals greater protection by mitigating their legal exposure thus should be a top priority for all parties involved, be they industry associations, the U.S. Department of Justice (DOJ), attorneys representing such defendants/convicts, or the translators and interpreters themselves. While the guidelines and codes of ethics issued by the industry's two main professional associations in the United States, namely, the American Translators Association (2010) and the National Association of Judiciary Interpreters (n.d.), afford some measure of protection, Yousry's cross-examination revealed that his prosecution did not revolve around adherence or lack of adherence to linguistic protocol or the extent of his linguistic agency during attorney-inmate conversations. Rather, the government's line of questioning focused primarily on the extent of his knowledge of the Islamic Group. This suggests that, post-9/11, the codes of these organizations, as written, are not sufficient to adequately quell the fears of translators and interpreters in the trenches, especially those in high-risk settings. It may thus be beneficial for such codes to explicitly acknowledge and adapt to the new environment by incorporating the latest research, which discusses struggles with important ethical dilemmas and the risk of co-optation into institutional agendas (see, for instance, Morris, 1999; Davidson, 2000; Berk-Seligson, 2002; Angelelli, 2004; Inghilleri, 2010; Baker & Pérez-González, 2011).

Operating strictly within the confines of their assignments, however, may go a long way in protecting interpreters. This means following proper interpreting protocol even if lawyers request otherwise for reasons such as time management, efficacy, etc. It also requires keeping role definitions well-defined. In Yousry's case, the fact that he was writing his doctoral thesis on

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Rahman provided the government with an opportunity to use his own academic research against him. While interpreters are expected to be experts in the areas in which they work, to lower the risk that such expertise be misconstrued, it is advisable that they closely adhere to the parameters of the profession and not inhabit dual roles, no matter the benefits to some other field.

Another policy suggestion that might insulate interpreters from potential prosecution is to lobby the DOJ to restructure/redraft SAMs-related documents so that the linguist's responsibility only extends to matters reasonably within his or her control and does not include the actions of attorneys or anything else unrelated to the interpreting process. It could be argued that turning to the state to remedy the very ills that were spawned by its laws and political agenda may be somewhat naïve. However, if the DOJ were to fully redress this deficiency in the SAMs, overall national security would benefit, since linguists would, in theory, no longer have to work in fear, and it might encourage the return of highly qualified professionals who fled the terrorism field after the Yousry verdict. Muhammad Muslih, an Arabic translator/interpreter and professor of political science who participated in most of the major U.S. terrorism trials between 1993 and 2005, has not accepted a terrorism-related translation or interpreting assignment since. In an interview for Swiss television, he commented that because the existing laws offer no protection, working on terrorism-related projects means that "you walk into a minefield" and that "every word is almost a time bomb" (Sallin, 2011). Thus, redrafting the SAMs with respect to linguistic staff appears to be key.

Barring that approach, lawyers who represent clients charged with or convicted of terrorist activities should rotate interpreters to reduce the risk of an interpreter suddenly being accused as a co-conspirator. While doing so may reduce the quality of the interpretation, especially in legally complex matters (since it prevents an interpreter from building a knowledge

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base specific to the case), in the current political climate, this lack of familiarity must be balanced against the elevated risk of prosecution arising from the Yousry precedent. In addition, linguists working in the terrorism arena must emancipate themselves vis-à-vis the lawyers who hire them. It is imperative that they catapult themselves from their historical position of invisibility and take an active stance in their dealings with the legal profession. For instance, learning as much as possible about the background of a lawyer can yield valuable information that will help them navigate unanticipated and/or unacceptable situations, especially in the case of an attorney with a reputation for (over)zealousness. While lawyers come in many incarnations, it is safe to assume that linguists are generally just a speck on their radar; consequently, the latter must vigorously seek to shield themselves from the actions of rogue attorneys.

Aside from any specific solution, however, the overall purpose of the SAMs and the spirit in which they were conceived must be revisited. While these measures are a tool of the Federal Bureau of Prisons for managing inmate interactions, more broadly they are a political instrument to advance U.S. interests in the war on terror. And, as anyone in the field of counterterrorism is well aware, the first line of defense in this war is manned by linguists working in high-priority languages such as Arabic. Whether sifting through chatter coming over the airwaves or interpreting in cases involving terrorist activity, these professionals are among the most crucial assets to national security. Thus, at a minimum, they are entitled to expect the SAMs—the ultimate objective of which is to protect the public—to protect them as well.

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The Translator-Traitor Mentality (TTM).

While implementing a micro-level policy change such as modification of the SAMs would appear very viable, combating the age-old translator-traitor mentality is another matter. This requires a macro-level effort that, above all, raises awareness of the issue and ushers in a paradigm shift in how linguists are perceived and treated across the globe. To accomplish this, an advocacy organization should be established that is solely dedicated to the protection of translators and interpreters in conflict zones and other high-risk settings,[182] with high-risk settings referring to such terrorism-related venues as prisons, detention camps, or even law offices. The mission of such an organization would be to call for better protection of linguists domestically and internationally, and to engage in a variety of activities, all designed to reduce their physical, psychological, and/or legal vulnerability.

Its action platform could include:[183]

▪ Drawing attention to and informing the industry and the public about the plight of T/Is in conflict zones and other high-risk settings (such as that in which Yousry operated). This can be done via social networks (Facebook, Twitter, etc.), in academic journals, at universities and conferences, and by providing research and contacts to the media.[184]

▪ Obtaining a special legal status for T/Is worldwide, similar to that granted the staff of the International Committee of the Red Cross. While the Third and Fourth Geneva Conventions make reference to the activities of interpreters, their rights are not explicitly addressed (Bartolini,

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[182] The author founded such an organization, Red T, which obtained its 501(c)(3) non-profit status in 2012 (retroactive to December 2010; see http://red-t.org).

[183] The sequence of the action items is not indicative of their importance.

[184] In part as a result of awareness-raising efforts by Red T and initiatives such as the AIIC (International Association of Conference Interpreters) Project to Help Interpreters in Conflict Zones, The List Project to Resettle Iraqi Allies, and the Iraqi Refugee Assistance Project, the dire conditions faced by linguists operating in theaters of war have garnered significant attention in the mainstream media and government circles.

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2010).[185] To remedy this, especially in view of the extreme vulnerability of T/Is in high-risk settings, a first step would be to seek a resolution from an international body such as the United Nations that confers protected-person status on linguists in conflict zones (akin to, for instance, Resolution 1738 protecting journalists).[186]

▪ Issuing safety guidelines and providing hi-tech protective solutions: Here, a safety kit for linguists at risk is envisioned, consisting of (a) a brief conflict zone field guide that outlines rights, responsibilities, and practices for field linguists as well as their employers[187]; (b) a safety handbook that more comprehensively addresses these rights and responsibilities and also details best practices (both (a) and (b) to be available in paper form and as an app). More specifically, this handbook should offer training in safety behind the front lines, such as basic precautions for a variety of situations, among them how to pass through an area of active combat, a checkpoint, etc.; how to spot landmines, booby traps, etc.; and how to respond to threats by other parties. In terms of post-conflict assistance, it should contain a section that focuses on psychological injuries and offers resources that help with post-traumatic stress disorder (PTSD)[188]; (c) a high-tech bracelet that, when triggered, utilizes phone and satellite technology to send an alarm that the wearer is in some kind of danger. The linguist can activate the alarm manually if he/she feels endangered, or if the bracelet has been removed by force, a stored message is sent automatically.

[185] While in international and non-international armed conflicts T/Is can fall under the category of civilians within the scope of international humanitarian law, Bartolini (2010) points out "that the amount of special and separate attention they are given in instruments is much less than for other categories covered" (p. 2).

[186] In process.

[187] In partnership with the International Association of Conference Interpreters (AIIC) and the International Federation of Translators (FIT), the latter serving as an umbrella organization for translator associations worldwide and representing over 80,000 linguists, the author co-drafted the first *Conflict Zone Field Guide for Civilian Translators/ Interpreters and Users of Their Services*. This guide, which was issued in March 2012 and is the first of its kind, summarizes the basic rights, responsibilities, and practices recommended by the three organizations, and its target audience is linguists working for the armed forces, journalists, NGOs, and other entities operating in conflict zones as well as those that contract them. It has been widely disseminated and translated into multiple languages and represents the inaugural document in the safety kit for linguists at risk (http://red-t.org/guidelines.html).

[188] The *Safety Handbook for Translators and Interpreters*, also the first of its kind, is currently being drafted by the three partner organizations.

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This warning message is then forwarded to social media sites such as Facebook and Twitter "to rally support and ensure people do not disappear without [a] trace" (Smart Bracelet, 2013).[189]

▪ Exposing injustices and rights violations as they relate to T/Is: Such injustices occur with great frequency throughout the world. To combat this state of affairs, these incidents should be posted on social media sites as soon as they occur and followed up with advocacy letters to the parties responsible. To increase the effectiveness of such letters, it would be advantageous for the various international professional organizations to join together and officially launch an Open Letter campaign. The purpose of this campaign is to urge the respective authorities to either release an unjustly imprisoned linguist or, depending on the circumstances, revise a policy that is detrimental to the profession and its members.[190]

▪ Creating and maintaining a database for T/I incidents and statistics: To the writer's knowledge, there is no central database in which TTM incidents from all over the world are compiled. Such a database would allow for quantitative and qualitative evaluations of the phenomenon and serve as a resource for the media, academic institutions, and other organizations interested in T/I-related issues.[191]

▪ Tracking T/I policy progress by country: In order to alert the press to national policies that disregard the physical, psychological, and professional well-being of linguists as well as draft effective letters to the respective authorities, hard facts and figures in addition to

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[189] For more information on how this smart technology operates, see http://www.bbc.co.uk/news/technology-22038012

[190] The author has posted widely on T/I-related injustices occurring worldwide, including in Afghanistan, China, Iran, Iraq, Turkey, and the U.S. In the same vein, she has presented stateside and abroad on the Yousry and Al-Halabi (see Chapter 7) cases to alert the public to linguist prosecutions in the United States and Guantánamo Bay. She also spearheaded the Open Letter Project, a letter-writing campaign in which AIIC, FIT, and the International Association of Professional Translators and Interpreters (IAPTI) joined in a historic first to fight on behalf of their fellow linguists (http://red-t.org/openletters.html).

[191] In addition to retaining a large archive of U.S.-terrorism prosecutions stretching back to the first World Trade Center bombing in 1993, the author has collected TTM incidents from across the world for the past three years. These incidents are culled either from open sources or interviews with linguists operating in high-risk settings.

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comparative data are needed. The advocacy organization proposed above should thus follow relevant legal developments in the U.S. and abroad, and monitor asylum grants to conflict zone interpreters.[192]

▪ Supporting other entities in the development and operation of programs that enhance the safety of T/Is: Inasmuch as conflict zone linguists are often in imminent danger, it may be beyond the scope of the advocacy organization to provide help on the ground. Instead, to extend its protective efforts, it should offer monetary assistance to non-profits with structures in place that enable them to get linguists out of physical harm's way.[193]

▪ Organizing, conducting, and/or sponsoring public events and lectures: As an inherent part of the awareness-raising effort, the organization should encourage discussions about T/I-related issues and, through its social media sites and other venues, provide a base forum for the exchange of ideas.[194]

▪ Raising awareness of the advocacy, its logo, and its mission in order to secure worldwide recognition.

This dissertation brings to light the SAMs issue as well as the extralegal factor TTM, in combination with Islamophobia and moral panic. It underscores the complexities and dangers encountered by linguists working in the terrorism arena and details the ramifications of moral-panic-based behavior and decisions on the part of the authorities and jurors. Yousry, a convenient pawn in the government's agenda, was expelled from the scope of justice by a jury of presumed peers. Whether as a representative of a profession whose default handicap is distrust

[192] The author has tracked asylum grants in the U.S. (Special Immigrant Visa policies) as well as those of the coalition countries in both the Afghan and Iraq wars, and this data was used for the Open Letters.

[193] Red T has provided financial support to The List Project to Resettle Iraqi Allies*,* which, as its name implies, brings Iraqi allies, among them linguists, to safety. For more information, see http://thelistproject.org

[194] In process.

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and/or as an Arab American, a group particularly distrusted and denigrated post-9/11, he was denied not only fair treatment but justice itself. Yousry paid a heavy price; however, the toll of such practices on our national security and, more importantly, our collective psyche far exceeds his personal fate. TTM and its corollaries have gone on far too long. It is time for a change.

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Appendix A

Overview of Charges *United States v. Ahmed Abdel Sattar, Lynne Stewart and Mohammed* [sic] *Yousry*, 02 Cr. 395 (JGK) (S.D.N.Y. 2003)				
Counts from Superseding Indictment November 19, 2003	**Sattar**	**Stewart**	**Yousry**	**Approx. max. sentence[195]**
Count 1: Conspiring to defraud the United States (18 U.S.C. § 371) *by hindering the Federal Bureau of Prisons in the administration and enforcement of the SAMs that prohibit Rahman from communicating with the media and his followers*	x	x	x	5 years
Count 2: Conspiring to kill and kidnap persons in a foreign country (18 U.S.C. § 956(a)(1) and (a)(2)(A)) *by facilitating communications between Rahman and his followers planning terrorist acts*	x			Life
Count 3: Soliciting crimes of violence (18 U.S.C. § 373) *by collaborating with Rifa'i Taha on the October 2000 fatwah calling on fellow Muslims to kill Israelis*	x			20 years
Count 4: Conspiring to provide and conceal material support to terrorist activity (18 U.S.C. §§ 371 and 2339A) *by agreeing with each other to the contents of Count Five below*		x	x	5 years
Count 5: Providing and concealing material support to terrorist activity (18 U.S.C. §§ 2339A and 2) *by providing personnel, i.e., making Rahman available as a co-conspirator, receiving instructions from him during prison visits, and conveying those instructions to third parties, thus enabling Rahman to communicate with his followers*		x	x	10 years
Count 6: Making false statements (18 U.S.C. § 1001) *by falsely agreeing in SAMs affirmation of May 2000 to abide by prison regulations*		x		5 years
Count 7: Making false statements (18 U.S.C. § 1001) *by falsely agreeing in SAMs affirmation of May 2001 to abide by prison regulations*		x		5 years

Table Appendix A Overview of Charges

[195] Sattar received 24 years and Stewart 28 months (resentenced to 10 years), while Yousry received 20 months.

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Appendix B

Main Trial Appearances *United States v. Ahmed Abdel Sattar, Lynne Stewart and Mohammed* [sic] *Yousry*, 02 Cr. 395 (JGK) (S.D.N.Y. 2003)	
Defendants	Yassir Al-Sirri (First indictment) Ahmed Abdel Sattar (First and superseding indictment) Lynne Stewart (First and superseding indictment) Mohamed Yousry (First and superseding indictment)
The Court / District judge Court clerk	John G. Koeltl Don Fletcher
Prosecutors	Robin L. Baker Anthony S. Barkow Andrew S. Dember Christopher J. Morvillo
Defense attorneys	Barry M. Fallick (Sattar) Kenneth A. Paul (Sattar) Michael Tigar (Stewart) David A. Ruhnke (Yousry) David Stern (Yousry)
Identified unindicted co-conspirators[196]	Omar Abdel Rahman (Cleric, inmate) Rifa'i Ahmed Taha Musa ("Taha," Islamic Group leader)
Government witnesses	Nabila Banout (FBI language specialist) Walid Farhoud (Contract translator, Taha book) Patrick Fitzgerald (Former Assistant United States Attorney, S.D.N.Y.) Gerard C. Francisco (Legal administrative specialist, USDA S.D.N.Y.) Ekkehart Hassels-Weiler (Bank lawyer; Luxor tourist) Cynthia McGrath (FBI special agent, Minnesota) Christine Monaco (FBI special agent, New York) Esmat Salaheddin (*Reuters* correspondent, Egypt) Amira Soliman (FBI language specialist/analyst)
Defense witnesses (Yousry)	Ramsey Clark (former United States Attorney General) Lawrence Schilling (Attorney, Rahman) Zachary Lockman (Yousry's dissertation chair; chair of Department of Middle Eastern and Islamic Studies, New York University) Charles F. Coleman (Coordinator, Program in Cultural Diversity, York College, City University of New York) Michael Gasper (Friend and academic colleague) Vincent Sawyer (Pastor, Faith Baptist Church, Queens, NY) Leslie Yousry (Daughter)
Defense witness (Sattar)	Muhammad Muslih (Forensic linguist, Arabic)

Table Appendix B Main Trial Appearances

[196] Listed here inasmuch as they were recurring figures (albeit not physically present).

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Appendix C: Authorities

Cases

In re Japanese Electronic Products Antitrust Litigation, 631 F.2d 1069 (3d Cir. 1980).

In re Senior Airman Ahmad I. Al-Halabi, Air Force Court, Misc. Docket 2003-07.

In re U.S. Financial Securities Litigation, 609 F.2d 411 (9th Cir. 1979), cert. denied, Gant v. Union Bank, 446 U.S. 929 (1980).

People v. Assi, Ind. No. 4848/2000 (Sup. Ct. N.Y.Co. 2000).

People v. Davis, Ind. No. 6315/86 (Sup. Ct. Bx Co. 1986).

People v. White, 73 N.Y.2d 468, 476, 541 N.Y.S.2d 749 (1989).

United States v. Felipe, 148 F. 3d 101 (2d Cir.1998).

United States v. Levasseur, 85 Crim. 143 (E.D.N.Y. 1985).

United States v. Rahman, 93 Cr. 181 (MBM) (S.D.N.Y. 1993).

United States v. Rahman, 189 F.3d 99 (2d Cir. 1999).

United States v. Sattar, Al-Sirri, Stewart, and Yousry, 02 Cr. 395 (JGK) (S.D.N.Y. 2002).

United States v. Sattar, Stewart and Yousry, 02 Cr. 395 (JGK) (S.D.N.Y. 2003).

United States v. Sattar, Stewart and Yousry, 395 F.Supp.2d 66 (S.D.N.Y. 2005).

United States v. Stewart, Yousry and Sattar, 590 F.3d 93 (2d Cir. 2009).

United States v. Zafiro, 506 U.S. 534 (1993).

Statutes and Rules

28 C.F.R. § 501.2. National security cases.

28 C.F.R. § 501.3. Prevention of acts of violence and terrorism.

8 U.S.C. § 1189. Designation of foreign terrorist organizations.

18 U.S.C. § 2. Principals.

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18 U.S.C. § 371. Conspiracy to defraud the United States.

18 U.S. Code § 373. Solicitation to commit a crime of violence.

18 U.S.C. § 956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country.

18 U.S.C. § 1001. Statements or entries generally.

18 U.S.C. § 2339A. Providing material support to terrorists.

18 U.S.C. § 2339B. Providing material support or resources to designated foreign terrorist organizations.

Federal Rules of Evidence, 14 (2013). Relief from prejudicial joinder.

Federal Rules of Evidence, 403 (2013). Excluding relevant evidence for prejudice, confusion, waste of time, or other reasons.

Federal Rules of Evidence, 606 (2013). Juror.

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