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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
1) NADER SALEM ELHUZAYEL;)
2) MUHANAD ELFATIH M.A. BADAWI,)
)
Defendants.)
_____)

CERTIFIED

No. 8:15-CR-0060-DOC
Day 9, Volume I

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Monday, June 20, 2016

Debbie Gale, CSR 9472, RPR, CCRR
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I N D E X

Jury Trial -Day 9, Volume I

PROCEEDINGS	PAGE
Stipulation re additional jury instruction	5
Government's Closing Argument	6

1 **SANTA ANA, CALIFORNIA, MONDAY, JUNE 20, 2016**

2 **Day 9, Volume I**

3 (8:12 a.m.)

08:12 4 *(Outside the presence of the jury.)*

08:12 5 THE COURT: We're on the record. The counsel are
6 present. The parties are present.

08:12 7 **STIPULATION RE ADDITIONAL JURY INSTRUCTION**

08:12 8 THE COURT: Deb notified me this morning that you
9 told me that you had stipulated to a jury instruction that
10 was neglected.

08:12 11 What's that instruction?

08:12 12 MS. HEINZ: Your Honor, because we stipulated to
13 the testimony of Badawi's mother, and we did that after we
14 had finalized the jury instructions, we -- the jury
15 instructions have neglected to have the usual model
16 instruction -- just an agreement as to what his mother would
17 have testified if she had been called as a witness.

08:13 18 THE COURT: Is it acceptable that we proceed with
19 argument, then, and we can add that instruction at the
20 recess, Counsel?

08:13 21 MS. HEINZ: Yes, Your Honor.

08:13 22 MS. CORRIGAN: Yes.

08:13 23 THE COURT: Counsel?

08:13 24 MR. LENGYEL-LEAHU: Yes, Your Honor.

08:13 25 THE COURT: Then, Counsel, can I summon the jury?

08:13 1 MS. HEINZ: Yes.

08:13 2 MS. CORRIGAN: Yes.

08:13 3 MR. LENGYEL-LEAHU: Yes, please.

08:13 4 THE COURT: *(To the clerk:)* Deb, if you'd be so
5 kind.

08:14 6 It's show time.

08:14 7 *(In the presence of the jury.)*

08:14 8 THE COURT: Good morning.

08:15 9 The jury's present. The alternates are present,
10 all counsel are still present. The parties are present.

08:15 11 Ladies and gentlemen, you're going to hear what we
12 call closing arguments or closing statements in just a
13 moment. When counsel are arguing to you, it is not
14 evidence, but it is the best summary of what they believe
15 the evidence has shown. And sometimes they may be mistaken
16 in an item or argument, but that's for you to finally
17 determine.

08:15 18 So you've heard all the evidence. We concluded
19 the case on Thursday. We'll commence with government
20 argument, please.

08:15 21 MS. HEINZ: Thank you, Your Honor.

08:15 22 **GOVERNMENT'S CLOSING ARGUMENT**

08:15 23 MS. HEINZ: Good morning, ladies and gentlemen of
24 the jury.

08:15 25 The call. The call went out from al-Baghdadi:

08:16 1 *"O Muslims, soldiers of The Islamic*
2 *State, stand up and fight. Join the*
3 *March of the Mujahideen. Harvest and*
4 *recruit soldiers for Allah."*

08:16 5 The defendants in this case, Defendant Badawi and
6 Defendant Elhuzayel, they answered that call. They made a
7 plan: They would join ISIS and fight. They would encourage
8 others to do the same.

08:16 9 They had different roles: Badawi was the
10 facilitator, Elhuzayel the fighter.

08:16 11 Count One of the Indictment, the first charge in
12 this case is Conspiracy to Provide Material Support and
13 Resources to a Designated Foreign Terrorist Organization.
14 The government has to prove four things.

08:17 15 In summary, the government must prove an
16 agreement: An agreement to provide material support and
17 resources to a designated foreign terrorist organization.
18 The government must prove that the defendants knew the goal
19 or the object of that agreement, and they intended to help
20 accomplish it. The government must prove that the
21 defendants knew that ISIS, or ISIL, was a designated foreign
22 terrorist organization or that that organization engaged in
23 terrorism or terrorist activity. And the government must
24 prove that the conduct occurred in the United States, at
25 least in part.

08:18 1 On a conspiracy charge, the accomplishment of the
2 crime is not necessary. It does not matter here that
3 Elhuzayel was stopped before he reached The Islamic State
4 and provided himself as a fighter to ISIS. The crime here
5 is the agreement. So let's look at the evidence of that
6 agreement.

08:18 7 Here, defendant's own words and own actions prove
8 they had the agreement. On March 27, 2015, they texted each
9 other. Badawi said,

08:18 10 *"Nader, inshallah. When we go, we make*
11 *a pact that we fight on front line and*
12 *we don't look back."*

08:18 13 Elhuzayel said, *"Allahuakbar."* God is great.

08:19 14 *"Inshallah"* -- meaning god willing.

08:19 15 May God grant us 72 virgins XD.

08:19 16 March 28th, 2015, again defendant's own words.

17 This is a Twitter from to Badawi:

08:19 18 *"I can't wait to make hijra with my*
19 *brother MayAllahAccept. Inshallah to*
20 *al-Sham."*

08:19 21 Now you've heard evidence that *"MayAllahAccept"* is
22 the Twitter account for the Defendant Elhuzayel. And you
23 also know that *"al-Sham"* is Syria.

08:19 24 You also heard Bill Braniff tell you that in the
25 ISIS world, *"hijra"* means religious migration, but it means:

1 *Hijra*, going to Syria to do *jihad*, and that "*jihad*" means
2 violent acts, violent attacks. William Braniff also told
3 you that ISIS is the most dangerous terrorist organization
4 in the world.

08:20 5 April 24th, 2015, more evidence of their
6 agreement. Defendant's own words in a telephone
7 conversation:

08:20 8 Elhuzayel says he wants to die *shaheed*.

08:20 9 "*Shaheed*" you know means martyr. He's not
10 thinking of marriage here.

08:20 11 May 9, 2015. More evidence of their agreement.
12 Again a telephone call. You'll remember, here, it's a
13 telephone call with Elhuzayel's mother in the background.
14 This is two days -- two days after they buy the plane
15 ticket:

08:20 16 Elhuzayel says, "*We'll meet up in The Islamic*
17 *State.*" And Badawi says, "*Tell her -- tell her I'm going.*"

08:21 18 May 15th, 2015, this is a telephone call; again,
19 defendant's own words. This is six days before Elhuzayel
20 will go to LAX. They discuss the defendants radicalizing
21 others, and look closely here: They anticipate the FBI
22 interview. They say.

08:21 23 "*Imagine -- imagine they -- they will*
24 *bring me over to a private FBI room.*"

08:21 25 That's Badawi.

08:21 1 Elhuzayel says, "Yeah."

08:21 2 Badawi says, imitating the FBI:

08:21 3 *"Where did your friend go?*

08:21 4 *"Are you guys part of the organization*

5 *of ISIS?"*

08:21 6 Elhuzayel says, again imitating the FBI:

08:22 7 *"We've gotten a lot of intel coming from*

8 *people talking about you guys trying to*

9 *radicalize people. Where is your*

10 *friend? We've been searching for him*

11 *for weeks now. We can't find him.*

12 *Where did he go?"*

08:22 13 Think about this conversation when you are

14 thinking about whether or not Elhuzayel and Badawi were

15 truthful all the time in their post-arrest statements.

08:22 16 Turning to the next thing that the government

17 needs to prove: Material support or resources. Here the

18 material support or resources that was being provided to

19 ISIS was Elhuzayel himself. We call it in legal terms

20 "personnel." But the bottom line was that the two

21 defendants agreed to provide Elhuzayel to ISIS as a fighter.

08:23 22 "Personnel" has a legal definition. It means one

23 or more persons, who (verbatim) can include the defendant

24 himself. And the requirement is that the person will work

25 under the direction and control of the terrorist

1 organization.

08:23 2 Now, keep in mind here that the defendants are not
3 charged actually with providing material support or
4 resources. They are charged with conspiracy. They are
5 charged with attempt. They are charged with aiding and
6 abetting an attempt. So what the government needs to prove
7 is that both defendants understood that when Elhuzayel got
8 to ISIS, he would be working under the direction and control
9 of ISIS. I submit to you: You have excellent proof of
10 this.

08:24 11 You have seen a video. You have seen a video in
12 which Elhuzayel swears *bay'ah* to al-Baghdadi. He swears
13 allegiance to ISIS.

08:24 14 Badawi, who was of filming the video, provides an
15 introduction in Arabic. The English language translation
16 is,

08:24 17 *"Brother Nader Elhuzayel, one of the*
18 *supporters of The Islamic State,*
19 *addresses a letter to the mujahideen of*
20 *The Islamic State in Syria and Iraq."*

08:24 21 And then, as you saw in the video, Elhuzayel goes
22 on to say,

08:24 23 *"May Allah protect Abu Bakr al-Baghdadi.*
24 *I totally support The Islamic State. I*
25 *will join you guys soon. I will be*

1 *there to fight with you guys. I will*
2 *fight for the sake of Allah to protect*
3 *what we believe in."*

08:25 4 And as you saw, when you watched the video,
5 throughout it Badawi says, "ameen," "ameen," "ameen,"
6 agreeing with everything that to Elhuzayel is saying.

08:25 7 Let's talk about "reasonable doubt," because this
8 is the standard the government needs to meet to prove-up its
9 case. Reasonable doubt is just that: It's a doubt based on
10 reason. It's not proof beyond any doubt, any shadow of a
11 doubt. The government needs only to prove its case beyond a
12 reasonable doubt. And "reasonable doubt" is a doubt that is
13 based on reason and common sense and it's not based on just
14 speculation.

08:25 15 So I'm going to turn now to the next thing the
16 government must prove. The government must prove that
17 ISIS/ISIL is a designated foreign terrorist organization.

08:26 18 Now, the Court is going to instruct you that ISIL,
19 also known as ISIS, has been designated by the Secretary of
20 State as a foreign terrorist organization throughout the
21 time period of the Indictment.

08:26 22 So the issue here that has been raised is whether
23 The Islamic State is somehow a different organization from
24 ISIS or ISIL. And I submit to you that you have strong
25 evidence that it is the same; that these are just different

1 names for the same organization. And the proof before you
2 is many. (Verbatim.)

08:26 3 Bill Braniff told you -- William Braniff told you
4 that ISIS, also known as ISIL, also known as The Islamic
5 State, have the same leader, the same flag, the same
6 mission, the same media wing, and have throughout the time
7 of the organization as it's changed its names.

08:27 8 So let's look at the same leader. Abu Bakr
9 al-Baghdadi has been the leader of this since 2010. He was
10 the leader of The Islamic State of Iraq, then he was the
11 leader of The Islamic State of Iraq and Syria, and now he is
12 the leader of what they call themselves now, "The Islamic
13 State." And that was the testimony of Bill Braniff.

08:27 14 The organization has maintained the same flag.
15 They have used this flag since 2007 when they were known as
16 al-Qa'ida in Iraq.

08:28 17 The organization has consistently had the same
18 mission. Bill Braniff testified that the mission of ISIS,
19 also known as ISIL, also known as The Islamic State, has
20 remained the same regardless of the name change. The
21 mission is the establishment of a worldwide caliphate and
22 the subjugation of all people to *Shariah* law, as it is known
23 in ISIS.

08:28 24 The organization, regardless of its name, has
25 maintained the same medial wing. And this -- what you see

1 here is interesting because this is actually a tweet. This
2 is a tweet that was found on the Badawi iPhone, as well as
3 on Elhuzayel's USB drive. And if you look at this closely,
4 you see the hashtags.

08:29 5 The hashtags are hashtag, "#ISIL."

08:29 6 Hashtag, "#IslamicState."

08:29 7 This is put out by the *Furqan* media organization,
8 which has consistently been the media wing of this
9 organization.

08:29 10 When the organization changed its name to The
11 Islamic State, it put out its first electronic magazine or
12 publication. It's called *Dabiq*. And this one was *Dabiq 1*.
13 In this publication the organization set out its history.
14 It set out its progression from al-Qa'ida in Iraq, all the
15 way through its different names, to The Islamic State.
16 William Braniff told you about this.

08:29 17 In addition, this publication -- this electronic
18 publication was on Elhuzayel's USB drive. This was the USB
19 drive that he had in his black carry-on bag when he was at
20 LAX.

08:30 21 In fact, you'll remember the testimony of Special
22 Agent Vicencia who told you that, while he initially checked
23 that bag, it was so important to him that he ran back to get
24 it and retrieved it from the ticket counter.

08:30 25 The defendants themselves know that ISIS is the

1 same as The Islamic State, that it is the same organization.
2 One of the proofs you have of this is a document that was
3 also on Elhuzayel's USB drive.

08:30 4 Here, this document is actually a document that
5 was part of a hacking operation by the ISIS cyber-caliphate.
6 The ISIS cyber-caliphate is a division of ISIS. And that
7 division hacked into USCENTCOM, and then released personal
8 information of U.S. military members, their families and
9 themselves. It was kind of a hit list. That's what William
10 Braniff told you.

08:31 11 Also proof of the fact that Defendant Elhuzayel
12 knew that "ISIS" was the same as "The Islamic State" is in
13 his post-arrest statement. Again, you heard this part of
14 the video:

08:31 15 Elhuzayel said, *"I've seen they" -- meaning CNN --*
16 *talk about ISIS a lot."* He uses the word "ISIS."

08:32 17 The agent then responded, *"So what's your*
18 *knowledge of The Islamic State?"*

08:32 19 And Elhuzayel responded, *"Oh, I know they rape. I*
20 *think they kill. They're considered terrorists."*

08:32 21 So Elhuzayel, himself, had no confusion about what
22 organization they were talking about.

08:32 23 Badawi does not contest that "ISIS" is the same as
24 at "The Islamic State," but we also have knowledge that he
25 knows that. Here is a Facebook communication. It's dated

1 July 23rd, 2014. In this, Badawi says, *"I might join ISIS*
2 *in the future."*

08:32 3 Turning to intent -- and I'm going to spend some
4 time on this, because "intent" is in the mind. And we can
5 not crack open someone's brain and see what's inside of it,
6 but you can tell someone's intent through their words and
7 their actions.

08:33 8 So I'm going to have you look at a Facebook
9 communication that Badawi did in -- July 8th of 2014. This
10 is quite a bit before the actual trip to the airport. And
11 it is telling that we see Badawi talking here:

08:33 12 Badawi says, *"I'm going to Syria. I want to help*
13 *fight."*

08:33 14 He's not talking to Elhuzayel here. He's talking
15 to someone else who we'll call "NA."

08:34 16 NA says, *"I want to go to Gaza, man."*

08:34 17 Defendant Elhuzayel says,

08:34 18 *"You down. Let's do this, man. Trust*

19 *me. We will be happy. We have to*

20 *establish the State first in Iraq and*

21 *Syria. We can join al-Dawla, al-Islamia*

22 *in Iraq and Syria."*

08:34 23 And that is Arabic name for "The Islamic State."

08:34 24 Now counsel for Defendant Badawi suggested to you
25 in opening statements that Defendant Badawi did not answer

1 the call to gather fighters, that his actions were the
2 result of a misguided friendship.

08:34 3 I submit to you that the case -- the evidence in
4 this case shows something far different. I submit to you
5 that the evidence in this case shows that Badawi was deeply
6 committed to providing Elhuzayel as a fighter to The Islamic
7 State.

08:34 8 Here's another Facebook communication. Again,
9 between Badawi and a person different than Elhuzayel. We'll
10 call this person "AI." And this occurs October 8, 2014:

08:35 11 Badawi says,

08:35 12 *"Inshallah. They will take over Jordan*
13 *as soon as they're"* -- I think it's
14 *probably -- "done with Iraq and Syria.*
15 *Implement Shariah and have access to*
16 *Israel. It's gonna happen, bro.*
17 *There's a fight of jihad, bro."*

08:35 18 And this is important: Badawi says,

08:35 19 *"I started my Islamic State campaign in*
20 *Orange County. You are welcome to join*
21 *anytime."*

08:35 22 Badawi, the facilitator.

08:35 23 Next, I'd like you to look at Badawi's tickets.

24 These are with Elhuzayel on February 5, 2015.

08:35 25 Badawi says,

08:35 1 *"My brother is so against Islamic State*
2 *after burning video. He said this is so*
3 *haram" -- or wrong -- "and has nothing*
4 *to do Islam. He told my mom not to let*
5 *me have a passport so I won't travel*
6 *there."*

08:36 7 This showed strength of Badawi's intent. He was
8 committed to ISIL even in the face of strong opposition from
9 his family.

08:36 10 The next text messages are on the Badawi iPhone.
11 And these are dated May 7, 2015, in the evening. Remember,
12 this is the date on which Badawi buys the plane ticket.

08:36 13 *"Good news. More people at al-Ansar now*
14 *are Islamic State supporters."*

08:36 15 Al-Ansar is the mosque.

08:36 16 *"Good news. We are five. I'm gonna*
17 *convert more."*

08:36 18 Badawi, the facilitator.

08:36 19 The next slide shows Badawi's communications with
20 a person that you've been told about who is Abu Hussain
21 al-Bertani. You'll remember that William Braniff testified
22 that Abu Hussain al-Bertani is -- went to ISIS in 2013, that
23 he's a notorious hacker, he was with the cyber-caliphate,
24 and he's incited violent acts.

08:37 25 So this is what Badawi says in the communications

1 between them:

08:37 2 *"Right now I am in darrulkufr."*

08:37 3 Now you'll remember that you heard testimony that
4 *the word "darrul" is Arabic for "house" or "house of."* And
5 you heard that testimony in relationship to Badawi's Twitter
6 handle, which is *@darrulislam*, meaning "House of Islam."

08:37 7 So here Badawi says, *"I am in darrulkufr"* -- the
8 house of the *kuffar*, or disbelievers.

08:38 9 Badawi says,

08:38 10 *"I will put it when the time is right,*
11 *inshallah. You wanna see my picture."*

08:38 12 And the picture there of the person with the knife
13 is attached.

08:38 14 Now you should consider this evidence carefully,
15 consider it only for the question of Badawi's intent. His
16 intent: What did he intend to do when he was in the
17 conspiracy with Elhuzayel. What was his intent when he
18 aided and abetted Elhuzayel.

08:38 19 The next slide is a slide showing Anwar al-Awlaki.
20 You've heard William Braniff testify about this person. You
21 have also heard a recording of his lecture. Anwar al-Awlaki
22 was with al-Qa'ida. His recorded lectures are widely
23 distributed.

08:38 24 Badawi, on his iPhone -- I'm sorry -- excuse me.

08:39 25 The picture of al-Awlaki is from the Badawi

1 iPhone, but the statements that Badawi makes that are
2 summarized here are from a May 16th, 2015 conversation with
3 Khalid Bahta in the vehicle. And you heard that recording.

08:39 4 In that recording Badawi defends The Islamic
5 State, he hopes that Elhuzayel ends up there, he says he's
6 going to join him soon, and then he plays the Anwar
7 al-Awlaki tape for to Khalid Bahta.

08:39 8 Turning to Badawi's post-arrest statement. Badawi
9 told the agents all about The Islamic State. He said they
10 want to expand to neighboring countries. They want to take
11 over the neighboring countries. They don't believe in
12 Israel. They are at war with Israel. They have committed
13 attacks against the governments of Iraq, Syria and Libya.

08:40 14 So Badawi evidenced here that he knows the goals
15 of The Islamic State. He knows what they want to do. And
16 it evidences Badawi's deep understandings of ISIL's plan to
17 expand the territory of The Islamic State. by violent acts
18 and war.

08:40 19 Finally, you can determine someone's intent by
20 looking at who their heroes are. Here, Badawi's are Anwar
21 al-Awlaki, al-Baghdadi, and Abu Malik al-Tamimi.

08:40 22 So, in his post-arrest statement, Badawi said that
23 he knew that al-Tamimi was part of Iraq -- um, part of
24 al-Qa'ida in Afghanistan, he was part of The Islamic State,
25 he was looked up to as a scholar by ISIS, and he was killed

1 on the battlefield in Syria. And Badawi uses the photo of
2 al-Tamimi as his Twitter banner. He also says in one
3 conversation. *"I love al-Tamimi."*

08:41 4 Turning to the question of Defendant Elhuzayel's
5 intent. Looking at of Elhuzayel's Twitter communication on
6 December 27th, 2014.

08:41 7 Now, William Braniff testified that the ISIS
8 ideology recognizes Jews as legitimate targets for violence.
9 Here, this Twitter communication evidences Elhuzayel's
10 intent. He -- here, you can see, he is exceeded by the
11 prospect of an ISIS attack on Israel and the prospect of
12 violence against Jews.

08:42 13 There is a Twitter communication by Elhuzayel on
14 March 1st, 2015. William Braniff testified that ISIS
15 embraces a fundamentalist interpretation of *shariah* a law,
16 which includes punishment such as crucifixion and beheadings
17 for violations of *shariah* law. So this Elhuzayel Twitter
18 communication evidences his adoption of the ISIS ideology.

08:42 19 Turning to a telephone conversation between Badawi
20 and Elhuzayel on May 10th, 2015. This telephone
21 conversation takes place after the plane ticket purchase on
22 May 7th, 2015.

08:43 23 Elhuzayel says, *"I won't be fasting in this filthy
24 country."*

08:43 25 Badawi says, "Yeah."

08:43 1 Elhuzayel says, *"And inshallah may -- may Allah*
2 *make it so that I make it to -- to you know where."*

08:43 3 And at the end Elhuzayel says, *"Can you imagine*
4 *man being with that army"* -- the mujahideen.

08:43 5 Now you'll notice that Elhuzayel and Badawi have
6 begun using greater caution in their conversations. They're
7 a little bit worried now that they've bought the plane
8 ticket. And this demonstrates that Elhuzayel intends to go
9 to The Islamic State. He does not intend to go to Israel
10 and just get married.

08:44 11 Turning to another conversation between the two
12 defendants on May 15, 2015:

08:44 13 *"You're gonna see an army over there."*

08:44 14 *"Here?"*

08:44 15 *"Yeah."*

08:44 16 *"For what?"*

08:44 17 *"People shooting each other."*

08:44 18 *"Nah, man."*

08:44 19 *"War is going to be chaos."*

08:44 20 *"95 percent of Anaheim has been*
21 *conquered."*

08:44 22 *"God's glory."*

08:44 23 *"God's glory."*

08:44 24 *"Can you image?"*

08:44 25 *"50 percent of Cypress has been*

1 *conquered."*

08:44 2 Now, again, you should consider this evidence only
3 for defendants' intent. There is no evidence in this case
4 that either of these defendants planned to conduct a violent
5 act here in the United States. So consider this, please,
6 only for their intent.

08:44 7 Turning to something that was in Elhuzayel's
8 U.S. -- in his black carry-on bag. And these documents were
9 on his USB drive. He had the black carry-on bag at the
10 airport with him on May 21st, 2015.

08:45 11 And you'll remember, again, that William Braniff
12 talked about the cyber-caliphate. And these documents --
13 take a look at these documents when you're in the jury room.
14 These documents contain proprietary information, sensitive
15 information of law enforcement and United States military.
16 And this is what Elhuzayel was taking overseas. This was
17 the currency for him to join ISIS. He was leaving the
18 United States with sensitive information. He did not have
19 gifts for his bride in his luggage. He had this.

08:46 20 Turning to Elhuzayel's post-arrest statement. And
21 I submit to you that here, in this part of the interview, he
22 was telling the agents the truth. He says,

08:46 23 *"Honestly, I was planning on just --*
24 *just going to The Islamic State from*
25 *Istanbul. I wasn't going to meet up*

1 with Enas. Nah, I didn't tell her. I
2 mean, I feel bad but, at the same time,
3 you know, it just -- it's -- it's
4 further away. Turkey is closer. I was
5 hoping to get my bags somehow."

08:46 6 Turning to another part of the post-arrest
7 interview. Elhuzayel told the agents:

08:46 8 "I bought out ticket to Tel Aviv because
9 it's -- it's -- it shows like my
10 ultimate goal was to go to Tel Aviv."

08:46 11 And then he explains this was a cover.

08:46 12 "This was a cover. In reality, I was
13 going to Istanbul."

08:46 14 And finally, during the post-arrest interview,
15 Elhuzayel told the agents how he planned get to ISIS from
16 Istanbul. He said,

08:47 17 "So my plan was to go to Istanbul and
18 then I was going to, at least, post on
19 Twitter like a hint that I was going to
20 make hijra. And then someone will tweet
21 me, and I'll ask that person, Do you
22 know anyone that can give me a route
23 to -- or -- or -- actually, I would ask
24 them to go on surespot. Then I'll ask
25 that person -- I'll ask if there's

1 *someone who knows that could help me*
2 *with hijra because I am in Istanbul*
3 *currently and I want to make it somehow*
4 *to The Islamic State."*

08:47 5 You'll remember that William Braniff testified
6 that it is more common for travelers to The Islamic State to
7 contact an online facilitator than it is to contact a person
8 inside The Islamic State and that online facilitators use
9 the Internet to assist those traveling to The Islamic State.

08:48 10 So what you have here: Elhuzayel's statement in
11 the post-arrest statement are entirely consistent with what
12 William Braniff told you is the way that people get to The
13 Islamic State.

08:48 14 More evidence of the defendants' intent in this
15 case is shown by their support of the attacks in Garland,
16 Texas, on May 3rd, 2015. And, in fact, if you look at the
17 evidence, I would submit to you, that those Garland attacks
18 and the defendants' support of those attacks -- which was,
19 in a sense, a catalyst -- a catalyst for the purchase of the
20 plane ticket.

08:48 21 So on the evening of May the 3rd, 2015, the
22 defendants exchanged texts. And the timing of those texts
23 is very close to the attacks themselves.

08:49 24 Badawi says, *"What city?"*

08:49 25 Elhuzayel says, *"Garland, Texas."*

08:49 1 Badawi says, *"Did they do an attack?"*

08:49 2 Elhuzayel says, *"Yes. May Allah grant him*
3 *shaheed"* -- or martyrdom.

08:49 4 You have heard testimony that the attacks in
5 Garland, Texas were an -- attacks at an art exhibit.

08:49 6 Looking now at a tweet that was on the Badawi
7 iPhone but is a tweet involving Elhuzayel. At the top of
8 this tweet, you'll see a picture and where it says, *"Shariah*
9 *is light."* You'll see that photo. You heard testimony that
10 that photo is a photo of Anwar al-Awlaki.

08:50 11 And in that of tweet -- that is a tweet from a
12 Twitter account *@atawaakul*. And you've heard testimony that
13 the Twitter account *@atawaakul* belonged to Elton Simpson,
14 one of the two shooters in Garland, Texas.

08:50 15 The tweet says,
08:50 16 *"The bro with me and myself have given*
17 *bay'ah to Amir al-Mumineen, which is*
18 *also al-Baghdadi. May Allah accept us*
19 *as mujahideen. Make dua.*

08:50 20 Hashtag, *"#TexasAttack."*

08:50 21 And below that you have a tweet from
22 *@Victory4ALLah*, which you have heard testimony is one of
23 Elhuzayel's Twitter accounts.

08:50 24 Elhuzayel says, *"Allahuakbar, brother, was it*
25 *you?"*

08:50 1 And this tweet is saved on the Badawi iPhone.

08:51 2 The next thing or element that the government
3 needs to prove the conspiracy charge is that the defendants
4 knew that ISIS was a designated terrorist organization or
5 that ISIS committed terrorism or terrorist activity.

08:51 6 I submit to you the evidence is overwhelming in
7 this case. The legal definition here of "terrorist
8 activity," you can read for yourselves.

08:51 9 *"The term 'terrorism' means premeditated*
10 *politically-motivated violence*
11 *perpetrated against non-combatant*
12 *targets by subnational groups or*
13 *clandestine agents."*

08:51 14 A lot of words. I submit to you that you already
15 know that ISIS commits terrorism and terrorist activity.
16 You know it from the evidence in this case.

08:52 17 So let's look at the defendants' knowledge that
18 ISIS, also known as The Islamic State, engages in terrorism.

08:52 19 So this is from the Badawi iPhone.

08:52 20 And the next slide is a picture of one of
21 Elhuzayel's tweets. This is on his Twitter account. And
22 this was on Elhuzayel's USB drive that was in his black
23 carry-on bag.

08:52 24 So that completes our discussion of the first
25 charge the conspiracy charge.

08:52 1 Count Two, the second charge is "attempt." It is
2 against Elhuzayel. And the specific charge is an "Attempt
3 to Provide Material Support or Resources to a Designated
4 Foreign Terrorist Organization" -- to ISIL.

08:53 5 So the elements of this are, Defendant Elhuzayel
6 intended to provide material support or resources to a
7 foreign terrorist organization, and Defendant Elhuzayel did
8 something that was a substantial step towards committing the
9 crime of providing material support or resources to a
10 foreign terrorist organization.

08:53 11 Now, we've spent a lot of time already discussing
12 "intent" so I'm not going to go through that again. But we
13 are going to discuss a little bit about "substantial step."

08:53 14 So what is a substantial step? A substantial step
15 is not mere preparation, but it is an act or actions that
16 demonstrate that the crime will take place unless
17 interrupted by independent circumstances.

08:53 18 So let's look at Elhuzayel's substantial steps.
19 He took several:

08:54 20 He obtained a plane ticket.

08:54 21 He went to the airport.

08:54 22 He obtained a boarding pass.

08:54 23 He checked his two luggage bags.

08:54 24 He ran back to the ticket counter and retrieved
25 his black carry-on bag that he had checked.

08:54 1 He presented his passport and boarding pass to
2 TSA. He passed through TSA security.

08:54 3 And once he had done that, nothing stood between
4 Elhuzayel and that plane to ISIS but the FBI.

08:54 5 The third charge, Count Three, is against
6 Defendant Badawi. This is "Aiding and Abetting an Attempt
7 to Provide Material Support to a Designated Foreign
8 Terrorist Organization" -- to ISIL.

08:55 9 The element of this charge, the things that the
10 government must prove beyond a reasonable doubt, are that
11 Defendant Elhuzayel committed the crime of attempting to
12 provide material support or resources to ISIL, and that
13 Defendant Badawi aided, counseled, commanded, induced or
14 procured Defendant Elhuzayel with respect at least one
15 element of the crime; that Defendant Badawi acted with the
16 intent to facilitate; and that Defendant Badawi acted before
17 the crime was completed.

08:55 18 Again, I'm not gonna spend any time on "intent."
19 We already discussed that. But I am going to talk about the
20 sufficiency of the aid.

08:55 21 So it is not enough that the defendant just
22 associated with the person committing the crime. Okay? The
23 evidence must show that the defendant acted with the
24 knowledge and intention of helping the person commit the
25 crime.

08:56 1 So, going to look at four examples of Elhuzayel --
2 of Badawi's aid to Elhuzayel:

08:56 3 Badawi counseled Elhuzayel.

08:56 4 Badawi purchased the plane ticket.

08:56 5 Badawi communicated with someone we'll refer
6 "Mosuly" oversees.

08:56 7 And Badawi talked to Elhuzayel about those
8 communications.

08:56 9 Turning to Badawi's counseling of Elhuzayel. On
10 the evening of May 20th, 2015. This is the day before
11 Elhuzayel will go to LAX. They exchange texts.

08:56 12 Badawi says, *"Are you ready for tomorrow?"*

08:56 13 *"Yeah, more than ready. One-way trip,"* says
14 Elhuzayel.

08:57 15 Badawi says, *"Did you delete your history?"* --
16 counseling him.

08:57 17 Elhuzayel says, *"Yeah."*

08:57 18 *"I gotta do the same for my computer."*

08:57 19 You have evidence before you about the purchase of
20 the plane ticket on May 7, 2015. So what happened that day?
21 We have two conversations, which you've heard between
22 Elhuzayel and Badawi. They make a plan to meet at the
23 Starbucks midday.

08:57 24 You have the testimony of Angela Azer, who was
25 doing surveillance. She saw the car with Badawi and

1 Elhuzayel in it leave the Starbucks. She saw them at a
2 computer at the Anaheim public library. She saw them
3 together in the car at 12:50 p.m., and she saw them leave
4 the library parking lot in that car at of 1:27 p.m.

08:58 5 You've seen the paperwork concerning the purchase
6 of the plane ticket, and you also have Badawi's Higher One
7 card in evidence. The paperwork shows that it was Badawi's
8 Higher One account and debit card that purchased the plane
9 ticket, that it was purchased on May 7th, 2015. And the
10 time it was purchased, 1:18 p.m., falls within the time when
11 Angela Azer saw the two defendants together in the car.

08:58 12 The plane ticket was with Turkish Airlines and the
13 price was \$671.60.

08:59 14 Turning to Badawi's communications with Mosuly.
15 These were on the Badawi iPhone:

08:59 16 On the evening of May 9, 2015, Badawi communicates
17 with a person named "Mosuly" who advises Badawi that his
18 friend can go to R-A-F-H, and from there to Sinai, which is
19 part of The Islamic State.

08:59 20 Now, this is what's important: Badawi says,

08:59 21 *"Whoever equips a fighter in the way of*
22 *Allah is as if he has taken part in the*
23 *fighting himself."*

08:59 24 This shows that Badawi purchased that plane ticket
25 for Elhuzayel intentionally, for the purpose of equipping a

1 fighter. Again, the facilitator. He did not make a
2 mistake. He was not duped by some false statement. He did
3 it on purpose: He bought the ticket to equip a fighter for
4 ISIS.

09:00 5 Then Badawi proceeds to talk about this
6 communication with Mosuly, with Elhuzayel. On May 10, 2015,
7 to Badawi tells Elhuzayel:

09:00 8 *"I was talking to a brother from Mosul*
9 *on Twitter. The brother said the*
10 *easiest way to go to Egypt, from*
11 *Palestine you go to The Islamic State in*
12 *Egypt."*

09:00 13 And Badawi encourages Elhuzayel to go to The
14 Islamic State in Egypt because they need him there.

09:00 15 Moving to the bank fraud. This is Counts Four
16 through Twenty-nine of the Indictment.

09:00 17 What must the government prove to prove bank
18 fraud. The government must prove that Defendant Elhuzayel
19 knowingly executed a scheme to defraud banks; that he did it
20 with the intent to defraud the banks; and that those banks
21 were insured by the Federal Deposit Insurance Corporation.

09:01 22 Now, that last element, you have the evidence that
23 all three banks here -- Wells Fargo, Chase, and Bank of
24 America -- were all insured by the Federal Deposit Insurance
25 Corporation.

09:01 1 So let's turn to scheme to defraud. What's a
2 scheme to defraud. It's a deliberate plan of action where
3 someone intends to cheat the bank, to steal from the bank.
4 And it's not necessary for the financial institution to be
5 the sole victim of the scheme.

09:01 6 It's also not necessary for the government to
7 prove that the defendant was actually successful in
8 defrauding the bank. And it's not necessary for the
9 government to prove that the bank lost any money.

09:02 10 In addition, because it's a scheme -- a scheme to
11 defraud -- Elhuzayel is liable for any acts by the
12 co-schemers. And here I would suggest to you that the
13 evidence shows that there were co-schemers here: Members of
14 Elhuzayel's own family.

09:02 15 So turning to Counts Four and Five of the bank
16 fraud. You can read the summary chart for yourself, but I
17 want you to notice this: This is Wells Fargo Bank. It is
18 Elhuzayel's account. It is Elhuzayel's detective card
19 '5283.

09:02 20 And as we go through these slides, and as you saw
21 in the evidence, it is the same pattern over and over and
22 over again: There is a deposit of a check that will not
23 clear because the check is either stolen -- is stolen,
24 either in blank or it's stolen when it was already written
25 out; and, once it is deposited, there are immediate

1 withdrawals before that check is returned. And then the
2 check is returned so that the check is not good.

09:03 3 This is the pattern. It occurs over and over and
4 over again.

09:03 5 You should also look at the fact that it is the
6 same Wells Fargo Bank -- uh, branch -- the same branch of
7 Wells Fargo that the defendants keep -- that Defendant
8 Elhuzayel keeps going back to.

09:03 9 The next slide is Counts Six through Nine. Again,
10 this is Wells Fargo. Again, this is Elhuzayel's debit card,
11 No. '5283. It is Elhuzayel's account. It is the same
12 pattern. It is the same bank branch.

09:04 13 Turning to Counts Ten through Eleven. Again,
14 Wells Fargo. Same pattern, same bank branch. Again,
15 Elhuzayel's debit card, No. '5283, and Elhuzayel's account.

09:04 16 Turning to bank fraud Counts Twelve through
17 Fourteen. Again Wells Fargo. Again, Elhuzayel's debit card
18 No. '5283. Elhuzayel's account. And the same pattern and
19 the same bank branch. Only here, we have ATM photos. And
20 you can see clearly in the ATM photos Defendant Elhuzayel,
21 and another person -- a co-schemer in the background -- his
22 brother Husam.

09:04 23 We also have surveillance for these counts.
24 Surveillance agents who testified they saw Elhuzayel at the
25 bank.

09:05 1 Turning to bank fraud Counts Fifteen through
2 Eighteen. Different bank: Chase. But it's the same
3 pattern. It's the same scheme. It's Elhuzayel's account.
4 It's Elhuzayel's debit card. There is a deposit and two
5 withdrawals. In this photo we see the brother, Husam. And
6 we have surveillance. That doesn't change things. Husam is
7 a co-schemer. Elhuzayel is responsible for his actions.

09:05 8 "Bank Fraud," Count Nineteen, which occurs on
9 May 4th, 2015. This is a Wells Fargo withdrawal. It is
10 Elhuzayel's account, it is Elhuzayel's debit card, and it is
11 the same branch.

09:06 12 Turning to bank counts -- bank fraud Counts Twenty
13 through Twenty-four. This is, again, Wells Fargo. Again,
14 the same account. Again, the same debit card.

09:06 15 But this day -- these days -- this day on May the
16 6th of 2015, Elhuzayel goes to three different branches.
17 It's the same pattern. We have ATM photos. We have
18 surveillance.

09:06 19 But I want you to notice the date. Three -- he
20 goes to three different branches on the 6th. He withdrawals
21 a total of \$1,100. And this is the date before he purchases
22 the plane ticket. It is after Garland, Texas. And he
23 purchases the plane ticket the next day.

09:06 24 Turning to bank fraud Counts Twenty-five through
25 Twenty-seven. This is Chase. We have an ATM photo of

1 Elhuzayel. It is Elhuzayel's account, it is his debit card,
2 and we have surveillance of him at the bank.

09:07 3 Turning to bank fraud Counts Twenty-eight through
4 Twenty-nine. These are the Bank of America. This is Bank
5 of America. You'll remember that Victim Michael Khouri
6 testified this is the, \$5000 check out of his client trust
7 account.

09:07 8 Elhuzayel goes to the bank. He opens up an
9 account there. He gets a debit card. There is surveillance
10 that sees him there -- Elhuzayel and his brother, Husam.
11 And approximately 30 minutes later we have an ATM photo of
12 Elhuzayel making a withdrawal at another Bank of America
13 within the same vicinity.

09:08 14 Elhuzayel's bank fraud financed his travel to join
15 ISIS. At the airport, when he was arrested, he had \$1,017
16 in cash.

09:08 17 Turning to the last count, Count Thirty. This is
18 the last charge. This is against Defendant Badawi, and it
19 is for Financial Aid fraud.

09:08 20 So the elements of this are Defendant Badawi
21 misapplied Pell Grant money; the amount of the Pell Grant
22 money that he misapplied was more than \$200; and that,
23 Defendant Badawi did so knowingly and willfully; and that
24 this Pell Grant money was provided and insured under certain
25 sections of the law.

09:09 1 Now, the Court is going to instruct you -- so you
2 don't even have to think about this element -- that Federal
3 Pell Grant funds are provided and insured under the
4 appropriate section of the law.

09:09 5 So let's look at the necessary intent. The
6 necessary intent here is "willfully." What that means is
7 that Defendant Badawi committed the act voluntarily and
8 purposely and with knowledge that his conduct was unlawful.

09:09 9 So you've seen several documents that apply here.
10 You've seen a FAFSA application. Okay? And the FAFSA
11 application, in Step 7 says,

09:09 12 *"If you are a student, by signing this*
13 *application, you certify that you will*
14 *use the Student Financial Aid only to*
15 *pay the cost of attending an institution*
16 *of higher education."*

09:10 17 You'll remember that Ms. Mendoza testified about
18 this. She told you that Defendant Badawi completed four
19 separate FAFSA applications and that in each one he
20 certified that he would use the money only for his college
21 expenses. This is strong evidence that Defendant Badawi
22 knew that he could not use that Pell Grant money -- that
23 free money -- to buy a ticket for Elhuzayel to join ISIS.

09:10 24 You've seen a document that shows you Badawi's
25 Pell Grant history. This clearly shows you that

1 Defendant Badawi received Pell Grants for four successive
2 years. Ms. Mendoza testified that the Pell Grant money can
3 only be used for the recipient's college expenses. It can
4 not be used to pay for another person's expenses.

09:11 5 You've also seen documents, and there are
6 documents in the evidence, which show the withdrawals from
7 Badawi's Higher One account. So let's look at these
8 closely.

09:11 9 On May 11th, 2015, we see the plane ticket. So
10 there's a withdrawal for \$671.60.

09:11 11 On May 18th, we see a withdrawal for a utility
12 bill: \$84.53.

09:11 13 And also, on May 18th, we see at the pending cash
14 withdrawal of \$500.

09:11 15 So why is this important? You'll remember that
16 the parties have stipulated that if called to the stand
17 Defendant Badawi's mother would testify that he gave her
18 \$700 in cash between of May 7th and May 21st, 2015.

09:12 19 Now, I submit to you that Defendant Badawi's
20 mother is not an unbiased witness. But let's look at all
21 these withdrawals. Okay? There's a utility bill and a cash
22 \$500 withdrawal. So I submit to you that if
23 Defendant Badawi did give his mother cash, that he gave it
24 to her at the time he paid the utility bill and that he gave
25 her that \$500.

09:12 1 But it really doesn't matter because the bottom
2 line here is that Ms. Mendoza testified to you that Badawi
3 cannot use his Pell Grant money to pay costs other than his
4 own educational expenses. This certainly means that
5 Defendant Badawi violated the law when he used his free Pell
6 Grant money to purchase the plane ticket for
7 Defendant Elhuzayel to join ISIS.

09:13 8 In addition, we know from the credit cards and
9 debit cards that were taken from Defendant Elhuzayel at the
10 time of his arrest that he had the means to purchase his own
11 plane ticket. He had credit cards and he had debit cards.

09:13 12 So I submit to you that the plan and the act of
13 having Defendant Badawi buy the plane ticket with his
14 Higher One card of the, again, another to cover. It was a
15 cover so that attention would not be drawn to
16 Defendant Elhuzayel. And I submit to you that both
17 defendants agreed to do this.

09:13 18 There was a final good-bye. On May 16, 2015,
19 Badawi and Elhuzayel had a conversation in a vehicle.
20 Khalid Bahta was present, and you've heard this recording.

09:14 21 Defendant Elhuzayel says, *"I might die, you know."*

09:14 22 And Defendant Badawi says, *"You won't die, but
23 even if you do, bro, shaheed."*

09:14 24 Martyrdom. This is what was important. He wasn't
25 going to Israel to get married. He was going to ISIS. And

1 Badawi, his friend, had helped him to do that.

09:14 2 Another part of the final good-bye conversation.

09:14 3 Badawi says, "You announced it publicly to
4 everybody?"

09:14 5 Elhuzayel: "No, not everybody knows. Not yet.
6 Should I announce it?"

09:14 7 Badawi says: "Why not? Who cares? Tell people
8 so they can follow in your footsteps."

09:15 9 Badawi, the facilitator.

09:15 10 A call went out from Baghdad. Defendants answered
11 that call. Defendants heard it.

09:15 12 Badawi facilitated.

09:15 13 Elhuzayel was to fight.

09:15 14 Based on the evidence in this case, you should
15 find the defendants guilty on all counts.

09:15 16 THE COURT: All right.

09:15 17 Why don't we take a 20-minute recess and begin our
18 closing arguments on behalf of defense.

09:15 19 (To the jury:) And you're admonished not to
20 discuss this matter amongst yourselves nor to form or
21 express any opinion concerning the case.

09:15 22 Have a nice recess. We'll come and get you in
23 20 minutes.

09:15 24 (Jury recess at 9:15 a.m.)

09:15 25 (Outside the presence of the jury.)

09:16 1 THE COURT: All right.
09:16 2 Then, Counsel, we're in recess.
09:16 3 *(Recess held at 9:16 a.m.)*
09:27 4 *(Further proceedings reported by Deborah Parker*
5 *in Volume II.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: March 30, 2017

/s/ Debbie Gale

DEBBIE GALE, U.S. COURT REPORTER
CSR NO. 9472, RPR, CCRR

DEBBIE GALE, U.S. COURT REPORTER