

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff;	)	
vs.	)	Case No. 00 CR 582
SHARIF A. ALWAN,	)	Chicago, Illinois
	)	October 18, 2000
Defendant.	)	1:45 p.m.

VOLUME 3
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RUBEN CASTILLO

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1 (Proceedings heard in open court; jury not present:)

2 THE COURT: You can come out, Mr. Alwan, and retake
3 the witness stand, please.

4 You can bring in the jurors.

5 (Jury enters courtroom.)

6 THE COURT: Please be seated, ladies and gentlemen.

7 You realize you're still under oath, Mr. Alwan?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. You may proceed, Mr. Gillogly.

10 MR. GILLOGLY: Thank you, your Honor.

11 SHARIF A. ALWAN, DEFENDANT HEREIN, PREVIOUSLY SWORN,

12 CROSS EXAMINATION (RESUMED)

13 BY MR. GILLOGLY:

14 Q. Mr. Alwan, when we broke for lunch, I was asking you some
15 questions about things that you told the grand jury and some
16 things that you never told the grand jury, and I want to
17 continue asking you some questions along that vein.

18 Yesterday you testified about the treatment, you
19 described the treatment that you say the Shimbet people did to
20 you. And I think you said something to the effect that you
21 felt like you were hanging or you were hung between life and
22 death, something to that effect. Did I hear you correctly?

23 A. Yes.

24 Q. All right. Now, sir, when you went before the grand jury
25 in July of 1998, you never told them that you had hung between

1 life and death, did you?

2 A. No.

3 Q. You did not tell them about any of the things that you say
4 that Shimbet did to you.

5 A. In 1998?

6 Q. Yes, sir.

7 A. I believe I plead my Fifth at that time.

8 Q. Now, in July 1999, you again went to the grand jury. Do
9 you recall that?

10 A. Yes.

11 Q. And your lawyer, Mr. Falconer, went with you to the grand
12 jury area --

13 A. Yes.

14 Q. -- correct?

15 A. Correct.

16 Q. When you went in to the grand jury on July 13th of 1999,
17 you did not tell them about any of the things that you say that
18 Shimbet did to you. That's true, isn't it?

19 A. Yes, but --

20 Q. In July 11th of this year, you again went to the grand
21 jury, correct?

22 A. Correct.

23 Q. And this time, Ms. Jarad was with you until you -- the
24 moment that you walked into the grand jury room, isn't that
25 true?

1 A. That's true.

2 Q. And when you entered the grand jury room on July 11th of
3 this year, you did not tell them about any of the things that
4 you say Shimbet did to you.

5 A. That's true.

6 Q. Now, in addition to your three appearances before the
7 grand jury, Mr. Alwan, you also appeared before a number of
8 judges in this building.

9 A. Yes.

10 Q. And so we're clear here, when I say you appeared before
11 them, you and your lawyers were in a courtroom or perhaps in
12 judge's chambers along with a judge, okay?

13 A. That's right.

14 Q. And each time that there was one -- there was an
15 appearance before a judge, you were present, correct?

16 A. Correct.

17 Q. And at least on one occasion, Mr. Falconer was present?

18 A. Correct.

19 Q. And on two more occasions, excuse me, Ms. Jarad was
20 present?

21 A. Correct.

22 Q. And on one occasion, both Ms. Jarad and Mr. Hill were
23 present.

24 A. Correct.

25 Q. So at all times when you appeared before a judge in this

1 building, you were accompanied by a lawyer.

2 A. Yes.

3 Q. A lawyer that you had hired.

4 A. That's correct.

5 MR. HILL: Judge, may I have a side bar at this point,
6 please?

7 THE COURT: Okay.

8 (Proceedings heard at side bar:)

9 THE COURT: Okay.

10 MR. HILL: My objection goes to anything going into
11 civil contempt, arguments that were made on civil contempt.

12 THE COURT: You're not going to go into the civil
13 contempt.

14 MR. GILLOGLY: Not as such, but statements that were
15 made by Mr. Alwan or on his behalf when he was present are fair
16 game. I won't mention civil contempt.

17 MR. HILL: The problem is Ms. Jarad or maybe myself
18 even were making arguments as to why the coercion was now
19 becoming punitive. We were dealing with an issue related to --
20 I'm saying it's difficult for us to put that in context.

21 THE COURT: Are you going into attorney statements now
22 that are being made on behalf of Mr. Alwan?

23 MR. GILLOGLY: It's certainly possible, Judge, given
24 what was said and what we're hearing today, they are two very
25 different things.

1 MR. HILL: I can't put Ms. Jarad on to explain that or
2 myself, and these arguments were directed as to the civil
3 contempt. There were no issues regarding criminal contempt at
4 this point. We were making arguments for why he should be
5 released. And it puts us in a position, it leaves the
6 impression, I think where he's going is why didn't you bring
7 that up in the civil contempt proceedings.

8 THE COURT: Okay.

9 MR. HILL: And there may well have been reasons that
10 it wasn't brought up that we're precluded from going into at
11 this point.

12 THE COURT: I have previously excluded any references
13 to the civil contempt. I'm going to continue to hold that to
14 that ruling.

15 So I think it's my suggestion, Mr. Gillogly, that
16 where you're headed seems to me to be somewhere that might
17 violate that ruling.

18 MR. GILLOGLY: Judge, here's the problem. Mr. Hill
19 and Ms. Jarad have chosen a legal strategy which puts in issue
20 what this man said or didn't say along the way, this whole
21 process along the way, and they're painting this, or attempted
22 to paint this picture of unfairness and this guy was
23 disregarded and ignored.

24 This jury ought to know what he really said and what
25 he really didn't say if he said it in counsel's presence. You

1 know, I'm sorry, that's the defense they chose to raise.

2 THE COURT: You're just talking about his statements.

3 MR. GILLOGLY: And statements of counsel when he was
4 present.

5 THE COURT: That's where you lose me. Statements of
6 counsel, while we're still dealing with the civil contempt,
7 those are out of bounds.

8 MR. GILLOGLY: But he adopts them, Judge. For
9 example, one clear example -- I'm sorry. I didn't mean to
10 interrupt the Court.

11 THE COURT: Go ahead.

12 MR. HILL: Can you keep it down, Judge?

13 MR. GILLOGLY: One clear example, and I think it was
14 Ms. Jarad, "This man fears he's going to be prosecuted." A
15 page or two later, Mr. Alwan says, "I say what my lawyer just
16 said." Judge, it's as clear as you can say, "I adopt what she
17 said." Now, it's unfair to us, Judge, that, you know, they've
18 chosen this defense tactic, we didn't. We objected, but here
19 we are.

20 MR. HILL: How do I put on what Ms. Jarad was doing?
21 I mean, I think, without calling her? I mean, you're getting
22 into counsel's strategy, you're getting into the arguments that
23 were made on behalf of his continued detention and civil
24 contempt.

25 THE COURT: Okay. And the whole point, the whole

1 point is that he didn't raise the security issue, is that
2 basically it?

3 MR. GILLOGLY: Right, or a family issue or the
4 secretive issue until at one point in time. You know, Judge,
5 Mr. Hill's complaining about this, but he put this ball in
6 play.

7 THE COURT: Okay. It's hard for me to deal with this
8 in a vacuum here at side bar. We're going to have to go
9 question by question. You make objections.

10 MR. HILL: We've got this. He's got the whole
11 transcript.

12 THE COURT: No, I understand that, but I can't deal
13 with this until I see what the questions are.

14 MR. GILLOGLY: I can assure the Court and counsel, I'm
15 not challenging the propriety or the wisdom of any legal
16 strategy. I'm not putting any legal issue at issue. That's
17 not the point. It's statements.

18 THE COURT: Stay clear of the civil contempt.

19 MR. GILLOGLY: I will not mention that word, Judge.

20 MR. HILL: I don't want to be in a situation where I
21 may be making too many objections, like this morning you called
22 me back.

23 THE COURT: Don't make speaking objections. If you
24 make an objection, I'll understand it.

25 MR. HILL: Okay.

1 THE COURT: Okay.

2 (Proceedings heard in open court:)

3 THE COURT: You may proceed, Mr. Gillogly.

4 MR. GILLOGLY: Thank you, your Honor.

5 BY MR. GILLOGLY:

6 Q. Mr. Alwan, I left off with a question to you that you
7 appeared before several judges in this building over the last
8 couple of years, isn't that true?

9 A. Yes.

10 Q. For example, you appeared before Judge Aspen on July 13th
11 of 1999, is that correct?

12 A. That's correct.

13 Q. All right. And Mr. Falconer was with you at that time.

14 A. Yes.

15 Q. Then on June 7th of this year, the year 2000, you again
16 appeared before Judge Aspen. Do you recall that?

17 A. Yes.

18 Q. And Judge Aspen, of course, is the Chief Judge of this
19 district.

20 A. Yes.

21 Q. And when you appeared before Judge Aspen on June 7th of
22 this year, both Ms. Jarad and Mr. Hill were present with you.

23 A. Yes.

24 Q. All right. So there was no time when you were without the
25 counsel that you had hired in this case, is that correct?

1 A. That's correct.

2 Q. Except, of course, when you were in the grand jury room.

3 A. Uh-huh.

4 Q. Then, again, on July 11th of this year, you appeared
5 before Judge Charles Kocoras. Do you remember that?

6 A. Yes, I do.

7 Q. All right. And he was the Acting Chief Judge that day.
8 Do you remember that?

9 A. Yes.

10 Q. And when you appeared before Judge Kocoras on July 11th of
11 this year, again, Ms. Jarad was with you.

12 A. Yes.

13 Q. Now, on -- excuse me -- on July 13th of 1999, sir, you did
14 not tell --

15 MR. HILL: Excuse me, your Honor. Objection as to the
16 form of that question. If I may have a side bar, I can
17 explain.

18 MR. GILLOGLY: Judge, I haven't even finished the
19 question.

20 MR. HILL: But after it's out --

21 THE COURT: Okay, let's go back.

22 (Proceedings heard at side bar:)

23 MR. HILL: See, the problem is it assumes that the
24 question was asked. Why didn't you tell us about no

25 punishment, no torture or anything like that. It assumes that

1 that was even the basis of the inquiry at that time.

2 The entire inquiry on both of these occasions was
3 whether or not this coercion had become punitive and whether or
4 not we raised this in our double jeopardy motion, and how --
5 those issues were not before the Court, and to suggest at this
6 point that they were is misleading.

7 THE COURT: Okay.

8 MR. GILLOGLY: Judge --

9 MR. HILL: I see where he's going.

10 THE COURT: Let me just stop. I'm overruling the
11 objection. You can ask the question.

12 (Proceedings heard in open court:)

13 THE COURT: You may proceed.

14 BY MR. GILLOGLY:

15 Q. Mr. Alwan, on June 13th of 1999, you appeared before Judge
16 Kocoras with Mr. Falconer, do you remember that? I'm sorry
17 July 13th, I misspoke, July 13th, 1999, okay, with
18 Mr. Falconer.

19 And at that time, the government was seeking an
20 immunity order, do you remember that?

21 A. Yes.

22 Q. And do you remember there was some discussion before Judge
23 Aspen at that time about whether or not you were going to
24 testify. Do you remember that?

25 A. Yes.

1 Q. Now, at that time, you never told Judge Aspen about any of
2 the things that you say that Shimbet did to you.

3 A. That's correct.

4 Q. Now, sir, on June 7th of this year, you again appeared
5 before Judge Aspen.

6 A. Yes.

7 Q. And this time Ms. Jarad and Mr. Hill were with you.

8 A. Yes.

9 Q. And this was in connection with a motion that had been
10 filed so that you wouldn't have to testify, do you remember
11 that?

12 MR. HILL: Which day are we talking about?

13 MR. GILLOGLY: June 7th, 2000, counsel.

14 BY THE WITNESS:

15 A. The motion what was for?

16 BY MR. GILLOGLY:

17 Q. That you wouldn't -- that you shouldn't be obliged to
18 testify.

19 A. Yes.

20 Q. All right. And at that time, June 7th, you did not tell
21 Judge Aspen about any of the things that you say that Shimbet
22 had done to you.

23 A. That's correct.

24 Q. On July 11th of this year, you were before Judge Kocoras
25 with Ms. Jarad, correct?

1 A. Correct.

2 Q. And that was a day that another immunity order was going
3 to be entered. Do you remember that?

4 A. Correct.

5 Q. And do you remember there was some discussion before Judge
6 Kocoras about whether or not you would testify. Do you
7 remember that?

8 A. Yes.

9 Q. Okay. And at that time, sir, you did not tell Judge
10 Kocoras about any of the things that you say Shimbet did to
11 you.

12 A. Yes.

13 Q. And on that day, July 11th of 2000, nobody said anything
14 to Judge Kocoras about the things that you say that Shimbet did
15 to you.

16 A. As I believe, yes.

17 Q. On June 7th, 2000 of this year, June 7th, 2000, Judge
18 Aspen, Ms. Hill and Mr. Jarad, nobody at that time said
19 anything about the things that you say that Shimbet did to you.

20 A. Yes.

21 Q. And then going back to July of '99 when you appeared
22 before Judge Kocoras on July 13th of '99, nobody said anything
23 to Judge Aspen at that time about the things you say Shimbet
24 did to you.

25 A. That's right.

1 Q. Now, you also testified yesterday that you had a concern
2 or I think you said a fear about your family. Did I hear you
3 correctly yesterday?

4 A. This is not a concern.

5 Q. A fear?

6 A. It is not a fear.

7 Q. What was it then? I'm sorry.

8 A. It is more than that. It is an immediate threat to my
9 family.

10 Q. A threat.

11 A. An immediate threat to my family if I do testify.

12 Q. An immediate threat to your family.

13 A. Yes.

14 Q. Now, Mr. Alwan, in July of 1998, you never told the grand
15 jury that you had any fear of an immediate threat to your
16 family, did you?

17 A. I wasn't asked about that, but I never said that to them,
18 that's correct.

19 Q. On July 13th of 1999, when you appeared before the grand
20 jury, it is true that you never said that you had any fear or
21 concern about an immediate threat to your family.

22 A. That's correct.

23 Q. In July of this year, July 11th of this year when you
24 appeared before the grand jury the third time, you never said
25 anything about a fear or concern about an immediate threat to

1 your family.

2 MR. HILL: Judge, we have the same objection.

3 THE COURT: Okay. The objection is overruled.

4 BY THE WITNESS:

5 A. Yes.

6 BY MR. GILLOGLY:

7 Q. Sir, on July 13th, 1999 when you appeared before Judge
8 Aspen with Mr. Falconer, no one told Judge Aspen that you had a
9 fear of an immediate threat to your family.

10 MR. HILL: Excuse me, Judge, if I might. This would
11 be just a continuing objection.

12 THE COURT: I understand. The objection is overruled.

13 BY THE WITNESS:

14 A. I just remember I told Judge Aspen it is serious, and I
15 wasn't mention anything about immediate threat, but I carry
16 that in my heart, and I never have a chance to explain it.

17 BY MR. GILLOGLY:

18 Q. Mr. Alwan --

19 A. Yes.

20 Q. -- you appeared before Judge Aspen on July 13th, 1999
21 with Mr. Falconer representing you. That's true, isn't it?

22 A. That's true.

23 Q. And nobody said a word to Judge Aspen about your fear of
24 an immediate threat to your family should you testify before
25 the grand jury.

1 A. I would assume, just this my way of thinking, when we
2 express our feelings to the judge that we have concern of being
3 arrest overseas, that's for me immediate threat and to my
4 family, too. But we did not bring the issue right there,
5 that's correct.

6 Q. So we're clear on this, Mr. Alwan, in June -- July 13th,
7 1999, when you appeared before Judge Aspen and there was a
8 discussion about whether or not you would testify, nobody told
9 Judge Aspen that you had an immediate -- a concern about an
10 immediate threat to your family.

11 A. Yes.

12 Q. On July 11th of this year, when you appeared before Judge
13 Kocoras with Ms. Jarad for the second immunity order, and when
14 there was a discussion about whether or not you would testify
15 and whether it was even worthwhile for you to go back to the
16 grand jury, nobody told Judge Kocoras that you had a fear or
17 concern about an immediate threat to your family.

18 A. I think, your Honor, for explanation just, when I express
19 my feelings in front of Judge Kocoras that I will be assaulted
20 when I go back to visit my family, that was the fear in my
21 feelings that immediately when I enter the borders, that I will
22 be arrested once again. That's what I meant about it.

23 But I did not mention anything in specific words to
24 express that it was immediate threat, that's correct.

25 Q. In your three grand jury appearances and in your three

1 appearances before two judges of this court, not once did
2 anyone say anything to the court or to the grand jury that you
3 had a concern about an immediate threat to your family.

4 A. Yes.

5 Q. In fact, sir, the only time that you expressed any concern
6 was a concern about you personally.

7 A. I believe I did mention my kids and my family and my wife
8 and my parents when I go and visit them there.

9 Q. You mentioned your wife and your children, Mr. Alwan --

10 A. Yes.

11 Q. -- in the context of explaining to the grand jury why you
12 would be going back to your homeland. That's true, isn't it?

13 A. That's true.

14 Q. Not that they were in any kind of immediate danger, isn't
15 that true?

16 A. At that time, yes.

17 Q. It was simply an explanation to the grand jury about why
18 it was that you might or would go back to your homeland at some
19 point in time, isn't that true?

20 A. That's true.

21 MR. GILLOGLY: May I approach, your Honor?

22 THE COURT: Yes.

23 BY MR. GILLOGLY:

24 Q. Mr. Alwan, I'm going to give you some exhibits which are
25 in evidence, sir.

1 MR. GILLOGLY: Exhibit 7, counsel.

2 BY MR. GILLOGLY:

3 Q. Would you turn to tab 7, Mr. Alwan?

4 Do you have that there, sir?

5 A. Uh-huh.

6 MR. GILLOGLY: And, your Honor, if the jury would like
7 to follow along?

8 THE COURT: Okay. In the notebooks, tab 7.

9 You can proceed.

10 BY MR. GILLOGLY:

11 Q. Would you turn your attention, please, to page 4,
12 Mr. Alwan.

13 Did you find it there, sir?

14 A. One second.

15 Q. The very top of the page, right underneath your name.

16 A. Yes.

17 Q. You were asked this question and you gave this answer:

18 "And you understand what that means to be immunized

19 Mr. Alwan?"

20 "Answer: Yes, I do. In the United States, I believe

21 that's giving me immunity, but I have a family

22 overseas I have to visit at least every one year, and

23 this order does not protect me when I have to go

24 through Jordan or go back to visit my family."

25 That's true, isn't it? That's what you said.

1 A. That's true. I said I understand.

2 Q. Now, Mr. Alwan, turn your attention, please, to Exhibit 4
3 which is in evidence. It's tab number 4, sir.

4 A. I'm sorry, again which exhibit is that?

5 Q. Tab number 4. And I would like you to turn specifically
6 to page 6 behind tab 4.

7 Do you have it there, sir?

8 A. Yes.

9 Q. Directing your attention again to the very top of the page
10 right below your name, which is in the center of the page:

11 Question -- you were asked this question, I'm sorry, and you
12 gave this answer:

13 "Question: Even though you have -- you know you have
14 full immunity in the United States, federally and
15 state, do you understand that?"

16 And you answered Mr. Chanenson by saying: "I
17 understand that. I did declare that in front of the
18 judge. I have another concern. Not to being
19 prosecuted here, but another concern of being
20 prosecuted overseas. In this stand, I refuse to
21 answer any questions to the grand jury. I have no
22 other choice."

23 Did you -- were you asked those questions -- or that
24 question, and did you give that answer?

25 A. Yes, I did answer, it's true.

1 Q. Now, sir, I'd like to direct your attention --

2 MR. GILLOGLY: 6A.

3 May I approach, your Honor?

4 THE COURT: Yes.

5 BY MR. GILLOGLY:

6 Q. Mr. Alwan, I'm going to hand you what's been marked for
7 identification as Government Exhibit 6A. If you want to close
8 the binder, you may, sir.

9 All right, sir, I'd like to direct your attention to
10 page 3 of that exhibit, please.

11 MR. GILLOGLY: Judge, this is not an exhibit the jury
12 has.

13 THE COURT: Okay.

14 BY MR. GILLOGLY:

15 Q. Would you look this over for a second, Mr. Alwan.

16 MR. GILLOGLY: May I hand up a copy of this to your
17 Honor?

18 BY MR. GILLOGLY:

19 Q. Mr. Alwan, have you had a chance to look at page 3?

20 Now, Mr. Alwan, this is a copy of the transcript of
21 the proceedings before Judge Aspen on July 13th, 1999, am I
22 correct?

23 A. Yes.

24 Q. All right. And you were -- at that time, Mr. Falconer was
25 your lawyer.

1 A. Yes.

2 Q. All right. Now, you were present, were you not?

3 A. Of course, I was present.

4 Q. Okay. Now, in your presence then, Mr. Alwan, the
5 following exchange took place:

6 Mr. Falconer told Judge Aspen: "He does understand
7 that, Judge. He's asked me to mention to the Court
8 that he appreciates your grant of immunity, but that
9 it's not as broad as we sometimes think; that is, it
10 will not extend on his trips to Israel or Jordan, and
11 he could suffer some adverse consequences there."

12 Judge Aspen said: "Well, as you know, that has
13 little legal consequence here."

14 "Mr. Falconer: I do know that, Judge."

15 "The Court: Did you explain that to him?"

16 Mr. Falconer says: "I have."

17 Judge Aspen said: "All right, then is it his
18 intention not to answer the questions before the
19 grand jury in spite of the immunity?"

20 Your lawyer, Mr. Falconer said: "I think you should
21 answer that so that you should just tell him yes or
22 no. Don't make a speech. Just say yes or no."

23 He was talking to you at that point, is that correct?

24 When Mr. Falconer says, "I think you should answer that," he
25 was talking to you, right, Mr. Alwan?

1 Have I lost you there, sir, line 15?

2 A. No, I'm just thinking about this sentence.

3 Q. Judge Aspen asked:

4 "All right. Then is it his intention," he's talking
5 about you, "is it Mr. Alwan's intention not to answer
6 the questions before the grand jury in spite of this
7 immunity?"

8 And then at line 18 you tell -- told Judge Aspen:

9 "No, sir."

10 And then Judge Aspen said to you: "You're not going
11 to answer the questions, right?"

12 And you said: "No."

13 Judge Aspen then said to you: "Even though I've
14 granted you immunity, is that correct?"

15 And you said: "Yes, because of the reasons my
16 attorney just expressed."

17 Did you say that to Judge Aspen on July 13th of 1999?

18 A. Yes.

19 Q. Okay. Now, let me take that exhibit back.

20 Now, on June 7th, you said that -- you appeared before
21 Judge Aspen again in this building.

22 A. Yes.

23 Q. And Mr. Jarad and -- Ms. Jarad, excuse me, and Mr. Hill
24 were with you at that time.

25 A. Yes.

1 MR. GILLOGLY: May I approach, your Honor?

2 THE COURT: Yes.

3 BY MR. GILLOGLY:

4 Q. Mr. Alwan, I'm going to give you what's marked as
5 Government Exhibit 8. Would you take a look at that, sir.

6 MR. GILLOGLY: Judge, this one's not in the binder
7 either.

8 THE COURT: Okay.

9 BY MR. GILLOGLY:

10 Q. And I'd like to direct your attention, Mr. Alwan, if it
11 helps you, to page 3.

12 MR. GILLOGLY: I'll tender a copy to the Court.

13 BY MR. GILLOGLY:

14 Q. Sir, this is a transcript, or a copy of the transcript of
15 the proceedings before Judge Aspen on June 7th of this year,
16 and this proceeding dealt with whether or not you were going to
17 testify before the grand jury. Do you remember that?

18 A. Yes, I remember.

19 Q. Okay. Now, sir, on page 3, your counsel, I'm directing
20 your attention starting on line 12, do you have it there, sir?

21 A. Yes.

22 Q. All right. And you were there, of course, right?

23 A. Yes.

24 Q. All right. And counsel said:

25 "And it is not in defiance of the Court's order or in

1 defiance of the subpoena, it is -- or in the desire
2 to continue to be in contempt, but rather it is
3 arising out of a genuine fear that he holds of being
4 persecuted should he travel to the West Bank. He has
5 a need to travel to the West Bank. He has his wife
6 and children there that reside there that do not have
7 lawful residency here. Therefore, his immediate
8 family members cannot travel to the United States,
9 requiring him to go overseas. And his concern or
10 fear, genuinely based, based on the political
11 situation, even currently ongoing, he has a genuine
12 concern and fear that he would be prosecuted once he
13 travels out there, and he will need to travel out
14 there."

15 Did I read that correctly, sir?

16 A. Yes.

17 Q. That was a statement made by counsel.

18 Now I'd like you to move ahead, Mr. Alwan, please, to
19 page 11, and particularly line 22. Actually, starting at line
20 20. Page 11, line 20.

21 All right. Sir, at that point, Judge Aspen said to
22 you:

23 "Okay, Mr. Alwan, is there anything you wish to say
24 to me?"

25 And you replied to Judge Aspen: "Well, I would like

1 to support what my attorney just said. The time --
2 um, the time is going to come or the time that is
3 going to come is not going to change my mind. I do
4 have a great fear when I go back home. I have to go
5 sooner or later back home to visit family. I have
6 two kids and I have my wife, my parents there, and I
7 can't give up going back there because it is my
8 homeland. I consider my second homeland here. And
9 there is a serious fear that I have. That is why I
10 think I keep my mouth shut all the time. Thank you."

11 Did Judge Aspen ask you that question, and did you
12 give him that answer?

13 A. Yes.

14 Q. All right. Now, moving ahead then about four weeks,
15 Mr. Alwan, to July 11th of this year, you appeared before Judge
16 Kocoras.

17 A. Yes.

18 MR. GILLOGLY: And, counsel, Government Exhibit 3A.

19 (Counsel conferring.)

20 MR. GILLOGLY: 3A, counsel, 3A now.

21 May I approach, your Honor?

22 THE COURT: Yes.

23 BY MR. GILLOGLY:

24 Q. Mr. Alwan, I'm going to give you what's marked for
25 identification as Government Exhibit 3A.

1 A. You want this back?

2 Q. May I take this back, sir?

3 MR. GILLOGLY: I'll give the Court a copy.

4 BY MR. GILLOGLY:

5 Q. Would you take a look at Government Exhibit 3A for a
6 moment, Mr. Alwan.

7 (Counsel conferring.)

8 BY MR. GILLOGLY:

9 Q. All right. Mr. Alwan, have you had a chance to look at
10 Government Exhibit 3A -- which is in evidence, your Honor --
11 yes, but not in the jury book.

12 THE COURT: Okay.

13 BY MR. GILLOGLY:

14 Q. Mr. Alwan, if you want to, I'm going to really focus your
15 attention on page 14 of that transcript.

16 All right. Sir, directing your attention to really
17 line 16. Now, sir, this was the date the second immunity order
18 was entered, am I correct? June 13th, 2000 -- July 13th, I
19 misspoke again, I'm sorry. July 13th, 2000 -- July 11th.
20 Thank you. I'm tired.

21 A. Yes.

22 Q. July 11th, 2000. And it was before Judge Kocoras, right?

23 A. Yes.

24 Q. And you were there?

25 A. Yes.

1 Q. Ms. Jarad was there, and the prosecutors were there.

2 A. Yes.

3 Q. This is Judge Kocoras's courtroom.

4 A. Yes.

5 Q. And it was a closed courtroom.

6 A. Yes.

7 Q. All right. Directing your attention to line 16, and right
8 before this, Mr. Alwan, you recall there was a discussion about
9 whether or not you would testify before the grand jury that
10 day.

11 Do you remember that discussion?

12 A. Yes, I do.

13 Q. All right. Judge Kocoras asked you, starting at line 16,
14 sir:

15 "Well, that is your personal choice. You have a
16 choice to testify if you want to."

17 And you told Judge Kocoras: "It is not the matter of
18 the immunity that is granted to me here that is
19 protecting me from further prosecution or state
20 prosecution. It is a matter of beyond these reasons
21 that I explained that through my lawyer through
22 different motions."

23 And Judge Kocoras said: "Okay."

24 And then you continued, Mr. Alwan, you told Judge
25 Kocoras: "That I fear prosecution when I go back

1 home. That has been my stand and that will be my
2 stand."

3 Did Judge Kocoras ask you those questions, and you
4 gave those answers, did you not?

5 A. Yes, I did give those answers.

6 Q. Thank you, sir.

7 Let me take the exhibit back. Thank you, sir.

8 Now, you testified yesterday, Mr. Hill asked you some
9 questions about why you wouldn't testify three months ago and
10 why you're willing to testify today.

11 Do you remember Mr. Hill asked you those questions?

12 A. Yes.

13 Q. Okay. And would you tell us, please, again why it is that
14 you don't have a fear now, but you did three months ago?

15 A. I do still have the fear, and three months ago, the stand
16 was different. And today the consequences I might face after
17 not testify will be harder to me.

18 It is like I will be able -- I won't be able to get my
19 citizenship as citizen of this country. I might lose my green
20 card. I'm subject to deportation.

21 Q. You understand, Mr. Alwan, that as a citizen of this
22 country, you have an obligation to obey the lawful court orders
23 that are entered?

24 A. Yes, I do.

25 Q. And you did not do that, did you, Mr. Alwan?

1 A. I did not obey that, that's correct.

2 Q. And you knew that you were required to obey the order of
3 the court to testify.

4 A. Yes.

5 Q. Today, you've decided that you are going to testify --
6 yesterday and today, you've decided that you're going to
7 testify.

8 A. I am in defendant stand to defend myself, and I believe I
9 have the right to defend myself.

10 Q. Mr. Alwan, my question to you is three months ago, you
11 weren't willing to testify. Today and yesterday, you are
12 willing to testify, is that correct?

13 A. I did not understand the question. Where is --

14 Q. I'll be happy to repeat it, sir.

15 A. Thank you.

16 Q. In July -- on July 11th, 2000, you, sir, decided that you
17 were not going to obey Judge Kocoras's order to you, didn't
18 you?

19 A. Yes.

20 Q. Today, sir, you have decided that you are going to
21 testify.

22 A. Yes.

23 Q. And today you tell us that you're willing to testify today
24 because you think it's in your best interest to testify today.

25 A. That's not my best -- it's not an interest, more than it

1 is an immediate danger if I will be deported and I will be in
2 the hands of the Shimbet again, yes, sir.

3 Q. Mr. Alwan, your -- your testimony is is that if there is
4 something about you that you care about, then you'll obey a
5 court order or not obey a court order.

6 A. If it was something about me -- would you repeat the
7 question, please.

8 Q. Sure.

9 Today, you have it in your mind that you want
10 something for yourself. You don't want to go back to your
11 homeland apparently. Do I understand you correctly?

12 A. That's correct.

13 Q. And so because you don't want to go back to your homeland,
14 you are willing to get on this witness stand and to testify.

15 A. That's right.

16 Q. But you weren't willing to do that back in July of this
17 year, three months ago.

18 A. That's correct.

19 Q. And you weren't willing to do that back in July of 1999.

20 A. That's correct.

21 Q. But today, you are.

22 A. Yes.

23 Q. So in short, Mr. Alwan, your decision not to testify in
24 July of this year, three months ago, had absolutely nothing to
25 do with any threat to your family.

1 A. I disagree.

2 Q. Now, Mr. Alwan, is it your testimony that it's now safe
3 for you to testify?

4 A. I believe with that big publicity, that will make it
5 little safer, but it is a hard stand as I believe.

6 Q. Mr. Alwan, you think the publicity is going to protect
7 you, is that your testimony, sir? Do I understand you
8 correctly?

9 A. No, sir, but that might at least give a picture that if
10 something happens to my family or to me, who's behind that.

11 Q. Now, explain to the jury, please, why it is that your
12 testimony before a grand jury would have subjected you or made
13 you vulnerable to some kind of arrest or torture or abuse at
14 the hands of the Israelis?

15 A. I did not understand the question. Would you repeat it
16 slowly, please?

17 Q. Did you testify yesterday that you refused to testify in
18 the grand jury because you feared that if you did testify
19 before the grand jury, the Shimbet or the Israelis then would
20 harm you, torture you?

21 A. That's correct.

22 Q. Can you tell the jury, please, how it was -- what's the
23 connection then between you testifying in a grand jury in
24 Chicago and then being set upon by Shimbet sometime in the
25 future, maybe, back in the West Bank?

1 A. I believe that the questions I was asked in front of the
2 grand jury, which is coming from the heart of the Shimbet, and
3 I have given no assurance that any answers that I give that
4 will go back to the Shimbet themselves, that will put me in
5 danger, in immediate danger.

6 And those questions, I did not understand them, and
7 they are not the matter of the question today.

8 Q. Well, Mr. Alwan, what is it about the questions that were
9 to be put to you that would anger the Shimbet such that they
10 would retaliate against you if they ever caught you back in
11 your homeland?

12 A. I will keep the answer to myself at this moment.

13 Q. I'm sorry, sir? I didn't hear you.

14 A. Well, after the torturing period of my days, there was
15 nobody ever questioned me why you stand the torture, why there
16 is no more statement.

17 I was in torture to be used at the hand of the
18 Israelis in the United States which I refuse to do under fear,
19 threat, trying to buy me at the same time, and I did explain
20 that --.

21 Q. All right --

22 A. -- to my attorneys.

23 Q. I'm sorry. I'm not going to ask you about any discussions
24 you had with your attorneys, Mr. Alwan. That's a privileged
25 communication that you have.

1 My question to you, sir, and I do not understand your
2 answer. What is it about the questions that were put to you in
3 the grand jury would cause the Shimbet people to arrest you and
4 torture you if they caught you back in your homeland after
5 this?

6 A. Because simply this testimony will -- that declare the
7 lies they made against me and somebody else in the United
8 States, and that declare their status and their threat to me
9 that these documents will be turned to the United States if you
10 don't cooperate with us, which is a hard stand I took it since
11 those years and I suffer hard consequences because of that.

12 Q. I'm sorry, who suffered what?

13 A. I suffer hard consequences because of that, the threat of
14 the Israelis, and something else.

15 Q. All right. Let me see if I understand this, Mr. Alwan.

16 In August of 1995, you wrote that Arabic statement
17 that you talked about this morning. You were also interviewed
18 by Israeli authorities. Certain information was written down.

19 It's your testimony that that information was forced
20 out of you and, and, it's false. Do I understand that
21 correctly?

22 A. Yes.

23 Q. Are you testifying that you believe that the questions put
24 to you in the grand jury had come from or originated with the
25 Shimbet?

1 A. Of course.

2 Q. All right. So if you're asked questions in the grand jury
3 about things that were already known to Shimbet, how is it,
4 Mr. Alwan, that when if you returned to your country and if the
5 Shimbet were ever to know that you testified about such things
6 in the grand jury you would be retaliated against?

7 A. Before I came to the United States, I have a meeting with
8 the Shimbet. They did threat me, direct threat that anything
9 that goes wrong that you will be in danger and it will cost you
10 your life.

11 Q. Is it your testimony today that before you came to the
12 United States, the Shimbet found you and told you -- told you
13 what?

14 A. They did not find me.

15 Q. All right.

16 A. They refused to give me my right to come back to the
17 United States. They refused me to make me use the airport to
18 come back. They deny that. And during a meeting with the
19 Shimbet, they did with threat directly to me.

20 Q. When was this meeting? I'm sorry. I didn't mean to cut
21 you off.

22 A. I came here June 1999, I believe it was around June 22 or
23 21, 1999, which is -- that carries the date of that roundtrip
24 ticket I took.

25 Q. And it is your testimony that right before you came back

1 in June of 1999, people from Shimbet talked to you.

2 A. Yes.

3 Q. And they told you what, sir?

4 A. They told you -- they told me exactly that you'll find
5 yourself, we're scared of you and if you do anything wrong, we
6 are scared of this trip, you will be like, some specific names
7 they mentioned that like Abdullah and his brother, which were
8 they were two people they were killed, and nobody knows who
9 killed them at that time.

10 Q. Did I understand you to say that these people that you
11 thought were from Shimbet told you that they, meaning Shimbet,
12 was afraid of you? Did I hear you correctly?

13 A. Yes.

14 Q. And that if you said anything about Shimbet, something bad
15 would happen to you?

16 A. Yes. They did make some cross-examinations, too.

17 Q. Now, Mr. Alwan, you never told that to the grand jury, did
18 you?

19 A. Never.

20 Q. You did not tell it to Judge Aspen.

21 A. Never.

22 Q. You did not tell it to Judge Kocoras.

23 A. Never.

24 Q. In fact, sir, you didn't even say it yesterday, did you?

25 A. I was hoping these things will be over and before I have

1 to say it.

2 Q. Now, Mr. Alwan -- so if I -- is it your testimony that you
3 were afraid that if you went public, made a statement to
4 somebody that the Shimbet had committed these acts of torture
5 against you, then something bad would happen to you?

6 A. I don't know what's going to happen, but --

7 Q. But they made some sort of ominous threat, you said. Did
8 I understand correctly?

9 A. Will you explain what's "ominous."

10 Q. I'm sorry. They made some kind of threat to you that
11 frightened you.

12 A. The testimony, you mean?

13 Q. Let me withdraw the question.

14 A. Go ahead, please.

15 Q. When you met -- you described in this meeting you met the
16 Shimbet.

17 A. That's right.

18 Q. And they told you they were afraid of you.

19 A. Yes.

20 Q. And they told you, in so many words, that if you said
21 anything about their torture of you that something bad would
22 happen to you, is that the gist of it?

23 A. Not just the torture.

24 Q. I'm sorry?

25 A. I did have threat from them.

1 Q. What threat did they make to you?

2 A. They told me anything that goes wrong, it will cost you
3 your life.

4 Q. Could cost you your life. If you were to say something
5 about Shimbet, then they would kill you?

6 A. I believe they are capable to do that.

7 Q. That's -- my question to you, sir, is that what those
8 people told you --

9 A. Yes.

10 Q. -- in June of 1999?

11 A. Yes.

12 Q. Now, Mr. Alwan, in fact, sir, you have made a number of
13 statements at various times alleging these acts of torture,
14 haven't you?

15 A. Yes.

16 Q. You told the Red Cross.

17 A. Yes.

18 Q. You told the Israeli Ministry of Justice.

19 A. Yes.

20 Q. They were going to do an investigation. Is that your
21 testimony this morning?

22 A. Yes.

23 Q. All right. You told your lawyer.

24 A. Yes.

25 Q. You told your father.

- 1 A. I didn't told my father. You mean about the torturing?
- 2 Q. The torture, yes.
- 3 A. Yes.
- 4 Q. You told your brother Yasser.
- 5 A. Yes.
- 6 Q. You told your brother Ramadan.
- 7 A. Yes.
- 8 Q. All right. None of those people has been arrested?
- 9 A. None of them.
- 10 Q. Tortured?
- 11 A. No.
- 12 Q. Put a hood over their head?
- 13 A. No.
- 14 Q. Shaken?
- 15 A. Nobody.
- 16 Q. Tied to a chair?
- 17 A. No.
- 18 Q. Beaten?
- 19 A. Nobody.
- 20 Q. Where is your father living?
- 21 A. He lives in the West Bank, Einybrod, Ramallah.
- 22 Q. I'm sorry?
- 23 A. He lives in the West Bank, Einybrod, Ramallah, which is
- 24 the village.
- 25 Q. Now, sir, in August of this year, after you were charged

1 with the offense that you are now on trial for, you, acting
2 through your lawyer, made a public accusation against Shimbet,
3 didn't you?

4 A. I have the right to defend myself.

5 Q. Nobody's questioning that right, sir.

6 My question to you was on August 1st of this year,
7 just a little over two months ago, two-and-a-half months ago,
8 your lawyer made a public charge against Shimbet that they had
9 tortured you.

10 A. Yes.

11 Q. All right. Now, after that, sir, you had your father sign
12 a statement which said that you had accused Israeli
13 authorities, Shimbet in particular, with torturing you while
14 they were holding you in 1995, isn't that true?

15 A. Will you repeat the question, please?

16 Q. Sure. After your lawyer made a public charge that you
17 were the victim of torture by Shimbet, you asked your father to
18 sign a statement that was filed in a public pleading in this
19 courthouse, and in your father's statement, he says that you,
20 the son, Sharif, made accusations of torture by Shimbet. Isn't
21 that true?

22 A. Except with some correction. I'm familiar with that
23 statement, and I read it, but I haven't asked my father to do
24 it. He did it. Thank you.

25 Q. Your father signed that statement, didn't he?

1 A. Yes.

2 Q. And in it, he says that you, his son Sharif, made a
3 public -- or made an accusation of torture against Shimbet,
4 correct?

5 A. I make an accusation?

6 MR. GILLOGLY: May I approach, your Honor?

7 THE COURT: Yes.

8 BY MR. GILLOGLY:

9 Q. I'm going to show you what's been marked as Government
10 Exhibit 10, Mr. Alwan. Take a look at that.

11 That's your father's statement?

12 MR. HILL: May we have it?

13 BY THE WITNESS:

14 A. Yes.

15 BY MR. GILLOGLY:

16 Q. And that statement, sir, was filed in the public record,
17 if you will, filed publicly in this courthouse.

18 A. Yes.

19 Q. Your father is living in the West Bank.

20 A. Yes.

21 Q. In the very same area where Shimbet operates, correct?

22 A. Yes.

23 Q. Has your father been arrested?

24 A. My father is an American citizen.

25 Q. Has your father been arrested?

- 1 A. No, sir.
- 2 Q. Has he been tortured?
- 3 A. No, sir.
- 4 Q. Has he been hooded?
- 5 A. No, sir.
- 6 Q. Put in that chair.
- 7 A. No, sir.
- 8 Q. Your wife. Has she been arrested?
- 9 A. No.
- 10 Q. Nobody put a hood over her head.
- 11 A. No.
- 12 Q. Nobody put her in a chair.
- 13 A. No.
- 14 Q. Your two daughters, have they been arrested?
- 15 A. No, sir.
- 16 Q. They're safe and sound, aren't they, Mr. Alwan?
- 17 A. I hope they are.
- 18 Q. Now, Mr. Alwan, do you have a binder up there, sir, that
- 19 black binder?
- 20 A. Yes, I do.
- 21 Q. Would you please open it to the grand jury testimony of
- 22 July 11th of this year.
- 23 Now, before I go into that, I want to ask you this:
- 24 Is it your testimony, sir, that you were willing to obey the
- 25 Court's order and to testify before the grand jury except for

1 this fear that you've described the last couple of days?

2 A. Repeat the question, please.

3 Q. I'll be happy to.

4 Is it your testimony -- withdrawn.

5 Sir, in July of this year in the grand jury, would you
6 have testified if you didn't have these fears that you've
7 described to the jury?

8 A. If I don't have these fears?

9 Q. If you did not have those fears, would you have testified?

10 A. I believe if somebody gave me some assurance, some certain
11 points, that I might took different stand.

12 Q. We'll look at that, we'll look at that.

13 I understood your testimony from just a little while
14 ago to say that you were threatened that if you were to expose
15 the torture of you by Shimbet, that they would kill you?

16 A. Not the torture, no.

17 Q. I'm sorry? I cannot hear you.

18 A. The statement's not right.

19 Q. Okay. Correct it for me, would you?

20 A. It's not talking about the torturing, but it is something
21 beyond that.

22 Q. Did you just tell this jury that you met with some Shimbet
23 people who threatened you and told you not to tell anybody what
24 they had done to you?

25 A. Not I told them that, no.

1 Q. Mr. Alwan, if you could keep your voice up.

2 A. No, sir.

3 Q. What did they tell you?

4 A. What did they tell me?

5 Q. Yes, what did those -- the people you thought were from
6 Shimbet --

7 A. Yes.

8 Q. -- in June of 1999, what did they tell you?

9 A. They told me that we are afraid of this trip that you're
10 going to make, and anything that goes wrong, you're going to
11 suffer the consequences, which is they mean by definitely --
12 they mean by it about the arrest that was arrested before
13 because they did ask specifically about some United States
14 residents who live in the United States, where do they live,
15 before they made this threat to me.

16 And I was wondering why they made it, and I was told
17 them that -- that why should you do that to me? Why should you
18 threaten me? Meanwhile this thing is over. I have done my time.
19 I served my time, whether I was guilty or not. I've served my
20 time and I get out, and they have nothing to do with you.

21 They did -- they did not allow me to use the airport.
22 They did try to entrap me at that Allenberg Bridge at the last
23 moment before I leave. There was somebody who was serve jail
24 at the day time that was served that was trying to give me
25 3,000 dinar to carry that out of the check point before I stamp

1 my passport. And at that moment, I refuse, of course, to take
2 it. After that, I was taken to that Shimbet office again --

3 Q. Mr. Alwan, let me go back to the question I asked you.

4 A. Go ahead.

5 Q. Did these people that you believed were Shimbet tell you
6 why they were afraid of the trip you were going to make to the
7 United States?

8 A. They never made that.

9 Q. I'm sorry?

10 A. They never made that clearly to me.

11 Q. All right. Well, did you understand these people to be
12 saying to you, Sharif Alwan, don't you dare talk about the way
13 we, Shimbet, treated you while you were in custody, or else we
14 will kill you?

15 A. It wasn't that statement like the way that we torture you
16 or the way that goes in there.

17 I believe they have some other concern, concerns if I
18 made any testimony against them.

19 Q. What is it, Mr. Alwan, that you understood these people
20 wanted you to keep your mouth shut about?

21 A. I believe that the information that came through the
22 Shimbet has misled the justice system and the FBIs through the
23 country against some innocent people; that their names, they
24 were mentioned in the torturing situation, they drove me in to
25 work against those people. They have nothing to do with HAMAS

1 organization or anything else. That's why.

2 Q. All right, I'm sorry. Are you telling the jury that these
3 fellows did not want you to repeat the statements that they had
4 written down and said you had said?

5 A. No, that's not the statements.

6 Q. Did they threaten you about some other people?

7 A. It is I assume that -- they know that there is an ongoing
8 investigation in the United States, and it's clearly they are
9 part of it.

10 Q. Now, Mr. Alwan --

11 A. They don't want any finger to be point at them.

12 Q. Have you finished your answer?

13 A. Thank you.

14 Q. No, have you finished?

15 A. Yes.

16 Q. Now, I don't suppose you have the names of these people
17 who talked to you in June of 1999?

18 A. I just remember one of them.

19 Q. And what is this person's name?

20 A. I'm sorry, I can't mention no names.

21 Q. I'm sorry?

22 A. I can't mention no names publicly.

23 Q. So you won't answer the question.

24 A. I said I cannot mention any names publicly.

25 Q. Mr. Alwan, we'll come back to that.

1 Mr. Alwan, do you have the book in front of you?

2 A. Yes, I do.

3 Q. When you went into the grand jury, Mr. Alwan, and I want
4 to turn your attention to Exhibit Number 4, which was the July
5 Grand Jury. I'll start your attention on page 6.

6 A. I'm sorry, would you repeat the exhibit?

7 Q. It's behind tab number 4, and beginning on page 6, okay?

8 A. Go ahead.

9 Q. Now, you testified earlier, sir, that you believed that
10 the questions that were being put to you in the grand jury had
11 originated with the Israelis.

12 A. Yes.

13 Q. And you told this jury this morning that the information
14 that was written down in the reports was false.

15 A. Yes.

16 Q. Untrue.

17 A. Yes.

18 Q. All right. Mr. Alwan, direct your attention to page 6,
19 the very -- the second question on that page.

20 "Mr. Chanenson asked you: Mr. Alwan, is it true that
21 you were recruited into the HAMAS organization in
22 approximately 1990?"

23 Do you see that question?

24 A. Yes.

25 Q. All right. And you said:

1 "Sir, I am refusing to answer any questions to this
2 grand jury. Is that clear?"

3 A. That's clear.

4 Q. All right. Now, Mr. Alwan, nobody asked you any questions
5 in that grand jury about the way you were treated by Shimbet,
6 did they?

7 A. No, they did not.

8 Q. And you're telling this jury today that you were not
9 recruited into HAMAS organization in 1990. Is that true?

10 A. That's true.

11 Q. I mean is that your testimony?

12 A. Yes.

13 Q. All you had to tell the grand jury was, "No, sir, that's
14 not true."

15 A. My testimony is I'm not a HAMAS member, and I've been
16 alleged to say that.

17 Q. And all you had to say to Mr. Chanenson was, "No, sir, I
18 am not a member of HAMAS," isn't that true?

19 A. That's true.

20 Q. Next question, they asked you if Muhammad Salah was one of
21 the individuals who was responsible for your military training
22 in the HAMAS organization.

23 Do you see that question?

24 A. Yes.

25 Q. All right. And you're telling this jury that Muhammad

1 Salah was not responsible for your military training in HAMAS
2 because you were not a member of HAMAS, correct?

3 A. Repeat the question, please.

4 Q. Sure.

5 You're telling us today that you are not a member of
6 HAMAS, and this Salah fellow was not anybody who was
7 supervising you in HAMAS.

8 A. That's correct.

9 Q. So all you had to do was tell Mr. Chanenson, "No, sir,
10 that's not true."

11 A. At that time.

12 Q. You didn't have to mention word one about Shimbet in
13 answering that question, did you, Mr. Alwan?

14 A. No, I did not.

15 Q. All you had to say was, "No, sir, that's false." Isn't
16 that correct?

17 A. My stand was different at that time.

18 Q. Going down the page, Mr. Alwan. Mr. Chanenson asked you:
19 ("Mr. Alwan, is it true, is it true that at some point at
20 Muhammad Salah and Mousa Abu Marzook's direction you attended
21 military training for HAMAS in the United States?"

22 Now, you're telling us today that this is not a true
23 statement. Do I understand you correctly?

24 A. Yes.

25 Q. And so all you had to say to Mr. Chanenson's question is,

1 "Sir, no, it is not true."

2 A. At that time, the answer should be yes or no.

3 Q. Sir, all you had to say to Mr. Chanenson's question is

4 "No, sir, that's not true."

5 A. What was if I say it was true. There is two possibilities
6 for answering that question. How could you assume that answer
7 is no or yes?

8 Q. Mr. Alwan, didn't you just tell this jury that you are not
9 a member of HAMAS?

10 A. Yes, I did.

11 Q. All right. So the answer to this question then for
12 Mr. Chanenson is "No, Mr. Chanenson, that is not true."

13 A. That's true.

14 Q. All right. But you didn't say that to Mr. Chanenson.

15 A. No, I didn't.

16 Q. And Mr. Chanenson didn't ask you word one about Shimbet,
17 did he?

18 A. No, he did not.

19 Q. Or how you were treated when you were arrested, did he?

20 A. No, he did not.

21 Q. Next page, Mr. Alwan.

22 Mr. Chanenson said to you: "Mr. Alwan, is it true
23 that you traveled overseas to Syria and to Lebanon to
24 partake in military training on behalf of the HAMAS
25 organization?"

1 You tell this jury today that you never did any of
2 those things.

3 A. That's true.

4 Q. So all you had to say to Mr. Chanenson's question on page
5 7 there is "No, sir, that is not true."

6 A. Not at that point.

7 Q. Nobody asked you anything about Shimbet.

8 A. Nobody asked me about Shimbet.

9 Q. Next question:

10 "Mr. Alwan, for your trip to Syria to attend the
11 training camp, did Muhammad Salah provide you with
12 the airplane tickets for that trip?"

13 Are you telling this jury that Muhammad Salah did not
14 provide you with any airplane tickets for a trip to Syria?

15 A. I have no connection with HAMAS organization.

16 Q. So when Mr. Chanenson asked you that question, the answer
17 to his question would be "No, sir. Mr. Salah did not provide
18 me with the airplane tickets for any trip anywhere."

19 A. That's correct.

20 Q. You didn't have to say word one about Shimbet.

21 A. That's correct.

22 Q. All right. Now, bottom of the page.

23 Oh, then you say to Mr. Chanenson:

24 "I did make my stand clear in front of the judge that
25 I'm coming to this room and I'm not going to testify.

1 Is that clear, please?"

2 Did you say that there on page 7?

3 A. Yes.

4 Q. All right. Then Mr. Chanenson asked you:

5 "On your trip for training in Lebanon, you spent
6 approximately two months at a Hezbollah military
7 camp, is that right, sir?"

8 Now, today, Mr. Alwan, you're telling this jury that
9 you didn't spend any time at any Hezbollah camp or any military
10 training in Lebanon.

11 A. That's correct.

12 Q. Do I understand you correctly?

13 A. Yes.

14 Q. So the answer to Mr. Chanenson's question is "No, sir,
15 that is not right."

16 A. That's right.

17 Q. Nobody asked you anything about Shimbet.

18 A. Nobody asked me at that time.

19 Q. Nobody asked you how you were treated during your
20 captivity in 1995 and '96.

21 A. Nobody.

22 Q. Then you left the room, Mr. Alwan.

23 A. Yes.

24 Q. And you met with Ms. Jarad.

25 A. Yes.

1 Q. And then you came back to the grand jury.

2 A. Yes.

3 Q. And when you came back to the grand jury, Mr. Chanenson
4 asked you some more questions.

5 "Now, sir, I asked you if during your time in the
6 Hezbollah military camp in Lebanon, you spent
7 approximately two months training there, is that
8 correct?"

9 Your answer to that question, Mr. Alwan, is what?

10 A. Is no.

11 Q. "No, I didn't, Mr. Chanenson," but you didn't say that,
12 did you?

13 A. No, I didn't.

14 Q. You didn't -- nobody asked you about Shimbet.

15 A. Nobody.

16 Q. Nobody asked you about your time in captivity, did they?

17 A. No, they didn't.

18 Q. Page 8 and 9, two more questions:

19 "Mr. Alwan, at some point near the end of your
20 training, you were told that you would be involved in
21 HAMAS activities in Jordan, but that you would return
22 to the United States first, is that correct?"

23 You're telling us today, Mr. Alwan, that that is not
24 correct.

25 A. That's not correct.

1 Q. But you didn't say that --

2 A. I'm sorry, the statement is not correct.

3 Q. That's right. The statement is not correct.

4 A. The answer is yes.

5 Q. But you didn't say to Mr. Chanenson, "No, sir, that is not
6 correct." That was not your response in the grand jury, was
7 it?

8 A. I did not respond, that's correct.

9 Q. Nobody asked you about Shimbet.

10 A. Nobody did.

11 Q. Nobody asked you about your time in captivity.

12 A. Nobody did.

13 Q. Now, yesterday, Mr. Alwan --

14 Judge, I don't know what your plan is, but --

15 THE COURT: Do you want to break at this point?

16 MR. GILLOGLY: Yeah, my throat's hurting, Judge, but
17 I'm getting there.

18 THE COURT: Okay. We'll take a ten-minute recess.

19 (Recess from 3:02 to 3:19 p.m.)

20 THE COURT: Please be seated, ladies and gentlemen.

21 Mr. Alwan, you can retake the stand.

22 You can proceed, Mr. Gillogly.

23 MR. GILLOGLY: Thank you.

24 BY MR. GILLOGLY:

25 Q. Mr. Alwan, yesterday your lawyer, Mr. Hill, was asking you

1 some questions about why you did what you did or why you
2 refused to testify in the grand jury.

3 Do you remember that whole series of questions from
4 your lawyer yesterday afternoon?

5 A. Yes.

6 Q. And among the questions he asked you, Mr. Alwan, is he
7 asked you about whether or not you would have been willing to
8 testify before the grand jury if someone had offered you some
9 protection for yourself from any consequences that might come
10 from that.

11 Do you remember that series of questions on that score
12 from Mr. Hill?

13 A. Yes, he did ask that. Yes, he did ask that, I think.

14 Q. Again, I know it's getting late. Would you like some
15 water or something, Mr. Alwan?

16 A. No, I'm fine. Thank you.

17 Q. If you can keep your voice up so we can all hear you.

18 A. Go ahead.

19 Q. Now, you told the jury yesterday in response to Mr. Hill's
20 questions that if somebody had offered you protection, that you
21 would have testified. Is that your testimony?

22 A. I can't recall what -- I can't recall what I said
23 yesterday.

24 Q. You can't recall what you said yesterday?

25 All right. Well, let me ask you this: If someone had

1 offered you protection, would you have testified in a grand
2 jury?

3 A. Yes.

4 Q. Yes?

5 A. If somebody would offer me assurance, you said.

6 Q. Protection for yourself.

7 A. Yes.

8 Q. You would have testified.

9 A. Yes.

10 Q. Now, Mr. Alwan, you never asked for protection, did you?

11 A. No.

12 Q. You never asked Judge Kocoras?

13 A. No.

14 Q. You never asked Judge Aspen.

15 A. No.

16 Q. You never asked the grand jurors.

17 A. No.

18 Q. And you never asked the government.

19 A. I never ask nobody. That's the answer for the whole
20 questions.

21 Q. Now, Mr. Hill also asked you some questions yesterday
22 about the secrecy of the grand jury. Do you remember that?

23 A. Yes.

24 Q. And Mr. Hill asked you, Mr. Alwan, that if someone had
25 told you that the proceedings, your testimony in front of the

1 grand jury, was secret, you would have testified.

2 A. Yes. I believe yes.

3 Q. That was your testimony to the ladies and gentlemen of the
4 jury yesterday.

5 A. Uh-huh.

6 Q. That if someone would have told you that the proceedings
7 before the grand jury were secret, you would have testified.

8 A. Yes.

9 Q. And you told the jury yesterday that nobody told you that
10 the proceedings before the grand jury were secret.

11 Do you remember testifying to that in front of the
12 jury yesterday?

13 A. Yes.

14 Q. You told them that no prosecutor told you that the
15 proceedings before the grand jury were secret.

16 A. Yes.

17 Q. And you told the ladies and gentlemen of the jury that no
18 judge told you that the proceedings before the grand jury were
19 secret.

20 MR. HILL: Your Honor, may I have a side bar, please?

21 THE COURT: I don't think we need one on this one,
22 Mr. Hill.

23 You can answer it.

24 BY MR. GILLOGLY:

25 Q. Do you remember the question, sir?

1 A. Yes, I believe I said -- yes, I believe I said yes.

2 Q. That no judge told you that the proceedings before the
3 grand jury were secret. That was your testimony yesterday.

4 A. I don't recall the exact answer. I'm sorry about that.

5 Q. Did you tell the ladies and gentlemen of the jury
6 yesterday that no judge told you that your testimony before the
7 grand jury was secret? No judge ever told you that.

8 A. That's what I understand. If it's secret, to me, it means
9 to stay in the border of the court, and it wouldn't be -- fly
10 to another country or --

11 Q. Mr. Alwan, I'm sorry. You've got to keep your voice up so
12 we can all hear you.

13 A. Yes. If you mean about -- when I answered that, when I
14 testified that, that I believe nobody assure me that this is a
15 secret meeting or a secret jury, and nobody gave me assurance
16 that any information will never flee back to the Shimbet or
17 somewhere else.

18 Q. All right. And you said that no grand juror ever assured
19 you that your testimony would be secret.

20 A. Yes.

21 Q. Now, Mr. Alwan, did you mean what you said yesterday when
22 you told the ladies and gentlemen of the jury that if someone
23 had told you that the grand jury proceedings were secret, you
24 would have testified before the grand jury?

25 Did you mean it when you said it to the ladies and

1 gentlemen of the jury yesterday?

2 A. Yes, I do mean it.

3 Q. Were you telling them the truth yesterday?

4 A. Sure, I was telling them the truth because I told them
5 that --

6 Q. So the truth, Mr. Alwan --

7 A. Let me --

8 Q. I'm sorry. So the truth, Mr. Alwan, is that if someone
9 had told you the proceedings before the grand jury were secret,
10 then you, sir, Sharif Alwan, would have testified in the grand
11 jury.

12 A. I would have took different stand, yes.

13 Q. The truth, Mr. Alwan, is that you were told that the
14 proceedings before the grand jury were secret.

15 A. Not I recall.

16 Q. Do you recall, Mr. Alwan, asked you a number of questions
17 about the various proceedings that you've had in this case,
18 where you've gone before judges with your lawyers to talk about
19 whether or not you're going to testify, okay?

20 Do you remember on June 7th of this year, you,
21 Ms. Jarad and Mr. Hill went before Judge Aspen. Do you
22 remember that?

23 A. Yes.

24 Q. And one of the issues that was before the judge that day
25 was your concern about having to testify.

1 A. Yes.

2 Q. And you wanted to be basically excused from having to
3 testify, is that a fair statement?

4 A. Yes.

5 Q. You were trying to get Judge Aspen not to order you to
6 testify. Do you remember that?

7 A. That's not what my interest was at that time.

8 Q. No, my question, sir, is that proceeding on June 7th
9 before Judge Aspen where you, Mr. Hill, Ms. Jarad and the
10 prosecutors were there, was about whether or not you were going
11 to have to testify, correct?

12 A. Was about what kind of -- we were seeking for some kind of
13 decision from the court in the status that I have.

14 Q. All right. Now, in that proceeding on June 7th,
15 Mr. Alwan, your lawyer told Judge Aspen, and we've read this
16 before, that you feared prosecution back home, in your
17 homeland, do you remember that?

18 A. Yes.

19 Q. All right. And you recall just a little while later
20 Mr. Chanenson said something to the judge.

21 Do you remember Mr. Chanenson, the Assistant U.S.
22 Attorney, the prosecutor?

23 A. Yeah.

24 MR. GILLOGLY: All right. May I approach, your Honor?

25 THE COURT: Yes.

1 MR. GILLOGLY: Government Exhibit 8, counsel.

2 BY MR. GILLOGLY:

3 Q. I'm going to show you Government Exhibit 8, Mr. Alwan --
4 let me take the rest of these back here.

5 And you've given some testimony about Government
6 Exhibit 8 already, and I'd like to turn your attention to page
7 6, Mr. Alwan. Do you have it there, sir?

8 A. Yes.

9 Q. Page 6? And if you would, sir, would you turn your
10 attention to starting about line 16 on that page.

11 A. Yes.

12 Q. Now, you recall that your counsel had told Judge Aspen
13 that you were afraid of prosecution back in your homeland. And
14 then the prosecutor had a chance to respond, and you were
15 present, Mr. Alwan, were you not?

16 A. Sure, I was.

17 Q. And so you heard Mr. Chanenson say the following things to
18 Judge Aspen:

19 "And at this point, Mr. Alwan's fear, I would submit
20 to your Honor, is premature and not necessarily
21 objectively reasonable. These grand jury proceedings
22 are secret, and the possibility of eventual
23 disclosure is speculative at this time."

24 And so, Mr. Alwan, you were told by a prosecutor in
25 front of a judge with both of your lawyers present that the

1 proceedings before the grand jury was secret.

2 A. Your Honor --

3 Q. Is that true?

4 A. -- my understanding at that time, that this secrecy is not
5 what I mean about it --

6 THE COURT: You need to direct your answer to
7 Mr. Gillogly's question.

8 THE WITNESS: I'm sorry.

9 BY MR. GILLOGLY:

10 Q. Sir, you were present when the prosecutor told the judge
11 in front of you and your lawyers that the proceedings before
12 the grand jury were secret.

13 A. I was there, yes.

14 Q. And, yet, Mr. Alwan, when you went into the grand jury
15 four weeks later on July 13th, you refused to obey Judge
16 Kocoras's order directing you to testify.

17 A. Yes.

18 Q. You made that decision not to testify.

19 A. Yes.

20 Q. You knew you were obliged to testify, correct?

21 A. Yes.

22 Q. You knew, there was no uncertainty in your mind, you knew
23 what that order required you to do.

24 A. Yes.

25 Q. And you, sir, decided not to obey Judge Kocoras's order of

1 July 13th, 2000.

2 A. Yes, but not --

3 Q. Mr. Alwan, the reason you did not testify before the grand
4 jury on July 13th or any -- either of the other two grand
5 juries, in July of '98 and July of 99, is because, sir, you did
6 not want to talk about people in the HAMAS organization.

7 A. That's not correct.

8 MR. GILLOGLY: Nothing further, your Honor.

9 THE COURT: Redirect examination.

10 REDIRECT EXAMINATION

11 BY MR. HILL:

12 Q. That last document that counsel asked you about, do you
13 remember you did appear before Judge Aspen with Ms. Jarad,
14 didn't you?

15 A. Yes, I did.

16 Q. And you appeared before Judge Aspen with Ms. Jarad as well
17 as myself, isn't that correct?

18 A. That's correct.

19 Q. And the Assistant United States Attorney, as counsel said,
20 did say these grand jury proceedings are secret, correct?

21 A. Correct.

22 Q. But he went on to say something else, too. There was an
23 "and" after that, isn't that correct?

24 Do you have it there, sir?

25 MR. HILL: May I approach, Judge?

1 THE COURT: Yes.

2 BY MR. HILL:

3 Q. He's given you a copy of what was said by the Assistant
4 United States Attorney, hasn't he? He gave you a copy of it,
5 right?

6 A. Correct.

7 Q. And what Mr. Chanelson said was, "The grand jury
8 proceedings are secret, and the possibility of eventual
9 disclosure is speculative at this time."

10 Is that what Mr. Chanelson said?

11 A. Yes.

12 Q. He specified that there was a possibility that this
13 information could be disclosed, did he not?

14 MR. GILLOGLY: Objection, your Honor. Could we have
15 Mr. Alwan testify, and not Mr. Hill?

16 THE COURT: The objection is sustained. Rephrase the
17 question.

18 BY MR. HILL:

19 Q. What did the prosecutor say? You read his words right
20 here.

21 A. "These grand jury procedures" --

22 Q. Slowly and loudly and as clearly as you can.

23 A. "These grand jury procedures are secret, and possibility
24 that eventual disclosure is spec -- is speculative" and --

25 Q. It says "at."

1 A. "At this time." I'm sorry.

2 Q. What did you understand Mr. Chanenson saying possible
3 disclosure of this grand jury material -- let me ask you this:

4 Did you understand that to mean that this
5 information -- strike that.

6 What did you understand it to mean?

7 A. I understand there is no assurance, and at any time it
8 could be open to the public.

9 Q. Because what did he say? Read it again.

10 A. Because he said this grand jury proceedings are secret and
11 at possibility of eventual disclosure, speculative at this
12 time.

13 Q. Did at any point anybody assure you at any proceedings
14 that this information would not be disclosed to the Shimbet?

15 A. Never.

16 Q. What was your understanding as to how this information had
17 come in the first place, Mr. Alwan?

18 A. It came from the heart of the Shimbet.

19 Q. How do you know it did?

20 A. It's out of the questions and out of the --

21 Q. You got to speak up. They got to understand you, man.

22 A. Out of the questions I been asked and about the statements
23 I was forced to write that put in my mind it's coming direct
24 from there.

25 Q. Did anybody ever once in any of the proceedings that you

1 appeared before offer you, your wife, your children, or your
2 father any protection for your testimony?

3 A. Never.

4 Q. Now, he asked you whether or not you had ever made these
5 fears known in other court proceedings. Do you remember him
6 asking you that?

7 A. Yes.

8 Q. Whether or not you had ever brought to the attention of
9 any of the judges that you appeared before in this court your
10 concerns about fear. Do you recall that?

11 Do you remember him asking you those questions?

12 A. Yes.

13 Q. Let's go through some of these documents.

14 He also mentioned that there was no discussion of the
15 possibility of you being in fear in any of the court
16 proceedings that you appeared before. Do you remember him
17 saying that?

18 MR. GILLOGLY: Objection, your Honor. That misstates
19 the cross-examination.

20 THE COURT: Sustained.

21 Ask your next question.

22 BY MR. HILL:

23 Q. Well, did you appear before Judge Aspen? Again, you were
24 before Judge Aspen on June 7th, correct, 2000?

25 A. Correct.

1 Q. I believe you have that transcript before you, do you not?

2 Do you not? This transcript right here.

3 A. Yes.

4 Q. And at the bottom, Ms. Jarad is making a statement to the
5 court, is she not?

6 MR. GILLOGLY: Counsel, I assume you're on page 3?

7 MR. HILL: I'm on the bottom of page 2, turning to
8 page 3.

9 MR. GILLOGLY: Thank you.

10 MR. HILL: Judge, if I may, I would like to read this
11 because of his -- I want the jury to understand what was said
12 in this transcript.

13 THE COURT: This is a transcript?

14 MR. HILL: Yes, sir. I'd prefer to read it if --

15 THE COURT: Go ahead.

16 MR. HILL: Ms. Jarad stated this, and you follow with
17 me and tell me whether or not I'm correct in that.

18 MR. GILLOGLY: I'm sorry, counsel, is this June 7th?

19 MR. HILL: June 7th.

20 MR. GILLOGLY: Thank you.

21 MR. HILL: 2000.

22 BY MR. HILL:

23 Q. This is Ms. Jarad, this lady right over here, correct?

24 A. Yes.

25 Q. And you were appearing before Judge Aspen, isn't that

1 correct?

2 A. That's correct.

3 Q. And at that time, Ms. Jarad said the following to Judge
4 Aspen:

5 "And it is not in defiance" -- starting in the middle
6 of the page at line 12 -- "and it is not in defiance
7 of the Court's orders or in defiance of the
8 subpoena," correct?

9 A. Correct.

10 Q. (Reading) "It isn't the desire to be -- continue to be in
11 contempt, but rather it is arising out of a genuine fear that
12 he holds of being persecuted should he travel to the West Bank.
13 He has a need to travel to the West Bank. He has his wife and
14 children there that reside there that do not have lawful
15 residency here. Therefore, his immediate family members cannot
16 travel to the United States, requiring him to go overseas. And
17 his concern or fear, genuinely based, based on the political
18 situation, even currently going on -- ongoing, he has a genuine
19 concern and fear that he would be prosecuted once he travels
20 out there, and he will need to travel out there."

21 Did Ms. Jarad say that to Judge Aspen on June 7th,
22 2000?

23 A. Yes, she did.

24 Q. And June 7th, 2000 was before you came into this court and
25 testified to these fears, isn't that correct?

1 A. That's correct.

2 Q. Going on, sir, turning to page 6 of the June 7th, 2000
3 transcript. Not only do you have Ms. Jarad talking about it,
4 Mr. Chanelson, the Assistant United States Attorney, is
5 acknowledging the fear, is he not?

6 MR. GILLOGLY: Objection.

7 MR. HILL: Well, I'll withdraw the question and direct
8 his attention, if I may, Judge, to page 6.

9 THE COURT: Okay.

10 BY MR. HILL:

11 Q. Mr. Chanelson is speaking here at page 6, is he not, sir?

12 A. Yes.

13 Q. Mr. Chanelson, the Assistant United States Attorney:
14 "With respect to the fear of prosecution in Israel" -- turn to
15 page 6, please -- starting at line 4.

16 May I read again, Judge? This is from the transcript.

17 THE COURT: Go ahead.

18 BY MR. HILL:

19 Q. (Reading) "With respect to the fear of prosecution in
20 Israel, and I assume that it is not simply fear of being
21 persecuted," that's Mr. Chanelson's words, is that correct?

22 A. That's correct.

23 Q. And going down here to number 9, line 9, "So assuming that
24 it is a fear of whatever he would truthfully admit to his
25 knowledge would subject him to this alleged fear of prosecution

1 in Israel, of course your Honor knows that in a related
2 situation," not a contempt case but in a related situation, it
3 goes on to talk about "fear of foreign prosecution does not
4 implicate," does it not?

5 MR. GILLOGLY: Judge, are we going to read it or are
6 we going to comment?

7 MR. HILL: Oh, Judge. No, the point here --

8 THE COURT: I think you just have to read it.

9 MR. HILL: Fine. I'll read it.

10 BY MR. HILL:

11 Q. Did Mr. Chanelson say those words?

12 A. Yes, he did.

13 Q. Did he acknowledge -- what did he say those words in
14 response -- strike that.

15 Were those words said in response to what Ms. Jarad
16 had said regarding your fear?

17 A. Yes, that's correct.

18 Q. And what was that fear that Ms. Jarad expressed?

19 MR. GILLOGLY: Judge, I'm sorry, I thought your Honor
20 had directed that the passage be read.

21 THE COURT: Okay. But now I think we've passed the
22 reading, and there's a question pending which is a proper
23 question.

24 You can answer it.

25 BY THE WITNESS:

1 A. The answer was it is a serious beliefs that he carry and
2 serious thoughts that he have, and it is serious. If we go and
3 read it, that will be more specific.

4 BY MR. HILL:

5 Q. Going on to page 7, if you would, sir, again, this is June
6 7th, 2000, before Judge Aspen, going to page 7, starting at
7 line 2 --

8 MR. HILL: If I may be allowed to read, Judge?

9 THE COURT: Okay.

10 BY MR. HILL:

11 Q. This is again Mr. Chanelson, the Assistant United States
12 Attorney.

13 MR. GILLOGLY: I'm sorry, counsel, are we on page 7 of
14 June 7th?

15 MR. HILL: I'm on page --

16 THE WITNESS: Yes, page 7.

17 MR. HILL: Yeah, I'll show it to you.

18 MR. GILLOGLY: Page 7 of June 7?

19 MR. HILL: Yeah, right here.

20 MR. GILLOGLY: I think we're running into your Honor's
21 order here.

22 MR. HILL: Right here.

23 MR. GILLOGLY: Yeah, exactly. I think we're running
24 into your Honor's --

25 MR. HILL: No.

1 MR. GILLOGLY: -- issue, your Honor.

2 MR. HILL: The question, Judge, is about whether --

3 THE COURT: Let's go to side bar.

4 (Proceedings heard at side bar:)

5 MR. HILL: I was just going to read Alwan's assertion
6 he would not testify even if there is --

7 THE COURT: Hold on, I can read it.

8 MR. HILL: -- honestly held belief by Alwan. I'm not
9 going to go into it beyond that.

10 THE COURT: Okay. What's your objection?

11 MR. GILLOGLY: The objection is, number one, it's not
12 relevant to anything. Mr. Chanenson's making a legal argument
13 on the issue of whether we've gone from coercive into the
14 punitive area. He's talking about a good-faith belief. This
15 is a legal argument. It is not a concession by any stretch of
16 the imagination. It's irrelevant.

17 MR. HILL: He did the same thing when he asked whether
18 or not Chanelson, in making his legal argument, had mentioned
19 that the grand jury proceedings are secret. That's part of his
20 argument.

21 THE COURT: That's a question of fact as to whether or
22 not he knew, and he put that in dispute.

23 I'm going to sustain the objection to that reference.

24 MR. HILL: Just that one?

25 THE COURT: I will tell you right now, I don't see the

1 relevance of anything else Mr. Chanenson is arguing --

2 MR. HILL: I'll move on.

3 THE COURT: -- to the Acting Chief Judge.

4 MR. HILL: Okay. Fine.

5 (Proceedings heard in open court:)

6 BY MR. HILL:

7 Q. At page 8, this is Ms. Jarad, page 8, line 18, do you see
8 this?

9 A. Yes.

10 Q. This is Ms. Jarad then expressing your position, is it
11 not?

12 A. Yes, she is.

13 Q. And she specifies here at line 18: "He would still remain
14 silent because his reasonably necessary fear of persecution
15 upon travel to the West Bank is a strong enough factor for the
16 Court to consider."

17 Did Ms. Jarad say that on your behalf on June 7th to
18 Judge Aspen?

19 A. Yes, she did.

20 Q. And at page 9 at the bottom, line 24, Ms. Jarad, speaking
21 on your behalf, line 24: "And the respondent's position" --

22 MR. GILLOGLY: Judge --

23 THE COURT: Is this Mr. Chanenson?

24 MR. HILL: No, this is Ms. Jarad.

25 MR. GILLOGLY: The Court may want to read ahead. It's

1 Mr. Hill's redirect, Judge, but your Honor had an order out
2 there.

3 MR. HILL: Judge, I'm within this order.

4 THE COURT: I don't know if I have a copy of this
5 particular exhibit. What exhibit are we talking about?

6 MS. SAFFORD: It's Exhibit 8, your Honor.

7 THE COURT: Okay, Exhibit 8? Okay, I have it.

8 MR. HILL: Page 9, Judge.

9 THE COURT: Okay. Hold on.

10 MR. HILL: I will.

11 THE COURT: What line?

12 MR. HILL: This is Ms. Jarad, line 24 and 25.

13 THE COURT: Okay. I'm sustaining the objection.

14 BY MR. HILL:

15 Q. Going to page 10, lines 21, 22 and 23, this is Ms. Jarad,
16 does she say at this point, "He has a genuine, sincere fear
17 that has prevented him for almost a year from testifying"?

18 THE COURT: I wouldn't go any further, Mr. Hill.

19 MR. HILL: Can I stop at "testify"?

20 THE COURT: You can stop right there.

21 MR. HILL: All right.

22 BY MR. HILL:

23 Q. Did Ms. Jarad say that, sir?

24 A. Yes, she did.

25 Q. When she said those things on your behalf, what did you

1 understand her to be saying to the judge?

2 A. That I understand she's expressing my feelings of the
3 immediate threats that I explained to her.

4 Q. Going back, counsel asked you for an exhibit -- asked you
5 about an exhibit from July 13th, 1999 marked Government Exhibit
6 6A.

7 MR. HILL: May I approach again?

8 THE COURT: Yes.

9 BY MR. HILL:

10 Q. Now, this is July 13th, 1999, correct? That's the date?

11 A. That's correct.

12 Q. And you recall counsel asked you whether or not you had --
13 you or your counsel had expressed any concerns about fear
14 prior --

15 MR. GILLOGLY: Objection, Judge. That was not the
16 question put to Mr. Alwan.

17 THE COURT: Okay. The objection is overruled.

18 BY MR. HILL:

19 Q. Do you recall that, Mr. Alwan?

20 A. Say it again, please.

21 Q. Do you recall counsel asking you whether or not before you
22 came into court today and -- I mean before testifying in this
23 trial you'd expressed, you or your counsel had expressed any
24 concerns about fear. Do you recall him asking you that?

25 MR. GILLOGLY: Judge, may I show a continuing

1 objection to this characterization?

2 THE COURT: Okay.

3 MR. GILLOGLY: Thank you.

4 BY MR. HILL:

5 Q. Do you recall him asking you those questions?

6 A. Yes, I do.

7 Q. July 13th, 1999, when you were represented by the last
8 lawyer, Mr. Falconer.

9 A. Yes.

10 MR. HILL: May I read? This is from the transcript,
11 Judge.

12 THE COURT: Okay.

13 BY MR. HILL:

14 Q. Mr. Falconer, your lawyer -- and by the way, this is
15 before Judge Aspen, is it not?

16 A. Yes, it is.

17 Q. This is on page 3, line 2, "Mr. Falconer: He does
18 understand that, Judge. He asked me to mention to the Court
19 that he appreciates your grant of immunity, but that is not as
20 broad as we sometimes think that is. It will not extend on his
21 trips to Israel or Jordan, and he could suffer some adverse
22 consequences there."

23 "The Court: Well, as you know, that has little legal
24 consequence here."

25 You recall Mr. Falconer saying that and the Court

1 answering, "Well, as you know, that has legal -- little legal
2 consequence here"?

3 A. Yes.

4 Q. What was your understanding of the argument that was being
5 presented by Mr. Falconer to the Court at that time regarding
6 your not testifying? And this is back on July 13th, 1999.

7 A. I understand I have to take my own decision to get out of
8 the situation.

9 Q. And, of course, at the -- and again, sir, on July the
10 11th, 2000, before Judge Kocoras, Ms. Jarad was present at that
11 time.

12 MR. HILL: May I approach again, Judge, to show him
13 the transcript?

14 THE COURT: Yes.

15 BY MR. HILL:

16 Q. This is at page 14. What do you say to the judge -- what
17 do you say at lines 7 and 8, sir, on page 14 of July the 11th,
18 2000? Speak clearly.

19 A. I said, "I wish I had a chance from the beginning, but I
20 have no choice."

21 Q. And going down to line 18, 19, 20 --

22 MR. GILLOGLY: Judge, under Rule 106, I would ask that
23 the counsel do lines 7 through 12.

24 THE COURT: Okay. Go ahead and do that.

25 MR. HILL: 7 through 12?

1 MR. GILLOGLY: Thank you, counsel.

2 BY MR. HILL:

3 Q. Okay. "The Court: You had a chance to do what?"

4 "10. To testify or not."

5 "11. You have that chance, you were put before the
6 grand jury, and I assume you declined to testify."

7 "The Defendant: That is what is clear, but I looked
8 at it last night. I have no choice but not to testify. I must
9 not testify."

10 And then "The Court: Well, that is your personal
11 choice. You have a choice to testify if you want to."

12 And then you say: "It is not the matter of the
13 immunity that is granted to me here that is protecting me from
14 further prosecution or state prosecution. It is a matter of
15 beyond these reasons that I explained that through my lawyer,
16 through different motions."

17 "Okay." The Court.

18 "The Defendant: That I fear prosecution when I go
19 back home. That has been my stand, and that will be my stand."

20 "The Court: That part I cannot address. That is
21 something you take up with your lawyer and with your own
22 conscience and your own considerations."

23 Did you bring that to judge -- were those statements
24 made by you to Judge Kocoras?

25 A. Yes, they were.

1 Q. Were those arguments presented by your lawyer, Ms. Jarad?

2 A. Yes, they were.

3 Q. What was intended by those motions?

4 What were you trying to let Judge Aspen, Judge
5 Kocoras, and the grand jury know?

6 A. I have --

7 Q. What were you trying to let them know? Tell these people.

8 A. I have a genuine fear, a real fear, and that immediate
9 fear that might harm me.

10 Q. And those things were said before you took the stand in
11 this courtroom on prior occasions, is that correct?

12 A. That's correct.

13 Q. Now, counsel asked you about the affidavit that you got
14 from your father. You remember him asking you about that?

15 A. Yes, he did.

16 Q. They've marked it Government Exhibit Number 10. This is
17 an affidavit that you got from your dad, correct?

18 A. Correct.

19 Q. Why did you get this affidavit from your dad?

20 MR. GILLOGLY: Judge, object.

21 MR. HILL: He opened the door.

22 MR. GILLOGLY: Judge, I object. Relevance.

23 THE COURT: Go ahead. Relevance?

24 MR. GILLOGLY: Yes, your Honor, and improper
25 foundation.

1 MR. HILL: Okay.

2 THE COURT: I'm worried about that question that you
3 have pending. Why don't you ask a different one.

4 MR. HILL: Okay.

5 BY MR. HILL:

6 Q. Counsel asked you about an affidavit, correct?

7 A. Correct.

8 Q. Is your father here to testify on your behalf?

9 A. No. He's in the West Bank.

10 Q. You have to speak up, sir.

11 A. He's in the West Bank overseas.

12 Q. And you have to speak as clearly as you can so that these
13 ladies and gentlemen can understand you.

14 A. He's overseas. He and my mother and my two kids, of
15 course, my wife.

16 Q. Did you obtain this affidavit hoping that you would be
17 able to -- for what purpose did you obtain this affidavit?

18 MR. GILLOGLY: Objection.

19 THE COURT: Okay. That objection is going to be
20 sustained.

21 MR. HILL: Okay.

22 BY MR. HILL:

23 Q. Is your father here to testify on your behalf?

24 A. No, he's not.

25 Q. Where is he?

1 A. He's in the West Bank, in the Occupied Territories in our
2 village.

3 Q. Now, counsel asked you whether or not your father
4 expressed the fact that you were tortured in this affidavit.
5 Do you remember him asking you about that?

6 A. Yes.

7 Q. Does your father in this affidavit express the fact that
8 you were tortured?

9 A. Yes, he does.

10 Q. Would you read from the affidavit where he expresses that.

11 A. "About 50 days" --

12 MR. HILL: Judge, if it's possible for me to read it,
13 I want it to be clear to the jury what's said here.

14 THE COURT: You can read. Where are you going to
15 start, paragraph 15?

16 MR. HILL: I'll start at -- if I may, I'd like to
17 start at paragraph 12, Judge.

18 THE COURT: Go ahead.

19 MR. HILL: Thank you.

20 "About 50 days after Sharif's arrest in 1995, I was
21 finally permitted to see my son for the first time in a
22 military prison located in Ramallah. His mother, my wife, and
23 his two brothers, Yasser Ahmad Alwan and Ramadan Ahmad Alwan,
24 were also permitted to see him with me at that time."

25 "At the time I was finally able to see Sharif, I

1 personally observed his physical and emotional conditions, and
2 I was very shocked and disturbed by the severe deteriorated
3 physical and emotional condition he appeared to be in. I
4 observed him to be very dazed and walking with difficulty.
5 When he spoke to me, he did so with difficulty and only while
6 stuttering."

7 "I was also outraged about the very unclean and
8 unsanitary conditions I personally observed concerning his
9 confinement and detention in that military prison. There was
10 even feces and urine where I met with my son."

11 "At the time of my first being able to see my son
12 Sharif, he told me in the presence of his mother, my wife, and
13 his two brothers, Yasser Ahmad Alwan and Ramadan Ahmad Alwan,
14 that he had been exposed to severe, inhumane and degrading
15 treatment by the security police authorities who had arrested
16 and/or confined him in a military prison."

17 "This included the deprivation of food and sleep for
18 extended periods of time and the denial of any medical
19 treatment or care. Sharif reported to me that he was forced to
20 undergo long periods of exhausting -- exhausting interrogation
21 which left him dazed, confused and afraid."

22 "Sharif specifically told me that he had been confined
23 to a very small and dark cell for a long periods of time.
24 Sharif also told me he was tied with his arms and hands behind
25 his back to a small chair which had shorter legs in the front

1 of it to prevent him from sleeping and which caused great pains
2 in his legs."

3 "While tied to this small chair, he told me that he
4 was hooded with a dirty, foul-smelling sack for extended
5 periods of time which did not permit him to see anything,
6 including his interrogators, and made it difficult for him to
7 breathe and added to his fears."

8 "Further affiant saith not."

9 Who is that signed by, Mr. Alwan?

10 A. That's signed by Ahmad Muhammad Alwan, my father.

11 Q. Do those paragraphs in this affidavit that counsel asked
12 you about demonstrate the fears that your father spoke of
13 publicly?

14 A. Yes, they are.

15 MR. GILLOGLY: Well, Judge, objection about his
16 interpretation of his father.

17 Your Honor, I think a limited instruction on the
18 proper use of this affidavit, which is otherwise hearsay, is in
19 order.

20 THE COURT: I'm going to overrule the objection. I'll
21 consider a limiting instruction at some other point.

22 Do you have anything else?

23 MR. HILL: Yes.

24 BY MR. HILL:

25 Q. Mr. Alwan, you told the ladies and gentlemen of this jury

1 that you're testifying even though you don't want to testify
2 now, isn't that correct?

3 A. That's correct.

4 Q. Would you tell them what you hope will be accomplished by
5 your testifying now?

6 A. My hope is to become an American citizen, just like
7 everybody of you, who have his rights, and I hope that I will
8 bring my family and kids to the United States.

9 Q. Are you still concerned for your family?

10 A. Sure I do.

11 Q. Why?

12 A. Because they still live there.

13 Q. Has anyone up until this very day, this very hour or
14 minute offered your family any protection?

15 MR. GILLOGLY: Objection, your Honor.

16 BY THE WITNESS:

17 A. No, sir.

18 THE COURT: Overruled.

19 MR. HILL: You may answer.

20 BY THE WITNESS:

21 A. No.

22 MR. HILL: I'm finished, Judge.

23 THE COURT: Any further cross?

24 MR. GILLOGLY: Yes, your Honor.

25

RECROSS EXAMINATION

1 BY MR. GILLOGLY:

2 Q. Mr. Alwan, your lawyer asked you some questions about
3 protection.

4 You testified before this jury today without any offer
5 of protection, didn't you?

6 A. I'm sorry. Would you repeat the question again?

7 Q. Please keep your voice up so we can all hear you, sir.

8 A. Go ahead.

9 Q. Mr. Hill just asked you if anybody had offered you any
10 protection.

11 A. Yes, he did.

12 Q. And you said no. You answered his question with the word
13 "no."

14 A. Yes, yes.

15 Q. So in spite of the fact that nobody's offered you any
16 protection, you, sir, have testified.

17 A. Yes.

18 Q. Now, you were asked some questions about what happened
19 before Judge Aspen on July 13th, 1999, do you remember, when
20 Mr. Falconer was there and he had you read some portions that
21 you'd already read about what was said in there?

22 A. Yes.

23 Q. So you showed up before Judge Aspen, your lawyer made
24 arguments, the government made its arguments. Judge Aspen
25 ruled, didn't he?

- 1 A. Yes.
- 2 Q. And what did he order you to do?
- 3 A. Would you repeat that date, please, again?
- 4 Q. Yes, July 13th, 1999. The first immunity order if that
- 5 helps you.
- 6 A. Oh, okay. That he order me to testify.
- 7 Q. Right. And you didn't do that, did you?
- 8 A. No, I didn't.
- 9 Q. You made your motion, you had your lawyers present, and
- 10 you ended up losing on your motion or on your -- actually on
- 11 your request not to be directed to testify.
- 12 A. That's correct.
- 13 Q. All right. Now, in July of this year, July 11th of 2000,
- 14 you again appeared before a judge of this court, correct?
- 15 A. Correct.
- 16 Q. Ms. Jarad was there, right?
- 17 A. Yes.
- 18 Q. Prosecutors were there.
- 19 A. Yes.
- 20 Q. Ms. Jarad made your arguments for you to Judge Kocoras.
- 21 A. Yes.
- 22 Q. You spoke to Judge Kocoras.
- 23 A. Yes.
- 24 Q. The prosecutor spoke to Judge Kocoras.
- 25 A. Yes.

1 Q. Judge Kocoras then ruled on the issues that were in front
2 of him.

3 A. Yes.

4 Q. And you lost, didn't you?

5 A. Yes.

6 Q. On June 7th of 2000, you appeared before Judge Aspen.

7 A. Yes.

8 Q. Mr. Hill was there.

9 A. Would you repeat the date again, please?

10 Q. Sure. June 7th, 2000.

11 A. Yes, yes.

12 Q. Ms. Jarad was there.

13 A. Yes.

14 Q. And they made arguments to Judge Aspen about why you
15 shouldn't have to testify.

16 A. Yes.

17 Q. And you've already told this jury that nobody ever said
18 anything to any judge in this building about the stuff that
19 supposedly happened to you in -- by Shimbet, right?

20 A. Yes.

21 Q. And that includes June 7th.

22 A. It was no specific things that we bring by whatever
23 happens exactly in the Shimbet, but they bring the issue of the
24 fear -- yes, that's right.

25 Q. In fact, your lawyer told Judge Aspen and the prosecutor

1 that you were afraid of being prosecuted in your homeland, do
2 you remember that?

3 A. Yes.

4 Q. And then Mr. Chanenson made some arguments, and that's
5 when he told you in front of you that the grand jury
6 proceedings were secret.

7 MR. HILL: Your Honor, objection. On the theory of
8 completion, I'd like him to read all of what Chanelson said.

9 MR. GILLOGLY: Judge, I haven't read anything.

10 MR. HILL: His entire sentence.

11 THE COURT: Nothing has been read. The objection is
12 overruled.

13 BY MR. GILLOGLY:

14 Q. Right, Mr. Alwan?

15 A. Would you repeat the question, please?

16 Q. Right, and then after Ms. Jarad made her argument about
17 you being afraid of being prosecuted in your homeland,
18 Mr. Chanenson responded to Ms. Jarad's argument and in so
19 doing, and when he responded, he reminded everyone in the room
20 that grand jury proceedings were secret.

21 A. Yes.

22 Q. All right. And that any possible disclosure, possible
23 disclosure, was speculative. Do you remember hearing that?

24 A. I did not understand the question.

25 Q. Do you remember Mr. Chanenson saying that the grand jury's

1 proceedings were secret and possible disclosure was
2 speculative.

3 Do you remember that? Mr. Hill just asked you about
4 them.

5 MR. GILLOGLY: May I approach, your Honor?

6 THE COURT: Yes.

7 BY MR. GILLOGLY:

8 Q. Do you have Grand Jury Exhibit -- or excuse me --
9 Government Exhibit 8 up there, Mr. Alwan?

10 A. Yes, I do have.

11 Q. Would you turn to page 6 then.

12 Okay. Again, I'm retracing ground here, Mr. Alwan,
13 but Mr. Chanenson said, "At this point, Mr. Alwan's fear, I
14 would submit to your Honor, is premature and not necessarily
15 objectively reasonable. These grand jury proceedings are
16 secret, and the possibility of eventual disclosure is
17 speculative at this time."

18 Did I read that correctly?

19 A. I'm sorry, I'm not catching up which line you are in.

20 Q. I'm sorry. Starting at line 16, sir. I'll try it again.
21 While you were present and in your presence, Mr. Chanenson
22 said: "And at this point, Mr. Alwan's fear, I would submit to
23 your Honor, is premature and not necessarily objectively
24 reasonable. These grand jury proceedings are secret, and the
25 possibility of eventual disclosure is speculative at this

1 time."

2 Did I read that correctly, sir?

3 A. Yes, you did.

4 Q. Now, Mr. Hill asked you, well, what did you understand
5 that to mean?

6 Do you remember he just asked you that question?

7 A. Yes.

8 Q. All right. And you said, to the effect anyway, that you
9 weren't sure that they were going to be secret. Is that a
10 correct summary of what you said?

11 A. Yes.

12 Q. All right. Now, you had a chance to talk to Judge Aspen
13 that same day, didn't you?

14 A. Yes, I did.

15 Q. In fact, about five pages later in this transcript, you
16 did speak to Judge Aspen directly yourself, didn't you?

17 A. Excuse me, which page?

18 Q. Five pages later, page 11.

19 A. Thank you.

20 Yes, I did speak with him.

21 Q. All right. And you personally spoke to Judge Aspen. Not
22 Ms. Jarad, not Mr. Hill, you, Sharif Alwan, and you didn't say
23 anything to Judge Aspen about being uncertain now about the
24 secrecy of grand jury proceedings, did you?

25 A. No, I did not.

1 Q. And neither Mr. Hill nor Ms. Jarad said anything to Judge
2 Aspen at that time about there being any concern about the
3 secrecy of the grand jury, did they?

4 A. No, they did not.

5 Q. And, Mr. Alwan --

6 A. Yes.

7 Q. -- at the end of the day on June 7th of 2000, having your
8 two lawyers make their arguments and their motion to the judge,
9 and the Court having heard from the government, your two
10 lawyers and you, the Court entered an order, is that correct?

11 A. That's correct.

12 Q. And your effort, sir, to be relieved of the obligation to
13 testify was denied.

14 A. Yes.

15 Q. In short, Mr. Alwan, after a full hearing with a lawyer,
16 you lost.

17 A. That's right.

18 Q. Now, you told this jury that what you want to do is you
19 want to become an American citizen. Do you remember just
20 telling them that a few minutes ago?

21 A. Yes, that's correct.

22 Q. And I think you told the ladies and gentlemen on
23 cross-examination earlier today that you understand that one of
24 the obligations of being a citizen is to obey the law.

25 A. Yes.

1 Q. And is to obey the lawful orders of the court.

2 A. Yes.

3 Q. You, Sharif Alwan, chose not to obey the lawful order of
4 Judge Kocoras of June -- July 11th, 2000.

5 A. Excuse me. I object to that form of that question because
6 you said "you chose." I said I have no choice.

7 Q. Sir, you made a decision --

8 A. Thank you.

9 Q. -- not to obey Judge Kocoras's order, didn't you?

10 A. Yes.

11 Q. And that decision was to not testify.

12 A. Yes.

13 MR. GILLOGLY: Thank you, Judge.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. HILL:

16 Q. Mr. Alwan, do you believe that becoming an American
17 citizen requires that you jeopardize the safety of your wife,
18 your family and your father?

19 MR. GILLOGLY: Objection.

20 THE COURT: Okay. Overruled.

21 You can answer.

22 BY THE WITNESS:

23 A. I believe becoming an American citizen would give me more
24 rights, more rights to protect myself here and in my country,
25 too, when I go back.

1 BY MR. HILL:

2 Q. Does it require, citizenship require that you jeopardize
3 the life of your family members?

4 A. No, it does not.

5 MR. HILL: No further questions.

6 THE COURT: Okay. You're excused, Mr. Alwan.

7 (End of excerpt.)

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