

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON

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4 HONORABLE JOHN C. COUGHENOUR, JUDGE PRESIDING

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6
7 UNITED OF STATES OF AMERICA,)
8 PLAINTIFF,)
9) CASE NO.
10 VS.) CR 99-666-JCC
11 AHMED RESSAM, AKA BENNI NORRIS,)
12 DEFENDANT.)

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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS
17 LOS ANGELES, CALIFORNIA
18 MONDAY, APRIL 2, 2001

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1 LOS ANGELES, CALIFORNIA; MONDAY, APRIL 2, 2001; 9:30 A.M.

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3 THE COURT: All right.

4 MR. HILLIER: Your Honor, I asked if I could address
5 the Court just very briefly. First and this relates to our
6 last side bar Thursday afternoon where we talked about the
7 question of Giahad and whether the testimony of the last

8 witness opened the door. There was some confusion as to
9 whether the Court had ruled on a motion in liminae that I had
10 brought earlier in the day.

11 And after a miserable weekend fretting over this,
12 Your Honor, I do have a transcript of the hearing. At the
13 hearing Thursday morning, I moved to exclude the references to
14 this person Reda as being somebody who had been to Afghanistan,
15 been to Pakistan, knows GIA people and the reference to Giahad
16 arguing that it wasn't relevant. That objection was
17 overruled.

18 I probably should have followed my own common sense and
19 maybe I should have continued to object even when testimony was
20 elicited, despite Your Honor's ruling, but I didn't. It seemed
21 to me the testimony was very limited to what Mr. Meskini
22 understood Giahad to mean. On direct examination, he talked
23 about, you know, fights against the enemies of the Muslims and
24 on cross, very limited cross, as to the notion that it has
25 other components also, such as the notion of public donation,

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1 giving money to the cause.

2 It seems that this testimony is very limited and should
3 remain limited lest we get into just very complicated and
4 confusing struggles from the government's point of view what it
5 means and our counter-experts on what it means. And how the
6 government's view to limit -- that's the issue I would address
7 after Mr. Bruguire has finished his testimony.

8 THE COURT: All right.

9 MR. GONZALEZ: Does the Court want some response to
10 that?

11 THE COURT: No.

12 MR. GONZALEZ: United States calls Judge Bruguiera.

13 THE CLERK: Please step forward to here, sir. Does the
14 interpreter have a card because you weren't the one that was
15 here earlier.

16 THE COURT: Don't worry about that.

17 THE CLERK: Thank you, sir. Would you please have a
18 seat in the witness stand.

19 THE COURT: Does the interpreter have an oath on file?

20 THE INTERPRETER: The interpreter does not have an oath
21 on file.

22 THE CLERK: Please raise your right hand.

23 (Interpreter sworn.)

24 THE CLERK: Would you state your name, please.

25 THE INTERPRETER: Paul Chang, C-h-a-n-g.

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1 THE CLERK: Thank you, sir.

2 MR. GONZALEZ: The interpreter has actually traveled
3 here from Seattle. I believe we had to bring someone down.

4 THE WITNESS: Bruguiera, John Louie.

5 THE CLERK: Would you please spell your last name.

6 THE WITNESS: B-r-u-g-u-i-e-r-e.

7 THE CLERK: Thank you.

8 MR. GONZALEZ: Your Honor, it's not my intention to
9 cover the ground we covered in Seattle, but to take up where we
10 left off. It's also not my intention to cover issues purely
11 factual, only that which would be offered as expert testimony
12 since that's the purpose of this hearing today.

13 THE COURT: All right.

14 DIRECT EXAMINATION

15 BY MR. GONZALEZ:

16 Q. Judge Bruguiere, when we left off with your testimony in
17 Seattle, we were just at the point where I was going to ask
18 about your investigation involving Ahmed Ressam.

19 A. Mr. Who?

20 Q. Ressam. Is that investigation being handled by
21 investigating magistrates in Paris?

22 A. Yes. Things have developed since the first time that I
23 came here. The case is being judged. Virtually the debates
24 and discussions are now concluded in France, and the decisions
25 will be set forth on April the 6th.

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1 Q. Is that the sentencing date?

2 A. Yes, it is. The date when the Court will be making its
3 decision.

4 Q. And the investigation which resulted in that trial, were
5 you in charge of that investigation, Judge Bruguiere?

6 A. Yes, absolutely.

7 Q. And was that an investigation with just one investigating
8 magistrate or did you work together with a colleague from your
9 office?

10 A. There were two of us, but I was the first one that was
11 chosen. So I was the one in charge for coordinating the
12 investigation.

13 Q. And what is the purpose for having two magistrates in
14 charge of one file?

15 A. In France, we deem that it is quite important with regard
16 to difficult and complex cases that there be two judges on the
17 case, both in order to make the case more efficient and also
18 for security reasons as well.

19 Q. Shifting just for a moment. In your later investigation,
20 did you come across any records of Ahmed Ressam being in
21 France?

22 A. I don't understand.

23 Q. Yes. I'm speaking now of records from Corsica. Would you
24 explain what those records from Corsica show?

25 A. Yes. We actually had set forth different documents and

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1 with regard to Mr. Ressam travelling undercover from and to
2 Corsica in 1993. When we also realized that he was doing so
3 under a fake name, they also informed this information to us.
4 We also provided that with regard to these documents that
5 contained photographs and also contained fingerprints.

6 Q. And were those transmitted pursuant to the letter rogatory
7 request from this country to your country?

8 A. Exactly.

9 Q. And as part of that same rogatory request, did you submit
10 documents pertaining to your investigation of Ahmed Ressam?

11 A. Exactly.

12 Q. And sitting on the table in a pile to my left is a stack of
13 the discovery we provided to defense counsel in this case. And
14 is that the basis of your testimony today?

15 A. Yes, exactly.

16 Q. Included in the documents you transmitted, was there an
17 analysis of the Tahar Medjadi passport used by the defendant to
18 enter Canada in 1994?

19 A. Yes, exactly. It was a copy of the passport.

20 Q. At some point, did your investigation of Ahmed Ressam
21 involve Canada?

22 A. Yes, exactly.

23 Q. And that led you to Canada in this investigation?

24 THE INTERPRETER: May the interpreter ask a question,
25 please?

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1 THE COURT: Yes.

2 THE WITNESS: Yes. Because since 1996, we were quite
3 aware of the fact that Canada was actually one of the main
4 centerpieces in all of this. And we also assumed and quickly
5 realized that there was a conspiratorial cell, namely in
6 Montreal in the apartment that was rented by Mr. Boumezbeur and
7 also where Ahmed Asez and Labsi Mustafa lived there and were
8 quite aware of the fact that this was spreading throughout the
9 international scene. And we requested aid from other countries
10 named such as Turkey and we also turned to Canada for
11 assistance.

12 Q. Was one of those Mustafa Labsi?

13 A. Uh-huh.

14 Q. M-u-s-t-a-f-a L-a-b-s-i?

15 A. Yes.

16 Q. Are you familiar with the name Kristoff Kasz?

17 A. Yes. I'm quite aware of it. I know Kristoff Kasz. He was
18 part of the network that was based out of France where Khabu
19 was also part of this. And this was where Khabu was related or
20 connected with Canada, and Kasz also opened fire on the police.

21 Q. What led to the confrontation with Kristoff Kasz?

22 A. The group that we call Rudone group, this group is located
23 in the north of France, had developed a violent strategy in the
24 beginning of 1996. And they had begun producing different
25 violent weapons such as PG 7s. Also machine guns and automatic

1 weapons as well.

2 And this had led to different actions such as armed
3 robbery. And they didn't have any qualms whatsoever about
4 shooting, shooting the population. And by the way, as a matter
5 of fact, they also attempted to carry out an attack by means of
6 a booby trap car against an international chancellorate for the
7 G7 in La Leal. And it was after an assault that was conducted
8 by the police where there was a confrontation where there was a
9 particularly arduous confrontation, Kasz was able to flee
10 across the Belgium border with Abu Mari. And there he began an
11 open fire on the Belgium police. And he died in this armed
12 confrontation.

13 Q. Was there some investigation done of documents and
14 information found on his corpse?

15 A. Absolutely.

16 Q. Any connection from that with the group in Montreal?

17 A. Yes. As a matter of fact, he did. On his person, we found
18 an electronic agenda with Abu Mari's telephone numbers and also
19 information directed towards Fateh Kamel.

20 Q. And what relevance did Fateh Kamel have?

21 A. According to the investigations that we had conducted,
22 Fateh Kamer was the leader of the cell that was based out of
23 Montreal.

24 Q. What role, if any, did the organization called IHH play in
25 the operation of the Montreal cell?

1 A. An important role. The IHH is an NGO, but it was kind of a
2 type of cover-up to thwart the Moujadin. At the same time, in
3 order to obtain forged documents and also to obtain different
4 forms of infiltration for Moujadin in combat. And also to go
5 and gather these Moujadines. And finally, one of the last
6 responsibilities that they had was also to be implicated or
7 involved in weapons trafficking.

8 Q. How does this relate to the Montreal cell, if it does?

9 A. The link is actually related. There's a rather close
10 relation. It was determined that Khabu, as you already know,
11 had left for Canada in order to find forged -- to seek forged
12 passports. And he actually carried these forged documents to
13 the IHH namely for another member as well.

14 In addition, with regard to Khabu, in addition to the
15 testimony and in addition to other documents that we had
16 gathered, there were also other calls. And there were actually
17 different calls that crossed between Canada and Turkey and
18 Istanbul where IHH is located.

19 Q. Did you conduct interviews with anyone who had traveled to
20 Montreal to meet with the people you believed to be members of
21 the Montreal cell?

22 A. I actually applied for a legal standing in order to conduct
23 these investigations in Canada. And yes, as matter of fact,
24 individual members of this organization were actually
25 interviewed by the Canadian legal authorities, namely

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1 Boumezbeur.

2 Q. Before travelling to Canada for those interviews and search
3 warrants which were also conducted, did you speak to people in
4 France who had traveled to Montreal connected with false

5 passports?

6 A. Yes. As a matter of fact, we had. We actually had stopped
7 and investigated Bendaoui.

8 Q. Could you spell that last name please?

9 A. B-e-n-d-a-o-u-i.

10 Q. And with whom did Mr. Bendaoui indicate he had met or
11 spoken with in Montreal?

12 A. It was with Mr. Khabu. He met him in Montreal, and he was
13 also in touch with namely with Mr. Ahmed Ressam and Atmani
14 Said.

15 Q. Are you saying Ressam with an R, correct?

16 A. Ahmed Ressam.

17 Q. Would you spell it so the interpreter will pronounce it
18 correctly.

19 A. There's a little problem here with the translation.

20 Yes. Khabu stated that he had clearly met Ahmed, and
21 it is -- it's Ressam, clearly. R-e-s-s-a-m.

22 Q. And during what time period did these meetings take place?

23 A. May and June 1996.

24 Q. And what was the purpose of the meetings?

25 A. The purpose of this was for Khabu to gather these forged

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1 passports and to make them arrive in Turkey where they were
2 destined for the recipients. They were going to get these
3 passports.

4 MR. GONZALEZ: Your Honor, may one of my colleagues
5 turn on the projector to show a photo?

6 MR. DISKIN: May I approach the projector, Your Honor?

7 THE COURT: Yes.

8 BY MR. GONZALEZ:

9 Q. Did you make some determinations about the members of the
10 Montreal cell including Said Atmani, Ahmed Ressam, Adel
11 Boumezbeur, Abdul Oskar, and Mustafa Labsi?

12 THE INTERPRETER: Would you mind repeating those names
13 for the interpreter?

14 MR. GONZALEZ: Said Atmani otherwise known as Don
15 Karid, Ahmed Ressam, the defendant, Adel Boumezbeur, Mohamed
16 Omari, Abdel Oskar, Mustafa Labsi and Murad Iklhef.

17 THE INTERPRETER: Could you repeat the question,
18 Counsel.

19 BY MR. GONZALEZ:

20 Q. Did the Judge make any determination about whether these
21 individuals were members of the Montreal cell identified by the
22 French investigation?

23 A. Yes. As a matter of fact, we did. And this involved
24 rather long investigations that were confirmed and further
25 completed by the investigations that were conducted in Canada

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1 in 1999.

2 Q. And is this the same cell that you believed to have been
3 led by Fateh Kamel?

4 A. Absolutely.

5 Q. I'd like to show you some photographs from the reports that
6 you've provided pursuant to the letter rogatory.

7 You list the first two photographs as Fateh Kamel. Is
8 this the man you identified as being the leader of this cell?

9 A. Exactly.

10 Q. The third photograph on this report from 1997 is Atmani
11 Said, otherwise known as Harim?

12 A. Yes.

13 Q. What do you know about Atmani Said, otherwise known as
14 Harim?

15 A. It was a contact that had been established with the group
16 that was capable of contacting him by means of a telephone
17 number. That was thanks to the telephone number that was
18 located at the conspiratorial flat at Malicorne Plaza.

19 Q. Is the Malicorne address the address of the apartment
20 rented in the name of Adel Boumezbeur?

21 A. Yes, exactly.

22 Q. And is that 6301 Malicorne in Quebec, Montreal?

23 A. Exactly.

24 Q. And also, in your report which proceeded your trip to
25 Canada, you had this photograph of the defendant?

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1 A. Exactly.

2 Q. And photographs of Mustafa Labsi and Ahmad Iklhef; is that
3 correct?

4 A. Yes, exactly.

5 Q. Did you have an opinion at that time about Ahmed Ressam's
6 role in the Montreal cell vis a vis Fateh Kamel?

7 A. My question -- my answer is a positive one, yes. And
8 because we knew of the fact that Khabu and Karim and that Ahmed
9 had to be with Ressam.

10 Q. In your opinion, did Ahmed Ressam's role in the Montreal
11 cell change at any point?

12 A. Could you possibly be more precise with regard to time?

13 Q. Certainly. Let's talk about after Ahmed Ressam's return to
14 Canada in February of 1999, after he had traveled to Pakistan
15 in March of '98.

16 A. Undoubtedly, there was a change in the attitude and also
17 the status of Ahmed Ressam.

18 Q. And how would you describe that change, Judge Bruguiere?

19 A. Ressam undoubtedly took a more higher role in the group,
20 especially after Fateh Kamel's arrest. Undoubtedly, Ressam had
21 an operational role after his move to the Pakistani Afghani
22 zone. All the more because Fateh Kamel, in light of the fact
23 that he was fleeing from the press, determined that it was no
24 longer prudent to live in Canada any longer.

25 And exactly it was 1999 when he left Canada. He left

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1 Canada for Turkey Jordanian and South Arabia. And that's the
2 reason why. The reason he left was to reinitiate his
3 contacts. And when, upon his return in April of 1999, he is
4 stopped and questioned on Jordanian soil from his return from
5 Arabia. And he was extradited.

6 Q. You're talking about Fateh Kamel at this point?

7 A. Yes.

8 MR. GONZALEZ: Your Honor, I believe the interpreters
9 need to switch off periodically. Would this be an appropriate
10 time?

11 THE COURT: Let me say to the interpreter I know that
12 interpretation in a court proceeding is at best, a difficult
13 process. I sense you may be a little nervous. For what it's
14 worth, I think you're doing a superb job. This interpreter,
15 also.

16 BY MR. GONZALEZ:

17 Q. Were you through with your answer, Judge Bruguiere?

18 A. I believe so.

19 Q. You indicated that you submitted a request through letter

20 rogatory from France to Canada regarding this investigation.

21 When was that submitted from France to Canada?

22 A. It was in April '99, but it was only about to Canada in
23 October.

24 Q. So you submitted the question to Canada in April of 1999
25 but actually conducted the searches in October '99?

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1 A. That's right because we had to have the agreement of the
2 Canadian authorities.

3 Q. In your request to Canada, did you include requests
4 regarding Ahmed Ressay?

5 A. Yes. He was really the objective of that request.

6 Q. In fact, you asked to have him questioned and have his
7 residence searched; is that right?

8 A. That was the request indeed that we formulated.

9 Q. Did you know at that time that he was living under a false
10 identity in the name of Benni Noris?

11 A. No. Absolutely not.

12 Q. Did you know that he had a second address on Rue Du Fort?

13 A. No. Absolutely not.

14 Q. Where did you understand him to be living or with whom did
15 you understand him to be living when you submitted your request
16 to Canada?

17 A. We had a clue of where he lived and that's precisely what
18 we mentioned to the Canadian government. And we had
19 something. That was the fact that we were supposed to -- that
20 was the fact that request was justified legally.

21 Q. And was that the address of Adel Boumezbeur on Plaza de
22 Malicorne?

23 A. That's right.

24 Q. By the time you got to Canada in October to actually do the
25 search, had Adel Boumezbeur moved his residence? Had he

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1 changed to a different residence?

2 A. It was the Canadian authorities that informed us that on
3 the basis of our request that the Plaza Malicorne address was
4 no longer valid and that Boumezbeur had moved and was living
5 somewhere else. And consequently, the search warrant applied
6 to his new address.

7 Q. Was that the 2525 Sherbrooke address?

8 A. That's right.

9 Q. And what did you expect that you might find? What is it
10 that you were looking for at the address of Ahmed Ressam and
11 others in Montreal?

12 A. We made these very clear in our legal request in order to
13 justify our request. And these justifications were accepted by
14 Canadian authorities. The idea was to find fake documents that
15 were connected to our investigation. Since we were facing fake
16 passport trafficking and we were also looking for address books
17 on which we could possibly have found the name of other
18 members. And also documents on which we may be able to find
19 information on activity -- on the group activities and their
20 relationship because indeed we were facing the activities of a
21 network.

22 Q. Was the search of that location conducted on October 4th,
23 1999?

24 A. That's right.

25 Q. Were any of the residents present in the apartment when it

1 was searched?

2 A. The search was carried out by the Canadian police. And,
3 you know, pursuant to Canadian law, the police is able and has
4 a right to be present during the search.

5 Q. My question specifically is were any of the people who
6 lived at the apartment present?

7 A. No.

8 Q. You weren't present at the search; is that right?

9 A. No, I wasn't there because I was not authorized by Canadian
10 justice or authorities to be present during the search.

11 Q. After evidence was seized at the location by the RCMP, was
12 any of that evidence transferred to France?

13 A. Quite.

14 Q. Among the documents transferred pursuant to the letter
15 rogatory request to Canada which had been seized at the
16 Boumezbeur flat, were there any immigration records in the name
17 of Ahmed Ressam or Mustafa Labsi?

18 A. Yes, absolutely.

19 Q. Were those Canadian immigration documents with their
20 photographs affixed?

21 A. Yes, yes. Quite.

22 Q. Did you also receive documents pertaining to Said Atmani
23 also known as Harim?

24 A. Yes.

25 Q. Did you receive photocopies of a passport in the name of

1 Said Reza with a photograph of Said Gasmi?

2 A. Yes. Right.

3 Q. Was that a Belgium passport?

4 A. That's right.

5 Q. Is there any relevance in your investigation to the altered
6 Belgian passport with Said Gasmi's photographs?

7 THE INTERPRETER: The interpreter doesn't understand
8 the question, Counsel.

9 BY MR. GONZALEZ:

10 Q. What is the relevance of that document?

11 A. These documents are interesting because it's part of a
12 whole set of documents that have been stolen in Belgium in a
13 city hall. And we know that one of the documents that belonged
14 to that set of documents had been used by an individual called
15 Isadin Jalal J-a-l-a-l. So he was the pyrotechnist for the GI
16 cell.

17 Q. I didn't hear the response. Could you repeat that?

18 A. He was a bomb disposal technician from the GI which is GIA.

19 Q. And what is GIA?

20 A. It's the group which is a particularly violent cell, LoFet
21 organization, and which is part of the group Osla Katar which
22 was at the time established in Brussels and which intended to
23 carry out terrorists acts.

24 Q. Was there ever any connection between Mustafa Labsi and
25 this series of stolen Belgium passports?

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1 A. Quite because he himself was -- owned the passport that
2 came from the same source.

3 Q. And when was it that Mustafa Labsi had one of the false
4 Belgium passports from the same source?

5 A. And actually he was in possession of those passports. He

6 precisely determined under which condition he was able to get
7 them, but the origin was clearly established.

8 Q. Did he have such a passport when he was arrested in
9 England?

10 A. Right in December '98.

11 Q. From the search, going back to the search of Adel
12 Boumezbeur's residence, did you also receive seized from that
13 location a daybook produced by the Swiss Bank Corporation?

14 A. That's right.

15 Q. Have you done some analysis of some of the entries in that
16 Swiss bank book?

17 A. Yes, I did.

18 Q. And ultimately, did you transfer that original document to
19 the FBI for processing at the laboratory?

20 A. Yes, that's right. Recently, I did and upon their request.

21 Q. Just a couple of weeks ago; is that right?

22 A. That's right.

23 Q. During the time that that Swiss bank book was in your
24 possession, were there any changes made to it or is it in
25 substantially the same condition that you received it?

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1 A. It remained identical to the state in which it was found
2 and protectionary measures had been taken to protect the
3 integrity of this document.

4 Q. Have you had a chance to take a look at some of the
5 photographs from that laboratory?

6 A. Which pictures are you talking about?

7 Q. The photographs that you looked at about an hour-and-a-half
8 ago.

9 A. Yes.

10 Q. It's a bit dark, but is that substantially what the cover
11 of the book looks like?

12 A. Yes, that's right.

13 Q. From 1996?

14 A. Yes.

15 Q. This is the inside page with the date of October 4th, '99
16 stamped in the book?

17 A. That's right.

18 Q. Does that indicate the date that it was seized in Canada?

19 A. That's right.

20 Q. I'm going to show you, skipping ahead to one of the pages
21 farther in the calendar section of the book. It says GPO.
22 There appears to be a POB number and SAD. Does this have any
23 significance?

24 A. We were able to identify this post office box. We chose
25 the post office box that has been used by Abouzoubeido in the

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1 first, at the beginning, Abouzoubeido.

2 Q. Please spell Abouzoubeido.

3 A. A-b-o-u-z-o-u-b-e-i-d-o.

4 Q. And also?

5 A. And after by Abu Jafar.

6 Q. It was used Abouzoubeido in what location?

7 A. Yes. At Peshure Wall in Pakistan.

8 Q. And later by the second individual. State and spell that
9 name again.

10 A. Abu Jafar. Spelling A-b-u J-a-f-a-r.

11 Q. What significance is there about those two individuals, if
12 you know?

13 A. Yes. This is a structure which has been set up in Pakistan
14 by Abu Jafar and which was used as a necessary relay to allow
15 the Moujadines to get trained in Pakistani camps. Correction.
16 In camps in Pakistan.

17 MR. GONZALEZ: I'm sorry. The witness said
18 Afghanistan, I believe, if you'll ask the witness.

19 THE INTERPRETER: Interpreter's correction. Camps in
20 Afghanistan.

21 MR. GONZALEZ: Moving ahead a number of pages.

22 THE COURT: Tell me again where this book was found.

23 MR. GONZALEZ: Your Honor, this book was seized from
24 2525 Sherbrooke Street which is on the map identified by
25 Francois Therrien in court the other day. It was the residence

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1 that was leased by Adel Boumezbeur. The lease began in April
2 of 1999 and on that lease Adel Boumezbeur indicated his
3 previous address as 6301 Plaza Malicorne.

4 The French originally requested to search an address at
5 which Ahmed Ressam lived according to his immigration files and
6 some of his documents when he was arrested seized by David
7 Jandrone October 4th, 1999 submitted to the French and returned
8 to the FBI laboratory a couple of weeks ago and Ahmed Ressam's
9 fingerprints were found in the book.

10 THE COURT: All right.

11 BY MR. GONZALEZ:

12 Q. On this page there are two phone numbers. One for Nabil
13 and we've spoke of Iklhef and there's also another name
14 Karnel. Do you know that to be the lease of Said Atmani?

15 A. Yes, that's right.

16 Q. I'll show you a photograph of an additional page of this

17 same book which contains the address for EverGro Products in
18 Delta, British Columbia. And on the adjoining page, there's a
19 London address. Does that address have any significance in
20 your investigation of the terrorist cell in Montreal?

21 A. That's right. It is the address of the doctor.

22 Q. Please spell that.

23 A. H-a-y-d-a-r aka B-a-b-u-o-d-o-h-a. That's also the address
24 of Labsi's address.

25 Q. Mustafa Labsi lived there as well?

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25

1 A. That's right.

2 Q. And remind us again, if you would, who Aboudoha is?

3 A. Aboudoha, according to our investigation, Aboudoha belongs
4 to the radical Islamic group Tenzi which is connected to the
5 grouping called Ohsama Ben Laden.

6 Q. Ohsama Ben Laden?

7 A. That's right. He was arrested recently in London following
8 an investigation regarding the prevention of terrorism.

9 MR. GONZALEZ: Your Honor, may someone approach the
10 projector and turn it off?

11 MR. DISKIN: May I, Your Honor?

12 BY MR. GONZALEZ:

13 Q. You indicated in one of your previous answers that you
14 considered Adel Boumezbeur's address to be a conspiratorial
15 flat. What brought you to that conclusion?

16 A. Would only be the fact that those addresses and references
17 were all coded. And they were headed by the members of -- the
18 French members Gaboul and Bendaoui. Also, as I indicated, it's
19 also in this apartment that he, Khabu, came when he lived --

20 when he came back from Canada. And within, of course, the
21 frame of the passport trafficking.

22 And also it seems that from this very apartment there
23 were a lot of telephone calls carried out and made to all sorts
24 of countries. Particularly, Turkey and Istanbul and I'm
25 talking about the IHH.

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1 Q. From the same search at the Sherbrooke address granted in
2 the name of Adel Boumezbeur, were there photographs seized?

3 A. That's right.

4 Q. Were you able through your investigation to identify some
5 of the people depicted in those photographs?

6 A. Yes, absolutely.

7 Q. Did the photographs include Ahmed Ressam?

8 A. Yes.

9 Q. Nabil Ikhlef?

10 A. Yes.

11 Q. Murad Ikhlef?

12 A. Yes.

13 Q. Fateh Kamel?

14 A. Yes.

15 Q. Were those photographs or copies of them also transferred
16 to the United States pursuant to a letter rogatory request to
17 your country?

18 A. Yes, that's right.

19 Q. Have you had a chance to review some of the evidence seized
20 during the arrest of Ahmed Ressam in Port Angeles in December
21 of '99?

22 A. Yes.

23 Q. Were you shown the slip of paper which had a phone number

24 followed by the capital letter J?

25 A. Yes.

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1 Q. And did that have any significance in your mind?

2 A. Definitely.

3 Q. And what significance was that, sir?

4 A. It's a phone number that, you know, which would enable you
5 to talk to Abu Jafal.

6 Q. In what location?

7 A. In Pakistan.

8 Q. And what method do you use to identify phone numbers in
9 Pakistan?

10 A. You know, we had a way of finding out these groups were
11 coding their phone numbers and I know we had. And then our
12 services set up a decoding system and it is trainings to that
13 system which basing on yourself on the information we had
14 that's how we were able to decide it is a coded number.

15 Q. And what else have you received which makes you believe
16 that members of this cell had coded numbers?

17 A. Because at the beginning it was clear that the number was
18 coded. And hence, we tried to find out what was the real
19 number. And as I told you, as I said before, helping -- with
20 the help of those decoding systems that had been used by who
21 was in the group. Namely, to subtract the number two from the
22 last figure. That's how we were able to find the real number.

23 Q. And where did you find an indication that there was such a
24 coding system by the cell?

25 A. Labsi had sent a letter to Boumezbeur to Canada. Labsi

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1 when he was in jail in London, and that let the record he had
2 mentioned that minus two.

3 Q. Did he specifically say you have to subtract the number two
4 from a number to get the number?

5 A. Very clearly.

6 Q. Was that among evidence seized from Adel Boumezbeur's
7 residence October 4, 1999?

8 A. That's right.

9 MR. GONZALEZ: One moment, Your Honor.

10 Q. Did you also review a telephone number to the United
11 Kingdom which was found with Ahmed Ressay?

12 A. Yes, that's right.

13 Q. And what significance was there to that number?

14 A. It's a phone number, Abdul's phone number. The address of
15 which was found on that document, the document we mentioned
16 earlier.

17 Q. In 1995 in Paris there was a bombing at the subway station;
18 is that right?

19 A. Several.

20 Q. Have you done some of the work in that case?

21 A. Yes, that's right.

22 Q. What sort of detonation devices, if you know, were used in
23 that series of bombings?

24 A. Craft systems that were using as a timer an alarm clock or
25 watches.

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1 THE COURT: Could we back up. I want to make sure I

2 understand the witness's testimony. Did he say alarm clocks or
3 watches in quotes?

4 THE INTERPRETER: I believe, Your Honor, he said both,
5 but I will ask him again.

6 THE WITNESS: Both because there was -- depending on
7 the criminal attempt, there was several of them.

8 THE COURT: All right.

9 BY MR. GONZALEZ:

10 Q. You said that it used alarm clocks or watches. What other
11 aspect of the explosives devices do you know of?

12 A. There was something particular regarding the ignition
13 system, you know, there to ignite the mixture. They were using
14 small light bulbs that were coming from cars and with sand
15 paper they would rub the top part of the bulb so far that the
16 filaments would appear and as those filaments heated up, why
17 the circuit was closed. These filaments became incandescent.
18 Then they would serve as detonators. And this system worked
19 very well.

20 Q. Is it your belief that these bombings were connected to the
21 same radical Islamic group you were investigating?

22 A. The same Islamic group as what?

23 Q. Who do you think was responsible for this bombing from your
24 investigation?

25 A. Clearly identified that came from the GIA and they had been

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1 directly sponsored by Yamel Zitouni.

2 MR. GONZALEZ: No further questions on direct,
3 Your Honor.

4 THE COURT: All right. Let's take the morning recess.

5 (Recess taken.)

6 THE COURT: How do you want to proceed, Mr. Hillier?
7 Do you want to argue the admissibility or what's your
8 pleasure?

9 MR. HILLIER: Ms. Oliver was going to do cross. I was
10 going to argue admissibility when that time came. If the
11 Court's prepared to rule on questions of admissibility or
12 wanting to get to that, we can go into that.

13 THE COURT: Let's argue the issue of admissibility.
14 Then if I conclude it's admissible or some of it's admissible
15 subject to cross-examination, then we'll go ahead and take the
16 cross. All right.

17 THE INTERPRETER: May the interpreter correct herself
18 regarding something. The previous word where Judge Bruguiere
19 used the French word "artifes," the interpreter translated that
20 by saying bomb disposable expert or technician. And it can
21 have that meaning, but actually in the context, it actually is
22 a bomb maker.

23 THE COURT: I appreciate that. The witness can go
24 ahead and have a seat in the audience.

25 MR. GONZALEZ: Judge Bruguiere, you may sit back here

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1 for a time.

2 THE COURT: All right. Mr. Hillier.

3 MR. HILLIER: Thank you, Your Honor. Your Honor, to
4 begin it seems that Judge Bruguiere's testimony is as described
5 by the government accurately a mixed bag in the sense that
6 there is fact-type evidence that is going to be relevant at
7 least to a limited extent, and then there's the question of the
8 expert testimony and that's what I'm going to address,
9 Your Honor.

10 First, Your Honor, I think it's important to kind of
11 put it all in context. The indictment in this case contains a
12 very specific charge for which there is quite a lot of
13 straightforward evidence. And we've been listening to that
14 evidence for some three weeks now. The prosecution wants --

15 THE COURT: Seems like three months.

16 MR. HILLIER: I agree entirely, Your Honor.

17 The prosecution wants to present evidence that
18 Mr. Ressay is a member of a radical Islamic fundamental
19 movement to use the charged description that has been repeated
20 by Judge Bruguiere and Mr. Gonzalez time and again. In order,
21 according to the government's brief on this matter at page 3,
22 to prove his motive to commit the offenses charged. That in
23 other words, motive is the relevant hook that the government
24 has offered for this very controversial far-reaching evidence.

25 I think it's important at the beginning to recognize

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1 that motive is not an element of any of the offenses charged
2 and needn't be alleged, discussed, referenced, much less
3 proved. So this is the reason why they want it in and it is
4 not a reason.

5 THE COURT: Can we quote you when it comes to
6 instruction time?

7 MR. HILLIER: To what, Your Honor?

8 THE COURT: As to whether motive is relevant and has
9 anything to do with the case? I'm being facetious. Go ahead.
10 I was just thinking those words might come back to haunt you.

11 MR. HILLIER: Motive isn't mentioned in the batch of
12 the instructions that we've given to the Court. So basically

13 what the government is doing is injecting hopefully hugely
14 controversial and we feel prejudicial information in a case for
15 an unnecessary purpose. That aside, when you really listen to
16 what Judge Bruguiere is saying and because we didn't get into
17 the cross much here, there are profound questions concerning
18 the reliability of the information that he relies upon. Most
19 of the opinions and conclusions that he reaches are based on
20 interrogations of suspects, Your Honor. Interrogations
21 primarily of Khabu who gave information allegedly about the
22 Canadian connection here.

23 Now, the defense can't probe into that source of
24 information. Can't confront that source of information which
25 leads to huge Fifth and Sixth Amendment problems and we would

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1 object strenuously to this evidence on the basis that it
2 violates the constitutional rights embodied in those
3 amendments. But in addition, when you think just basically
4 about the concept of the reliability, what source of
5 information could be more unreliable than a suspect in a case.
6 Compare that with common notions of expert testimony where what
7 we get is a scientist or somebody who comes to court and tells
8 you why an opinion has been reached and has bench notes and
9 reports with examinations and background that can all be
10 discussed and probed into and examined. This is just the
11 opposite. It's the information supplied by someone we can't
12 reach, can't confront, and who is inherently unreliable.

13 Next, component of the question of reliability is the
14 question of methodology. And the interrogations conducted in
15 this case by Judge Bruguiere were conducted under rules which
16 are entirely foreign to our system of criminal justice. We're

17 talking about his ability to go out and interrogate people
18 without counsel and subject them to his questioning where no
19 rules that govern our basic concepts of due process apply.
20 It's an interrogation by a law enforcement entity without any
21 protections whatsoever. That methodology undermines the
22 reliability of this already unreliable source of information.

23 In addition, it's done by not an unbiased person. It's
24 not Your Honor or some other judge as we understand that
25 concept in America, but by an officer. I'll use the phrase

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1 that Mr. Gonzalez used in his brief of the French inquisitorial
2 system. And the term inquisitorial is a good term for what
3 happens in this case. Who, despite his accomplishments and I'm
4 sure he's had many, is hardly infallible.

5 He has brought to court scores of individuals who are
6 actually and factually innocent and detained them for months
7 and months and months on end just to see them leave at the end
8 of the case tarnished only by the fact that they didn't see the
9 light of day for months and years on end. Who is recognized
10 internationally throughout the human rights community for his
11 zealotry and his tendency to overreach.

12 This is the speaker who is giving us the information
13 that is coming from the unreliable source that we have no
14 ability to confront on a subject, Your Honor, that is
15 exceedingly complex and not quite as black and white as the
16 government would like the jury to believe. And the focus of
17 Judge Bruguiere in this context is not on the larger scheme of
18 things, but is limited to a group that he termed a radical
19 Islamic fundamentalist movement which is a focus that is
20 criticized by many, many scholars and people involved in

21 understanding these complex subjects as unfairly reinforcing
22 stereotypes.

23 That's a criticism that was advanced by Edward Said who
24 is a professor at Columbia University and who has background
25 that makes the Judge pale by comparison on the subject that the

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1 Judge would have us believe that he is an expert on. In fact,
2 he has a point of view which emphasizes stereotypes and that's
3 what creates obviously for us a dilemma. If this comes in, we
4 have to get our own expert to counterbalance that testimony
5 which is going to lengthen the trial and just also make it
6 infinitely more complex and confusing on the issue as which I
7 began seems foreign to what this case is all about.

8 We're not here talking about what's happening in
9 Europe, Turkey, Istanbul and Brussels. We're talking about
10 events in Port Angeles specifically charged in the indictment
11 and it seems to be the subject of quite a bit of conversation
12 already. It wasn't until this indictment was enlarged two
13 weeks before trial to go back to 1996 that this apparently was
14 even conceived of by the government as something that it would
15 like to do in this case.

16 On the question of motive, and Your Honor, that's
17 another problem, another layer of problems. The information
18 that's being offered by the government through this testimony
19 is to try to create the view that Mr. Ressay is motivated by
20 some generalized notion that attaches to what the government
21 believes is the aim of this huge network or radical movement
22 that it's describing.

23 That isn't what's in our client's head. We don't know

24 what is in Ahmed Ressam's head. This evidence is of a very
25 general nature, but is offered for supposedly to prove specific

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1 intent or the specific motive of Mr. Ressam. I submit that
2 this sort of generalized information can scarcely illuminate
3 what is in Mr. Ressam's head.

4 THE COURT: You've said repeatedly that motive isn't an
5 issue in the case. As I recall, the opening statement and to a
6 large degree the way this case has been tried, the defense has
7 been talking a great deal about Mr. Ressam and whether he knew
8 what was in the trunk.

9 MR. HILLIER: The question of knowledge is an element
10 of the offense. How is what the government is offering here
11 evidence of motive because of these organizations that are out
12 there that they believe based upon information that we can't
13 confront Mr. Ressam is a part of?

14 THE COURT: What about the testimony that they
15 proffered in January? Is that when it was?

16 MR. GONZALEZ: Yes, Your Honor.

17 THE COURT: To the effect that it's entirely
18 inconsistent with this witness's experience that a conspiracy
19 of this type as alleged by the government would use an
20 unknowing courier?

21 MR. HILLIER: Let me make two points on that.
22 Actually, three. First of all, he's wrong. If we can believe
23 anything that Mr. Meskini has to say and the government called
24 Mr. Meskini to this case to testify about our client and he
25 says and he's involved, apparently, because he's been

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1 convicted. I didn't have any idea what was happening. I
2 didn't know there was any explosives in there. So to the
3 extent that there's validity to that opinion whatsoever, well,
4 there is no validity to that opinion whatsoever. Completely
5 belied by the government's own proof in this case. Secondly,
6 Rule 704 B.

7 THE COURT: I suspected Mr. Meskini wasn't carrying the
8 bomb.

9 MR. HILLIER: Well, what I heard the Judge say is
10 nobody who is involved with these radicals doesn't know about
11 what's happening. That's inconceivable what he said. 704 B
12 says that no expert witness may testify with respect to mental
13 state or condition of the defendant in a criminal case. I
14 think that rule bears on this. In effect what the government
15 is asking through that question is for him to comment on the
16 mental state of the defendant which is in our view would
17 violate rule 704 B and constitutes reversible error and that is
18 the third point, Your Honor. And this sort of references the
19 concern that the Court expressed last week. In January of this
20 year, the 9th Circuit Court of Appeal in 237 Fed.3d. 1008 held
21 it reversible error for the government to present evidence by
22 an expert concerning the structure of a drug trafficking
23 organization to undermine the view that the defendant was an
24 unwitting courier. So that evidence of this massive thing was
25 unduly prejudicial and constituted reversible error. So the

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1 case law, the rule of evidence, and the actual evidence in this
2 case all tend to in our views suggest that it would be unwise

3 to introduce this sort of prejudicial information for that
4 purpose.

5 And, I guess, you know, I don't want to be flip,
6 Your Honor. It seems that the government has some tools that
7 are at its disposal in the context of the evidence that has
8 been admitted in this case to deal with that defense and that's
9 what trials are all about. And the government, you know, I
10 think sort of blithely suggests 403 B isn't to be used unless
11 somebody is dragging in purposefully prejudicial information
12 and any information against our client is always going to be
13 prejudicial.

14 So if you let this stuff in, Your Honor it just is
15 completely collateral to what this case is all about, but it is
16 charged with prejudice and charged with irrelevance that is
17 going to work to the detriment of the client and put us in a
18 position of having to present a whole aspect of a case that
19 wasn't contemplated early on.

20 In addition, Your Honor, just in terms of this notion
21 of motive and what was in his mind and that's one of the
22 problems with this generalized testimony is that, you know, who
23 knows whether the government is accurate on this or Judge
24 Bruguiere is accurate on some of it. Richard Lober wrote a
25 book last year after four years of exploring this identical

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1 question entitled "Dollars For Terror." Wherein he comes up
2 with entirely different reasons for motives that drive what the
3 government has termed the radical Islamic movement.

4 I suspect there are many, many individuals out there,
5 scholars and experts alike, who would disagree with the
6 generalized notion that with the government stands the

7 testimony.

8 So given those layers of problems with the expert
9 testimony, Your Honor, we would just -- we would urge the Court
10 not to allow it and inject this sort of information into the
11 trial when it's completely and unwholly necessary. To the
12 extent that there are problems with the chain of custody
13 because of materials going that the Court deems are factually
14 related to the case and admissible and I gather, there may be
15 chain of custody issues.

16 MR. HILLIER: We are willing to stipulate to chain of
17 custody issues to take care of any dilemma that might be posed
18 in that respect.

19 THE COURT: Okay. Mr. Gonzalez.

20 MR. GONZALEZ: I'd feel more concerned about
21 Mr. Hillier and the length of the trial if he'd actually been
22 here for it. It has been a long trial, I'll also say.

23 THE COURT: It is kind of unfair, Mr. Hillier. Getting
24 to back to Seattle and we're stuck here and you complain about
25 the length of the trial.

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1 MR. HILLIER: I had to explain I was there more times,
2 especially virtually appearing as the trial went on.

3 THE COURT: All right.

4 MR. GONZALEZ: I'm also very mindful of the issue that
5 we confront with the fact that we're talking about a group that
6 is involved in far-reaching criminal conduct which has as an
7 ideological base a connection with a religion. I also know
8 that we have investigated cases, for example, that involve
9 white supremacists who claim their ideology is based on

10 Christianity. I would submit that their connection with that
11 group and use of Christian words and ideology does not in any
12 way besmirch the Christian religion. A group that's willing to
13 bomb subways in Paris, to bring explosives into the country for
14 millennium celebrations, that's a group that besmirches those.
15 In Islam, those who truly believe in Islam, would tell you that
16 those activities are inconsistent with that belief. That's
17 what we believe as well. We should separate that. We should
18 separate that. We should not be using terms like Paki which is
19 actually a racial epithet in this case to describe visas to
20 Pakistan because again, talking about Pakistan, talking about
21 it being used by certain groups, such as entering Afghanistan
22 for Jihad not criticizing Pakistan. We're not visiting
23 Afghanistan either. The criticism is what's done in camps and
24 are criticisms of the Taliban government. It is criticism of
25 the use of Osama Bin Laden whose training camps in that country

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1 have a clear separation and a limiting instruction might be
2 appropriate. Certainly, an ability to separate the criticism
3 of the criminal conduct with that which claims an affiliation
4 from Islam, from true beliefs of that religion.

5 To address specifically the evidence from
6 Judge Bruguiere and the testimony which is expert testimony
7 from Judge Bruguiere, I said initially I wasn't going into
8 evidentiary background, but some of what we presented today was
9 evidentiary in nature. But it gives some of the background to
10 his expert opinion. The search that was done at the residence
11 of Adel Boumezbeur 2525 Sherbrooke revealed additional
12 evidence.

13 We will have an RCMP member before the Judge actually

14 takes the stand in the trial; that is, David Jandrone from RCMP
15 and he was an exhibit custodian and served the same Andre
16 LeBrecque did when he searched the Du Fort residence. Ressay's
17 residence in the name of Benni Noris was searched in December
18 '99. They found during that search numerous stolen passports
19 in addition to altered passports that we've talked about. 5
20 stolen passports from one family from South America, Chinese
21 passports, Belgium passports from all over the world.
22 Corresponding driver's licenses and other forms of
23 identification. Some of them were in certain forms of
24 disrepair indicating their use for travel documents. Some of
25 them were for use of fraud. They've all been confirmed either

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1 stolen or counterfeit that were found at that location.

2 That evidence comes in through the RCMP and Judge
3 Bruguere's testimony about that is the significance of some of
4 the entries in that passbook. And I would submit that this is
5 an issue about which the jury needs some clarification and some
6 explanation and without the expert testimony of Judge Bruguere
7 to elucidate the meanings of those entire entries in that
8 passbook, the jury might not understand them. Evidence
9 directly relevant in this case and Court correctly pointed out
10 the issue mainly goes to defense of Ressay that Ressay is an
11 unwitting courier.

12 And we know that not to be true, but we only know that
13 through -- we know that may not be true from the intercepts
14 which came from Canada which we were not able to verify with
15 the translator so we're just talking about how can we present
16 this and what we can present about it. What is admissible.
17 What isn't admissible evidence.

18 Tying Ahmed Ressam to a group that was involved in
19 trafficking of false documents in support of terrorist activity
20 in Europe, well before he became the subject of interest on
21 December 14th in this country that goes directly to his
22 knowledge about what the group was up to and what it was that
23 he had in the trunk of his car. So it does go directly to a
24 point which I believe is relevant and must be argued to the
25 jury especially in the light of the opening statement and

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1 cross-examination, frankly, by the defense in this case.

2 As to methodology by Judge Bruguiere, defense counsel
3 points to the fact that he does some interrogation. I submit
4 to the Court that background information about what led him
5 initially to Canada was supported by what they found in
6 Canada. Namely, the stolen travel documents and other stolen
7 documents at the residence. In addition, the evidence within
8 the Swiss bank book and I'll point out to the Court in addition
9 to evidence we've discussed here, there was a section on the
10 last page of that bank book which has gone to the laboratory at
11 the FBI. There was writing that was obscured, covered up which
12 has been developed through techniques at the lab which appears
13 to be Arabic writing which includes what appears to be Peshure
14 and an account number and additional information which we'll
15 present in this case through laboratory experts.

16 This case, Your Honor, is one where really --

17 THE COURT: What is the significance of Peshure?

18 MR. GONZALEZ: Peshure, Pakistan is the entry point
19 into Afghanistan either through Peshure or Isbad. Defense
20 counsel points out what the United States made in its briefs

21 and that is certainly much of what Judge Bruguiere has to say
22 is prejudicial, but only that which is unfairly prejudicial is
23 excluded. It's prejudicial to show the defendant's knowledge
24 of the Montreal cell, his involvement in that Montreal cell,
25 and therefore, the fact that he was not an unwitting courier

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1 when he drove those explosives into the United States on
2 December 14th of 1999.

3 As far as the criticism of Judge Bruguiere for being a
4 zealot as Mr. Hillier has stated, there's far more praise of
5 Judge Bruguiere and the work that he has done in France than
6 there is criticism. And I submit that techniques that he uses
7 are techniques he described in his testimony in January in
8 Seattle. Tried and true law enforcement techniques. Very
9 similar, if not identical, to the ones we use in the United
10 States.

11 As for the lack of protection, the defense counsel is
12 appointed and many of the questioning sessions that went on
13 were attended by defense counsel for the witness, but that
14 testimony really is just background information again which led
15 him to submit the letter rogatory to Canada in order to travel
16 to Canada to conduct searches and questioning of witnesses in
17 Canada. I have no problem with removing some of that
18 background information from the direct testimony if the Court
19 finds that too highly or unfairly prejudicial.

20 His testimony also is quite relevant as to an
21 explanation of what Giahad training camps are and the type of
22 training that's available in those camps. We have no other
23 witness to explain that. He's a witness who certainly has
24 direct information about what happens in the training camps and

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1 evidence about that issue, it bears some explanation to the
2 jury. I submit the Judge is able to do that.

3 Defense mentioned 704B, but I believe he may have
4 misinterpreted its meaning. We're not asking the Judge to say
5 do you think Ressaym knew that there were explosives in the
6 trunk of his car? We're not going to ask him that question.
7 That's what precluded in that rule.

8 And finally, just to review the standards for
9 admissibility of expert testimony, it certainly falls in the
10 area of other specialized knowledge and I submit that we have
11 adequately explained to the Court his qualifications as an
12 expert again back in January. And we've covered it as well
13 today. How his expert opinion would assist the trier of fact
14 of understanding that evidence presented to them and certainly
15 the evidence in the Swiss bank book and the evidence found on
16 Ressaym when he was arrested is not something that's immediately
17 understandable.

18 In fact, even on close review of those documents, I
19 submit it wouldn't be understandable without an expert
20 explaining what those addresses are in Pakistan and phone
21 numbers in Pakistan are used by what camps and what the
22 training there consists of. Talked about the Judge's
23 qualifications and I submit they're beyond dispute.

24 Relevance of methodology and whether or not we can
25 fashion the testimony in a way that avoids unfair prejudice

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1 that goes back to the very first remarks that I made having to
2 do with drawing clearly a distinction between the criminal
3 group that has a religious claim of affiliation and that
4 religion itself. Abuse of discretion is the standard for the
5 review of the Court's decision on this.

6 And I submit that the cases that we have included in
7 our brief which draw analogy to drug and weapons case in which
8 expert testimony was admitted to explain the workings of a
9 group are applicable in this case and offer the Judge's
10 testimony both as an expert, or if the Court wishes, some
11 limitation on the background information in Europe and
12 terroristic activities in Europe that connected Ressay to those
13 groups.

14 Followed by the factual evidence that the Judge has
15 from the book itself, from the passport and photographs and
16 from -- excuse me, the fingerprints and photographs from
17 Corsica and France and his analysis of the passport itself in
18 the name Tahar Medjadi.

19 THE COURT: Anything further?

20 MR. HILLIER: May, I Your Honor.

21 THE COURT: Please.

22 MR. HILLIER: Your Honor, I hope that my comments
23 suggested no disrespect for Judge Bruguiere. My comments were
24 simply to put him in perspective. He is a gentleman of
25 controversy. I don't believe I called him a zealot, but just

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1 simply suggested that he works zealously and in doing so has
2 had problems and controversy follow his techniques.

3 With respect to separating the prejudice that goes with
4 this sort of information concerning religious backgrounds, it's
5 not that simply analyzed, Your Honor. And a good case, a very
6 recent case U.S. versus Manglay out of the 10th Circuit decided
7 on March 7th where it was a cross burning case and just
8 horrific racial slurs and racial animus that provided the cross
9 burning. The government in that case called an expert to the
10 stand to talk about the KKK and cross burning significance and
11 what had been the racist slurs within the race motivation
12 context because that case had motive as an element. Motive had
13 to be proven by the government for some of the charges.

14 The 10th Circuit condemned the use of that testimony
15 because of two things that the direct linking was not good and
16 secondly, just because of the notion of guilt by association
17 that goes with these kinds of offers by the government,
18 presentations by the government which overrides what we're
19 talking about when it is proving its case here. Where motive I
20 think is not an issue, the lesson of Mangaly is even more
21 pronounced with respect to the passport evidence, Your Honor.

22 It's important that when the government suggests
23 separating out background information, we're all for that. I
24 think fact information that can come in it's going to be very
25 difficult without being impossible in the context of the

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1 passport documents, trafficking information that the Judge
2 would like to testify to. And the reason is that the nut of
3 that information is what Khabul told the Judge and what
4 significance it had as he expressed it, anyway, as concerning
5 his travels to Canada, what he was doing, why, and what the
6 passports were all about.

7 So that information is so intertwined it simply can't
8 be separated at least in terms of any conclusions or opinions
9 the Judge might draw concerning what he characterizes as the
10 cell in Montreal and what its activity was all about.

11 Mr. Gonzalez mentioned evidence in the Canadian
12 intercepts undermining an unwitting courier. We received that
13 information during trial, as you know. I can't say that I read
14 it word for word, but I certainly went through it and there
15 simply isn't information to that effect in there except to the
16 extent that circumstantially one might infer just as we already
17 know in this case that Mr. Ressam flew to Pakistan and/or
18 traveled to Pakistan and circumstantially the government
19 through Meskini and other evidence would argue that then he
20 went on to Afghanistan from there.

21 I think it is a little unfair to suggest that those
22 tapes say something that perhaps they don't. That information
23 would be the inference the government would like the jury to
24 draw from this and it's already all there. It's there through
25 direct proof of an airline ticket that certainly allows the

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1 government to make the arguments that it's prepared to make
2 here.

3 The bank book information, Your Honor, all that
4 information has been connected up through RCMP, FBI testimony.
5 If the bank book is deemed relevant, it can come in through
6 those agents. The issue of fingerprints, telephone numbers,
7 et cetera can be proven up quite apart from the testimony of
8 Judge Bruguiere.

9 Your Honor, I think really the core problem with all of
10 this is prejudice to our ability to really get at this

11 information that he would testify to because it does come from
12 sources that we can't confront. I don't know what happened in
13 these interrogations of suspects. I certainly believe
14 Mr. Gonzalez in some ways and there may have been lawyers
15 involved, but it is a system very odd compared to ours.

16 In fact, as we know from his testimony this morning,
17 the Judge's testimony, Mr. Ressay was apparently tried in Paris
18 this last month without his even being there much less having a
19 lawyer there to assist him. These circumstances I think speak
20 mightily toward the concept of reliability and admissibility of
21 this testimony.

22 MR. GONZALEZ: May I respond just very briefly?

23 THE COURT: Yes.

24 MR. GONZALEZ: The appointment of an attorney happened
25 within days of custody and the conviction which is likely to

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1 come on April 6th both of Fateh Kamel and Ahmed Ressay in
2 France will result in the immediate sentencing of Fateh Kamel
3 who is there and stood trial in France. Ahmed Ressay wasn't
4 there and if he ever is in French custody based on the warrant
5 outstanding for him and based on those charges, he'll have a
6 right to a new trial before he can be sentenced. So the
7 unfairness that counsel suggests in the French system I submit
8 is unwarranted.

9 There is also quite a bit of evidence that was brought
10 out through Abdelghani Meskini about the false passport
11 trafficking so there was a basis for that. That still can come
12 in and can be explained by Judge Bruguiere and that's the
13 significance of that. So I submit again that his expert

14 testimony is appropriate in this case.

15 THE COURT: I recall rather vividly when this testimony
16 was first suggested to me that I had expressed to counsel my
17 profound misgivings about it. I must say that I've been most
18 impressed by the eloquence of the government in its
19 presentation and the effective description of this testimony
20 and persuasive effort the government has expended to persuade
21 the Court or show the Court the testimony should be admitted.

22 There is no question in my mind that Judge Bruguiere is
23 an expert and his credentials in the field of international
24 terrorism are breathtakingly extraordinary. However, this
25 testimony under the facts of this case is not needed to assist

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1 the jury. I don't intend by so stating to minimize in any way
2 the importance of the investigatory work he has done. Rather I
3 must conclude that the probative value of his opinions would be
4 outweighed by potential for prejudice to the defendant.

5 It would be particularly difficult to limit the
6 testimony to matters directly relevant to this case and avoid
7 disclosures of police intelligence which while appropriate upon
8 examining the magistrate to gather evidence would be extremely
9 prejudicial to the defendant in this case. Much of the
10 witness's testimony would necessarily be based upon hearsay and
11 while it might be admissible as a basis for expert testimony
12 that distinction would likely be difficult for most jurors to
13 apply.

14 Justice would be better served if the jury's
15 determination of the defendant's participation in this alleged
16 conspiracy were based upon hard facts. Given the extraordinary
17 prestige of this witness regarding the subject of international

18 terrorism, the force of his reputation would carry with it the
19 risk that the jury would fail to focus on the hard facts and
20 instead substitute this witness's analysis for the more arduous
21 and meticulous analysis of the several weeks of testimony we
22 have all endured. Such a shortcut would be a poor substitute
23 for a verdict based upon careful analysis by the jury of all of
24 these many facts. So I'm going to sustain the objection. He
25 will, of course, be permitted to testify to factual evidence as

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1 the foundation is laid.

2 Counsel, I want to begin tomorrow morning at 9:30, but
3 the balance of the week we're going to work until 5:00 tomorrow
4 and then we're going to start up at 9:00 on Wednesday and work
5 till 5:00 and the same for the balance of the week. And we're
6 going to move this case to conclusion this week.

7 So to the extent the government feel it has a number of
8 witnesses, then start condensing their testimony to the time
9 that's available so that we have time left for the defense.
10 You indicated you have about two days?

11 MR. FILIPOVIC: Yes, Your Honor.

12 THE COURT: So plan accordingly and be prepared to deal
13 with me if it looks like it's not going to fit into it. I've
14 given you a lot of discretion in terms of timing up to now.
15 That time has passed. Mr. Diskin.

16 MR. DISKIN: I understand that. Your Honor, can I take
17 up a housekeeping matter that might impact the availability of
18 witnesses that the defense, I believe, anticipates calling.
19 Mr. Filipovic and I have been unable to agree upon a
20 stipulation prepared by defense counsel regarding the following
21 issue and I'm asking for the Court's guidance on the

22 admissibility of the evidence that the defense at least is
23 proffering to me to date.

24 The Court may recall at the time that the defendant was
25 initially charged by complaint, there was some information in

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1 the possession of the U.S. Customs Service that he had a
2 reservation to leave Seattle and travel -- let me take that
3 back. Some information within the possession of the Customs
4 Service that he had a reservation from New York to London
5 within a day or so of the incident at Port Angeles. And I
6 believe there was a sentence in the complaint which I did not
7 bring here with me this morning that mentioned that
8 information.

9 Thereafter, the government tried to confirm and
10 therefore the defense tried to confirm it and the defense has
11 an interest, I believe, in introducing evidence along the
12 following lines. That on the morning of December 16th, a
13 customs agent named Gary Reece received a request from another
14 custom agents specifically Tyler Morgan to check into whether
15 or not there were airline reservations in the name of Benni
16 Noris or Mario Roig which is a name on another driver's license
17 that the defendant had in his possession, Your Honor.

18 Mr. Reece then contacted an individual who he knew who
19 had been employed in the travel industry who reportedly checked
20 on those two names and discovered a reservation that had been
21 made for a flight on December 15th on American Airlines from
22 Seattle to New York connecting with a British Airways flight
23 from New York to London. And as I indicated earlier in my
24 presentation here, there are no such records of that which

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1 As I understand the system, if a reservation is made
2 but no ticket is purchased and no flight is actually made, the
3 computer system loses the information and is not part of any
4 flight manifest and there's no other documentation with respect
5 to that. And while I am certainly prepared at the defense
6 request to have Special Agent Reece here and Special Agent
7 Morgan here to talk about the sequence of events, I don't know
8 how the underlying information which they discovered from this
9 source of information is going to be admissible.

10 If the defense can convince the Court it would be
11 admissible. I'll either have the agents here or try to again
12 work out the wording of the stipulation, but the information
13 that appeared on a screen is no longer there even through the
14 testimony of the individual who saw it on the screen.

15 THE COURT: Which you're not talking about here;
16 right?

17 MR. DISKIN: Which I am not talking about because I
18 don't have control over that person. He's not an agent. I'm
19 concerned with getting the agents here if the defense wants the
20 agents here. They can explain their own difficulties in
21 dealing with the original source of information, if they want.

22 THE COURT: All right. Mr. Filipovic.

23 MR. DISKIN: What I'm really looking for is the Court's
24 direction on have your agents here because that information is
25 going to be admissible one way or another or don't have those

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1 agents here and defense be prepared to do other things.

2 MR. FILIPOVIC: Your Honor, this is the first I've
3 heard that Mr. Diskin controls the witnesses and agents.
4 Rule 17 subpoenas were issued, I believe, and served on both
5 Agent Reece and Agent Morgan. It's my understanding they've
6 been served. I've been in contact with both agents. They're
7 prepared to arrive here. This issue was addressed in my trial
8 brief. I also have another memorandum that's in the works.

9 Mr. Diskin is correct up to a point. What we have is
10 an individual who Agent Reece in customs has used for many
11 years for this type of information. Reece would call him for
12 information about folks who had flight reservations. This
13 person who is an experienced travel agent gets into these
14 computers apparently and finds out by reading the computers and
15 finds out this information that generally drops off the airline
16 reservation computers, if the ticket is not paid for.

17 In fact, it's my belief and understanding he continues
18 today to do this even after Mr. Ressay was arrested in Port
19 Angeles and he's a reliable source for Customs Agent Reece.
20 Reece's significance is that he is essentially a conduit
21 between other customs agents and other FBI agents and this
22 individual who he has been using for a number of years.

23 This individual, we have him under subpoena. There is
24 some issues concerning what his testimony will be. He
25 initially advised us that he himself conducted this review of

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1 these computers. Looked into this special computer program,
2 found the information concerning the Benni Noris reservation
3 and then passed it up the line. The way this began, as I

4 understand it, with Agent Calonita and Agent Tyler Morgan
5 saying we need to find out is there a reservation on an airline
6 for Benni Noris or Mario Roig.

7 That gets passed on to Gary Reece and that Mr. Biao
8 researches it the very same day and comes back with information
9 that is in the complaint that Agent Calonita signed under
10 oath. Reservation Benni Noris on a specific flight number,
11 specific time out of Seatak connecting with a flight in New
12 York. And that information gets put in the complaint.

13 Mr. Biao now has told us most recently that he may not
14 have the been person who actually initially looked at he
15 computer screen. That someone else may have done that and
16 verified it through some Internet site. He's not sharing with
17 us the information concerning how he found or how he verified
18 that on the Internet site that he mentioned during our
19 interview.

20 Another development that has occurred, Your Honor, is
21 that we received by fax, both Mr. Diskin and myself, a letter
22 from the lawyer that he retained in which he's now indicating
23 despite his work with customs for many years providing this
24 information, he may be asserting some kind of trade secret
25 privilege in the information. May be asserting the Fifth

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1 Amendment unless the government gives him immunity for his
2 testimony. So there are complications for him here. However,
3 he's a very important piece of evidence to the defense.

4 Obviously, if Mr. Ressam had reservations under the
5 name of Benni Noris to leave the state after he arrived in
6 Seattle, that's inconsistent -- directly inconsistent with the

7 testimony of Abdelghani Meskini. I would like the opportunity
8 to have these witnesses brought before the Court, including the
9 agents, and to make my presentation. I'd also like the
10 opportunity to provide the Court with some additional legal
11 authority beyond what we've already submitted in the trial
12 memorandum.

13 I think there's a number of ways the evidence comes
14 in. One is an admission by a party opponent. This is
15 information the government has put forth as true fact under
16 oath basically on a source that they've used and have labeled
17 as a reliable source who has been a reliable source for them
18 for many years. Now, because that information has disappeared
19 off of the computer because apparently the ticket had not been
20 paid for, the person didn't show up at the gate to take the
21 plane, it's their view this is not admissible evidence.

22 THE COURT: It strikes me it's more of a Rule 1004
23 question. That is where the original document no longer exists
24 the contents can be proved by according to the rule which says
25 the original is not required and other evidence of the contents

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1 of a writing, recording or photograph is admissible if all
2 originals are lost or have been destroyed. This is kind of a
3 new version of a document, but it is centrally the same thing.

4 I guess my question is what the rule means when it says
5 other evidence? Must it be direct evidence that's subject to
6 cross-examination? That is, the man who saw it on the screen
7 has to be tendered so he can be cross-examined by the
8 government or does other evidence permit hearsay?

9 MR. FILIPOVIC: We are prepared to offer both. Now,
10 I'm not sure what will happen with Mr. Biao when he arrives.

11 If he refuses to testify or asserts the Fifth Amendment
12 privilege or trade secrets privilege. The later one frankly, I
13 still have some research to do to address that issue.

14 THE COURT: You can, but I wouldn't spend a lot of time
15 on that, if I were you.

16 MR. FILIPOVIC: I won't, Your Honor. If he doesn't
17 testify for whatever reason or refuses to testify, our position
18 would still be the information can come through Reece or
19 Calonita, who is the ultimate person who receives it all in the
20 same day.

21 THE COURT: I'm not particularly persuaded by admission
22 of a party opponent argument. I do want more help on what
23 other evidence includes. Can it be somebody one step removed
24 from the viewing of the original? So get me that. And I think
25 you're going to have to bring your witnesses, if the witnesses

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1 are going to respond to a subpoena which be better stated.

2 MR. DISKIN: I didn't realize these folks had received
3 Rule 17 subpoenas.

4 THE COURT: Okay. Mr. Gonzalez.

5 MR. GONZALEZ: If this matter is over, I would request
6 a brief side bar.

7 THE COURT: Do you need a reporter?

8 MR. GONZALEZ: I don't think so.

9 (Side bar held between the Court and counsel.)

10 (Court reporter not present.)

11 THE COURT: We'll be in recess until tomorrow morning
12 at 9:00 o'clock.

13 (Recess taken at 12:00 p.m.)

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CERTIFICATE

I, LAURA MILLER ELIAS, C.S.R. No. 10019, in and for the State of California, do hereby certify:

That the foregoing 59-page proceedings were taken down by me in shorthand at the time and place stated herein, and represent a true and correct transcript of the proceedings.

I further certify that I am not interested in the event of the action.

Witness my hand this _____ day of _____, 2001.

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Certified Shorthand

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Reporter in and for the

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State of California

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