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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 IN RE: TERRORIST ATTACKS ON
5 SEPTEMBER 11, 2001,

6 03 MD 1570 (GBD)

7 Conference

8 -----x
9 New York, N.Y.
10 July 31, 2024
11 9:45 a.m.

12 Before:

13 HON. GEORGE B. DANIELS,

14 District Judge

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1 (Case called)

2 THE COURT: Let me first ask are there any issues that
3 we need to address before we begin by anyone?

4 MS. SCHELL: Good morning, your Honor.

5 Jacqueline Schell on behalf of several of the media
6 outlets.

7 THE COURT: Yes. Would you step up to the podium,
8 please.

9 MS. SCHELL: Yes, your Honor. Thank you.

10 It's Jacqueline Schell of Ballard Spahr, here on
11 behalf of CBS News, ProPublica, and Nexstar, which includes
12 NewsNation and several news outlets. We would ask to be heard
13 briefly, your Honor, on the July 29 order regarding sealing.

14 THE COURT: Okay.

15 MS. SCHELL: Your Honor issued an extensive and very
16 thoughtful order that recognizes that this is a hearing of
17 great importance that is protected by the First Amendment right
18 of access. And we appreciate the thought of this order and the
19 openness of this hearing. We were simply concerned about our
20 understanding of the order, which may be mistaken, that would
21 seal the names of 30 of the high-profile or high-priority
22 witnesses.

23 As your Honor no doubt knows, that is still a closure
24 of the courtroom, and we respectfully submit that there have
25 not been the sufficient on-the-record findings that sealing

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1 these individuals' names would actually protect, much less
2 sufficiently protect in a narrowly tailored way a compelling
3 interest in those individuals' privacy.

4 Our understanding — and obviously as outsiders, our
5 understanding is limited because we don't have the full list of
6 the 30 names, but our understanding is that many, if not most
7 of these witnesses, have already been publically identified.
8 Several that we were able to deduce from the record have
9 already come forward publically and voluntarily spoken with the
10 press. Others may be deceased, may have been identified in the
11 public.

12 And with all due respect, your Honor, there is no
13 privacy interest in their names because their names are already
14 out there. The cat is out of the bag. And even if we were to
15 assume that there were a compelling interest, redacting all 30
16 of their names, even if perhaps only one or two had some
17 privacy interest that needed to be protected, is overly broad
18 and is not the narrow tailoring that is required by the Court.

19 We're further concerned that limiting the use of these
20 individuals' names will hamper not just the names themselves,
21 but the public's understanding of the facts of this case and
22 how the facts fit together and how the arguments that are being
23 made are connected to the background information. We're
24 concerned that it will impair access to exhibits and whether
25 the press will be able to fully see and appreciate photographs

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1 or videos if identities are withheld.

2 THE COURT: Well, I'm not sure that you understood the
3 nature of my ruling in that regard. On page 8 of my opinion in
4 the full paragraph on that page, it indicates with respect to
5 the 30 high-priority individuals, this Court find that the
6 FBI's asserted privacy and law enforcement interests demand
7 only the redaction of the names and personally identifying
8 information of the FBI sources and witnesses in its 9/11
9 investigation.

10 Names of certain individuals that are merely discussed
11 in FBI materials, but who are not themselves investigative
12 sources or witnesses, may be publically disclosed, but other
13 personally identifying information of such individuals should
14 remain redacted so as to avoid unwarranted intrusion into their
15 privacy.

16 Accordingly, this Court grants in part the FBI's
17 request to maintain its existing redactions of FBI witnesses'
18 names, and personally identifying information in the briefs,
19 averments of fact, and exhibits without prejudice to future
20 specific unsealing requests. The remainder of the 30
21 high-profile individuals that plaintiff seeks to reference at
22 oral argument may be identified by name, but other personally
23 identifying information should be redacted.

24 So basically, throughout the opinion it's my
25 consistent ruling that the FBI sources, the names and

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1 identifying information of their witnesses, can remain
2 redacted. This order does not order the redaction of any
3 information about individuals that is gleaned either from the
4 FBI sources, or from other sources.

5 And other than the names and addresses and other
6 identifying phone numbers and other identifying information, it
7 does not have redacted pursuant to this order any information
8 about actors or any information that is other than the names of
9 the FBI sources and the identifying information about those FBI
10 sources in their 302s or other reports.

11 So the substance of any name the parties intend to
12 argue today, this does not affect the substance of that, the
13 nature of the information that they're relying upon. And I
14 made clear in this order that the other redactions with regard
15 to information about this case and activities of individuals is
16 not the subject of redactions for today's hearing.

17 MS. SCHELL: Yes, your Honor. Thank you very much for
18 that. We really appreciate the consideration you've given and
19 the openness. And I apologize for any misunderstanding.

20 It wasn't clear to me whether, if someone was an FBI
21 source but had also been identified through discovery or other
22 means, the parties would be able to use the name of the person
23 identified in other means in this case.

24 THE COURT: If the person is identified in any other
25 source, quite frankly, other than the -- that I've addressed

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1 separately in Saudi Arabia's nature of their redactions and the
2 reasons that they wish to redact that information, but with
3 regard to people who are identified in other sources that are
4 not solely FBI sources, first of all, that information, even
5 with regard to FBI sources, can be addressed, as long as it
6 doesn't identify the names and addresses and personal
7 information of those of the witnesses who provided that
8 information.

9 But this order should give both sides free opportunity
10 to discuss the substance of the evidence that they wish to rely
11 upon or wish to dispute at this hearing on this motion.

12 MS. SCHELL: Thank you, your Honor. That very much
13 addresses our concern, and I appreciate your time.

14 THE COURT: Anything further by anyone else before we
15 begin? Who would like to start? Just make sure you put your
16 notice on record for the court reporter when you speak.

17 MR. KELLOGG: Good morning, your Honor.

18 Michael Kellogg. I will be presenting the opening
19 argument for Saudi Arabia. My colleague, Mr. Rapawy, will
20 present any necessary rebuttal.

21 THE COURT: Good morning, sir.

22 MR. KELLOGG: In order to overcome sovereign
23 immunity --

24 THE COURT: I forgot to note on the record we do have
25 a full courtroom. We do have three overflow courtrooms and a

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1 telephone link, so a third overflow courtroom has been
2 accessed, so I'd like to have everyone take a seat. If there
3 are not seats here, then one of the three overflow courtrooms
4 should be able to accommodate anyone else who's at the
5 courthouse.

6 You can continue. I'm sorry.

7 MR. KELLOGG: Thank you, your Honor.

8 In order to overcome sovereign immunity, JASTA
9 requires that an official employee or agent of a foreign state,
10 while acting within the scope of their office, employment, or
11 agency, commit a tortious act that caused plaintiff's injuries.

12 The Court held in March 2018 that assisting the
13 hijackers was not within the scope of employment of either Omar
14 Bayoumi or Fahad al Thumairy.

15 Accordingly, for there to be a tortious act
16 attributable to Saudi Arabia, under JASTA there had to be
17 actual direction from a senior Saudi official to Bayoumi and/or
18 Thumairy to assist the hijackers, so the question which the
19 Court ordered discovery on in 2018, was "whether and to what
20 extent Thumairy, Bayoumi, and their agents took actions in 2000
21 at the direction of more senior Saudi officials to provide
22 assistance to Hazmi, Mihdhar, and the other 9/11 hijackers."

23 This was the one, but only one, respect in which the
24 Court found that plaintiffs' allegations articulated a
25 sufficiently reasonable basis for jurisdiction to warrant

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1 discovery to see if those allegations were supported by the
2 evidence.

3 Discovery has stretched over four years. Saudi Arabia
4 provided unprecedented access to sensitive diplomatic
5 facilities and high ranking Saudi officials. Plaintiffs
6 deposed 18 current or former Saudi officials and eight
7 third-party witnesses. The Kingdom produced over 9,500 pages
8 of documents. The FBI produced 13,500 after an extensive
9 declassification review.

10 In its decision authorizing this jurisdictional
11 discovery, the Court cited a number of highly specific factual
12 allegations made by plaintiffs to support their overall claim
13 that Thumairy and Bayoumi and their agents took actions to help
14 the hijackers at the direction of more senior Saudi officials.
15 Discovery revealed that these critical factoids were false.

16 Indeed, for the most part, plaintiffs in their reply
17 brief do not even defend the very allegations that enabled them
18 to get discovery. For example, four years ago, plaintiffs
19 claimed, in reliance on a preliminary FBI memo, that a senior
20 Saudi official, later identified as Musaed al Jarrah, tasked
21 Thumairy and Bayoumi to assist the hijackers.

22 The FBI subsequently clarified that this was a mere
23 speculative investigative theory based on hearsay from an
24 unnamed source. The FBI has since rejected that theory. No
25 evidence was found in discovery to support it, and plaintiffs

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1 do not so much as mention it in their reply brief. The
2 assertion that hijackers were tasked by Jarrah was plaintiffs'
3 main allegation in getting discovery, and now they don't even
4 mention it.

5 Plaintiffs also made specific claims about Omar
6 Bayoumi four years ago that he was an intelligence operative,
7 that despite claiming to be a student, he never enrolled in any
8 classes, that he paid the hijackers' rent, that he provided
9 them with a cell phone, and that he got an unexplained increase
10 in his stipend for helping the hijackers. Again, these
11 allegations were refuted by the evidence in discovery.

12 What the evidence shows is that Bayoumi earned a
13 master of international business degree in December 1997, took
14 graduate business classes in '98 and '99, earned a master's
15 certificate degree in March 2000, and then enrolled in a Ph.D.
16 program in the fall of 2000. He was one of many such students
17 in Saudi Arabia's Saudization program, an effort to provide
18 employment for Saudi citizens with the proper training.

19 THE COURT: Well, let me start with some questions
20 now. I'm not sure from your perspective what you say that
21 Mr. Bayoumi's employment was during this period of time and
22 what --

23 MR. KELLOGG: He was employed by the Presidency of
24 Civil Aviation.

25 THE COURT: As what? To do what?

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1 MR. KELLOGG: Well, he was an accountant.

2 THE COURT: Okay. Did he do it? Is there any
3 evidence that he did any accounting work?

4 MR. KELLOGG: Not during the relevant period in
5 question. He was sent to Dallah Avco and paid a stipend under
6 the contract that Saudi Arabia had with Dallah Avco in order to
7 go to school.

8 THE COURT: You say --

9 MR. KELLOGG: He was a student.

10 THE COURT: -- he was an accountant. If he was an
11 accountant and that's what he was being paid for, at the same
12 time, you're saying he didn't work as an accountant.

13 MR. KELLOGG: Well, he was going to school. He was
14 paid to be going to school so that he would be qualified to
15 take over the position of a Turkish position in the Presidency
16 of Civil Aviation named -- I'm forgetting the name, but to take
17 over that position.

18 THE COURT: But that never happened?

19 MR. KELLOGG: Well, he did eventually go back to the
20 Presidency of Civil Aviation after he pursued graduate work in
21 London. He returned to Saudi Arabia and returned to his
22 employment with the Presidency of Civil Aviation.

23 THE COURT: But it was unclear to me what he was being
24 trained for while he was in the United States. And when he
25 went back to Saudi Arabia, what evidence is there that he did

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1 any work in relationship to what he was being trained for for
2 four years in the United States?

3 MR. KELLOGG: Well, he took classes in English and in
4 accounting.

5 THE COURT: Okay.

6 MR. KELLOGG: Both of which were considered important
7 to the skills that they were trying to develop so that he could
8 take over the position.

9 THE COURT: But he didn't take over that position?

10 MR. KELLOGG: Well, he did return to the Presidency of
11 Civil Aviation in a new position, so --

12 THE COURT: But I mean, when you say it was intended
13 that he was to take over that position after being trained in
14 the United States, is it accurate to say that he never got
15 employed in that position? He never took that position when he
16 went backing to Saudi Arabia?

17 MR. KELLOGG: I don't believe he took that precise
18 position. But he did return to a job with Civil Aviation that
19 was using his accounting and English language skills.

20 THE COURT: And what is the evidence of that?

21 MR. KELLOGG: The evidence that he returned? His
22 testimony on --

23 THE COURT: Other than his testimony, what evidence
24 corroborates the statement that he went back to Saudi Arabia --
25 that he was in the United States to be trained as an accountant

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1 and he went back to Saudi Arabia and utilized that training in
2 the capacity of being an accountant when he went back to Saudi
3 Arabia?

4 MR. KELLOGG: Well, we provided copies of the various
5 degrees that he received.

6 THE COURT: Right.

7 MR. KELLOGG: The Court has his employment
8 information, both while he was seconded to Dallah Avco and
9 afterwards. And he himself testified as to what he was doing
10 after, when he returned to Saudi Arabia.

11 THE COURT: Well, it's still unclear to me
12 specifically, other than his schooling, what it is that you say
13 he was being trained for in the United States and what is the
14 evidence other than his say-so that is consistent with his
15 being trained in the United States as an accountant in order to
16 go back to Saudi Arabia and take on a position that it appears
17 to me that he never actually did.

18 MR. KELLOGG: I believe we provided his employment
19 records when he returned and when he was working for the
20 Presidency of Civil Aviation. We produced his entire résumé,
21 which indicated the positions that he held. And frankly, I
22 mean, learning more accounting and learning English were two of
23 the absolute prerequisites for the work that he was hoping to
24 do at the Presidency of Civil Aviation. And his testimony to
25 that effect is corroborated by everything in the record.

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1 THE COURT: He was in the United States for six years;
2 is that correct?

3 MR. KELLOGG: He was in the United States, I'm sorry?

4 THE COURT: For six years?

5 MR. KELLOGG: Was --

6 THE COURT: Approximately?

7 MR. KELLOGG: Approximately six years.

8 THE COURT: Okay. And in that six years that he was
9 in the United States, it was primarily, if not totally
10 schooling?

11 MR. KELLOGG: Correct.

12 THE COURT: And what was his job before he came to the
13 United States? What does the record indicate was his --

14 MR. KELLOGG: I forget the exact name of his position.

15 THE COURT: No, the nature of his work.

16 MR. KELLOGG: He was accounting in the Presidency of
17 Civil Aviation.

18 THE COURT: Okay. And what was the different nature
19 of his work after the six years of schooling in the United
20 States.

21 MR. KELLOGG: I cannot say for sure, your Honor. I
22 think Mr. Rapawy will have the details on that.

23 But the important thing is that he provided limited
24 and wholly innocent assistance to the hijackers when they
25 first arrived, helping them find an apartment, open a bank

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1 account, get a certified check. As he himself explained, such
2 courtesy is customary in the Islamic culture because he got a
3 referral fee for helping them to find an apartment. And after
4 that, he had very little contact with the hijackers because he
5 was in Saudi Arabia and London for most of 2000.

6 THE COURT: Is there any evidence in this case during
7 this extensive discovery that he provided this kind of
8 assistance in the past to any other strangers or individuals
9 other than the hijackers?

10 MR. KELLOGG: I'm not sure of specific instances. But
11 I know he at least one other occasion had referred somebody for
12 an apartment and gotten a --

13 THE COURT: And the evidence of that is what, other
14 than his word? What is the evidence? Is there anything that
15 corroborates his --

16 MR. KELLOGG: Sure. The 9/11 Commission and the 9/11
17 Review Commission both examined his employment history and his
18 work record, and both found that he was an unlikely candidate
19 for covert operation.

20 THE COURT: But I'm not trying to focus on that issue.
21 You said that the kind of assistance that he provided to the
22 hijackers was the kind of assistance that is customarily
23 provided. And my question obviously is, then, in the six years
24 that he was in the United States, what is the evidence that he
25 provided this similar assistance to anyone else other than the

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1 hijackers?

2 MR. KELLOGG: I'm not sure there's a documented record
3 of the times that he provided assistance, but --

4 THE COURT: Is there a name of a person that the
5 record reflects that he provided such assistance to other than
6 these two individuals?

7 MR. KELLOGG: I don't recall, your Honor. I'll have
8 to check the record on that.

9 THE COURT: Okay.

10 MR. KELLOGG: But I think the critical thing is that,
11 as the 9/11 Review Commission, the 9/11 Commission, the FBI,
12 and the CIA confirmed, nothing in the record suggested he was
13 anything other than what he presented himself as, an employee
14 of the Presidency of Civil Aviation. He was seconded to Dallah
15 Avco so that he could pursue language and business studies.

16 He also helped found and volunteered at a local
17 mosque, just as others volunteer at temples and churches. That
18 does not equate with extremism. Nothing suggests that he knew
19 the hijackers were planning to attack the United States or that
20 he directed anyone else to assist them or that he had anything
21 to do with al Qaeda. Indeed, as the 9/11 Commission found, the
22 only reason it even knew about Bayoumi's lunchtime encounter
23 with the hijackers was because he volunteered that information.

24 And the same about-face -- and I would stress that
25 even in their reply papers they don't dispute the basic actions

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1 of Bayoumi in terms of the minimal assistance provided. The
2 same about-face is true for Fahad al Thumairy, who is an imam
3 at the King Fahd Mosque.

4 Four years ago, plaintiffs claimed that Thumairy met
5 with Bayoumi at the consulate for an hour before sending
6 Bayoumi off to meet the hijackers. That, too, turned out to be
7 false, and plaintiffs do not even mention it in their reply.
8 They nonetheless claim that Thumairy was responsible for
9 "orchestrating the U.S.-based support network for Hazmi and
10 Mihdhar, and that he gave them money, found them lodging, and
11 helped them to find flight schools and obtain driver's
12 licenses." As the 9/11 Commission, the 9/11 Review Commission,
13 the FBI, and the CIA all concluded, there's no evidence to
14 support that claim.

15 It was denied, not just by Thumairy, but by every
16 single person he's alleged to have helped or to have directed
17 to help the hijackers. Thumairy met the hijackers only once
18 for a few minutes and provided them with no assistance
19 whatsoever. Plaintiffs claim he met with them again at the
20 King Fahd Mosque the night before Mihdhar's departure for
21 Yemen, but the evidence shows that at the time he was on his
22 way to Saudi Arabia.

23 Now, critical thing is even if plaintiffs' allegations
24 were enough to suggest that Bayoumi and Thumairy themselves
25 knew the hijackers' plans and assisted them, which they aren't,

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1 the evidence doesn't show that, but that would still not make
2 them agents of Saudi Arabia, which is a declared enemy of al
3 Qaeda. The Court already found that such actions were not
4 within the scope of their employment, nor is there any agency
5 relationship that included such instructions.

6 So plaintiffs have now turned on a dime, and they
7 claim not just that Thumairy and Bayoumi, but nine or more
8 Saudi officials and employees knew that Hazmi and Mihdhar were
9 planning an attack on the United States and assisted them or
10 directed others to do so.

11 Not only is that wholly implausible that so many
12 people were informed of the impending attack, but it has no
13 basis in the evidence. And it's directly contradicted by the
14 FBI's conclusion that information about the attacks was highly
15 compartmentalized within al Qaeda. There is no evidence that
16 any of these additional Saudi officials and employees ever met,
17 assisted, or directed anyone else to assist the hijackers.
18 They have no directions, no agency relationship that they've
19 shown. And that alone should end the jurisdictional inquiry.

20 And the reason plaintiffs indiscriminately throw out
21 so many names is that they have no evidence against any of
22 them. Plaintiffs deposed eight of these nine officials. One
23 died before he could be deposed. All eight and every other
24 witness, including Saudi government officials and nonparties,
25 testified that they had no knowledge of the hijackers'

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1 intentions, that they never received instructions from anyone
2 to assist the hijackers, and that they never gave instructions
3 to anyone else to assist the hijackers.

4 THE COURT: Let me focus your attention on the
5 specific relationship between Bayoumi and these individuals. I
6 believe that the evidence that you proffered is that the
7 relationship began simply coincidentally.

8 MR. KELLOGG: Correct.

9 THE COURT: That Bayoumi went to the consulate to
10 renew his passport, and at some point during that trip he
11 happened to run into these two individuals.

12 MR. KELLOGG: Correct, your Honor.

13 THE COURT: And that they developed some kind of
14 relationship, particularly in relationship to the mosque, and
15 Bayoumi assisted them in various ways to help get them an
16 apartment, with some other issues. And I'm going to start with
17 the consulate and the passport. What's the evidence that
18 indicates that he was at the passport office simply to renew
19 his passport?

20 MR. KELLOGG: Well, the records of the embassy itself,
21 the date on the passport, which was dated either the day he was
22 there or the day after he was there — because the passports
23 were sent to him by mail after he renewed them — and testimony
24 of witnesses who saw him there.

25 THE COURT: It was unclear to me — and I was trying to

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1 find it, but given the voluminous papers, I didn't specifically
2 find it -- when did his prior passport expire? Why this day?
3 What motivated him to renew his passport on that date? My
4 understanding is that date was not the date that his passport
5 expired.

6 MR. KELLOGG: I assume that's right. We all usually
7 renew our passports in advance, right?

8 THE COURT: Right. So the record reflects somewhere
9 that information of how long he had had his passport, when his
10 passport was to expire in relationship to when he went to the
11 consulate to renew the passport?

12 MR. KELLOGG: I'm not sure we have, your Honor. My
13 colleagues will look it up and --

14 THE COURT: And walk me through their first meeting.

15 MR. KELLOGG: With the hijackers?

16 THE COURT: Yes.

17 MR. KELLOGG: Okay. So Bayoumi went to Los Angeles
18 from San Diego to renew his passport for himself and his
19 family. He went to the embassy. He was accompanied by an
20 individual named Kaysan Morgan, who was interested in Islam and
21 converting to Islam but spoke no Arabic. But he went along
22 with Bayoumi to the consulate.

23 THE COURT: And is the consulate -- is there reason
24 that he went from Los Angeles to San Diego? Was there not a
25 consulate --

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1 MR. KELLOGG: That's where the consulate was. He
2 lived in San Diego, and so he went to Los Angeles to renew his
3 passport in person and also to pick up some literature for the
4 mosque that he volunteered at.

5 THE COURT: And there wasn't a consulate in San Diego
6 where he was where he could have renewed that passport?

7 MR. KELLOGG: Not to my knowledge, your Honor.

8 THE COURT: Go ahead. And then he did what?

9 MR. KELLOGG: And then they went to get some lunch.
10 They went to a halal meat store and were told that they did not
11 serve meals there, but they directed them to another place
12 nearby where they went and got halal sandwiches.

13 THE COURT: And when you say this, you're referring to
14 Morgan and Bayoumi?

15 MR. KELLOGG: Morgan and Bayoumi.

16 And Bayoumi heard two men there talking in Arabic.
17 And he introduced himself and had a very brief conversation
18 with them, and in the course of which he mentioned that he
19 lived in San Diego. But that was the extent of the interchange
20 at that point.

21 THE COURT: And how long an interchange was that?

22 MR. KELLOGG: Just a few minutes.

23 THE COURT: Okay. So they did not sit down and have a
24 meal together?

25 MR. KELLOGG: Not to my knowledge.

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1 THE COURT: And they parted ways?

2 MR. KELLOGG: And they parted ways.

3 THE COURT: With what kind of information about each
4 other?

5 MR. KELLOGG: Well, I think he had very little, if
6 any, information. The hijackers had mentioned, you know,
7 potential interest in San Diego. Bayoumi said it's very
8 pretty. And subsequently they did, indeed -- which was
9 according to the plan that al Qaeda developed for Hazmi and
10 Mihdhar to move to San Diego where they were going to pursue
11 English language courses and try to take flight training.

12 THE COURT: Okay. So after this first meeting, when
13 and how did they meet again?

14 MR. KELLOGG: They met again at the mosque where
15 Bayoumi volunteered and helped set up --

16 THE COURT: The mosque in --

17 MR. KELLOGG: In San Diego.

18 THE COURT: -- in San Diego.

19 And what evidence is there that would indicate why
20 they met at the mosque in San Diego?

21 MR. KELLOGG: It would be wholly coincidental, with
22 the caveat that it's not coincidental that two Saudis would go
23 to a nearby mosque to find other adherents of Islam and to seek
24 assistance.

25 THE COURT: But I thought that they were in Los

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1 Angeles, not in San Diego.

2 MR. KELLOGG: They were in Los Angeles, and they
3 decided to move to San Diego.

4 THE COURT: So the evidence would indicate that they
5 moved to San Diego when? From Los Angeles. Before this
6 meeting or after this meeting?

7 MR. KELLOGG: After the meeting in Los Angeles.

8 THE COURT: Okay. And they moved how soon after the
9 meeting with Bayoumi and Morgan, the initial meeting, did they
10 move to San Diego?

11 MR. KELLOGG: I'm not sure I remember the precise
12 dates, your Honor.

13 THE COURT: So it was coincidental that they met in
14 the restaurant?

15 MR. KELLOGG: Correct.

16 THE COURT: They made no future plan to meet again?

17 MR. KELLOGG: Correct.

18 THE COURT: And it was coincidental that they met at
19 the mosque?

20 MR. KELLOGG: Correct.

21 THE COURT: After the coincidental meeting at the
22 mosque, what contacts did they have with each other?

23 MR. KELLOGG: Limited contact.

24 But as I said, Bayoumi helped them find an apartment.
25 He helped them --

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1 THE COURT: Why?

2 MR. KELLOGG: Why?

3 THE COURT: How did that come about?

4 MR. KELLOGG: They --

5 THE COURT: You say that it was not part of his job.

6 It was unrelated to his job or his schooling. That was not a
7 function of his job. It was a personal motivation for him to
8 help?

9 MR. KELLOGG: Correct. He had helped found this
10 mosque, and he volunteered at the mosque and he assisted people
11 who came to the mosque. And he helped the hijackers find an
12 apartment --

13 THE COURT: How long had he been at the mosque? I
14 mean years a member of the mosque.

15 MR. KELLOGG: I'm sorry, your Honor. I don't remember
16 the exact date when it was founded.

17 THE COURT: He founded the mosque, helped found it.

18 MR. KELLOGG: I think it was at least a couple of
19 years.

20 THE COURT: Okay. So I guess that takes me back to my
21 original question. So is there any evidence that he assisted
22 anyone else at this mosque in the manner that he assisted these
23 two individuals --

24 MR. KELLOGG: I don't recall --

25 THE COURT: -- in his entire time at the mosque?

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1 MR. KELLOGG: -- specific examples.

2 THE COURT: Okay. So your argument that it's
3 customary to engage in this friendly activity, but you're
4 arguing that it's customary in general, that it's not
5 necessarily his custom because there's no evidence that he
6 provided similar assistance to anyone else in the two years
7 that he was a member of the mosque?

8 MR. KELLOGG: We do know that he had received a
9 payment for helping somebody else find an apartment in the same
10 location.

11 THE COURT: And that was for money?

12 MR. KELLOGG: For money.

13 THE COURT: Okay.

14 MR. KELLOGG: And if I may, your Honor, the 9/11
15 Commission, the Review Commission, the FBI, and the CIA,
16 examined all this in great detail and found no reason to think
17 that the encounter with the hijackers was anything but
18 coincidental and that the minimal assistance given by Bayoumi
19 was anything other than just being helpful and getting a
20 kickback on the apartment. The Court --

21 THE COURT: Well, just run through the list of things
22 that he did for them, the category with regard to residence,
23 with regard to food, with regard to getting around the city.
24 What is the catalog of things that he did for them?

25 MR. KELLOGG: It is that he introduced them to the

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1 manager of his apartment building and helped them find an
2 apartment for which he got a kickback. In order to get the
3 apartment, they needed a cashier's check and a bank account.

4 THE COURT: Right.

5 MR. KELLOGG: They had money, but they had no
6 cashier's check, no bank account. He helped them go to the
7 bank and establish a bank account. And then, because they'd
8 only just opened it, they couldn't get a cashier's check. So
9 they gave him the money and he received the cashier's check,
10 which he turned over to them to give to the apartment. And
11 that's basically it.

12 THE COURT: And over what period of time did this
13 occur?

14 MR. KELLOGG: That all occurred, I think, in a single
15 afternoon, your Honor.

16 THE COURT: In one day?

17 MR. KELLOGG: Yes.

18 THE COURT: And what was the nature -- we have the
19 chance meeting at the restaurant, we have the chance meeting at
20 the mosque in San Diego. We have this meeting where you say
21 that he assisted them with banking and residence at that time.

22 MR. KELLOGG: Well, the last meeting you mentioned is
23 contemporaneous with the meeting at the mosque in San Diego.

24 THE COURT: Okay. And so those are three meetings.
25 Did they have any more significant contact as members of the

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1 mosque?

2 MR. KELLOGG: No. They were in the same apartment
3 building for a time before the hijackers moved somewhere else
4 at the invitation of somebody who was actually an FBI informant
5 and lived with them during most of the relevant period.

6 THE COURT: Why did they decide to move out of the
7 apartment that he assisted them in getting to move in another
8 apartment?

9 MR. KELLOGG: Because Abdussattar Shaikh, he invited
10 them -- he had a rooming house and he invited them to give a
11 cheaper alternative to the motel where they were staying. And
12 they stayed with him, and he told the FBI about them and gave
13 the names to the FBI.

14 But Bayoumi himself had very little contact after,
15 except for one party at his motel where he was thanking various
16 imams who would come to help deliver prayers during Ramadan.
17 And because under Saudi custom, unmarried men and families do
18 not mix, Bayoumi asked if they could use their room for the men
19 to be in and the families would be in another room.

20 THE COURT: And he requested that in relationship to
21 their residence?

22 MR. KELLOGG: Correct.

23 THE COURT: There's discussion in the papers that
24 these individuals spoke no English and needed assistance in
25 order to prepare for a pending attack, and they were sent to

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1 the United States without a bank account, without a residence,
2 without knowing any English. What, if any, evidence is there
3 that someone else other than Bayoumi provided that kind of
4 assistance?

5 MR. KELLOGG: I think there were other individuals, a
6 couple of Yemeni individuals, who may have helped them in
7 certain ways. But Bayoumi had nothing to do with that. And
8 obviously none of them were acting at the direction of senior
9 Saudi officials.

10 THE COURT: But it's not your position that if Bayoumi
11 had not by chance assisted these individuals, that there is
12 some evidence that they had prepared some other way to
13 integrate themselves into the community for that period of
14 time?

15 MR. KELLOGG: Well, the 9/11 Commission did say that
16 it was unlikely that they had come over without some plan.

17 THE COURT: Right.

18 MR. KELLOGG: The FBI explored that theory in great
19 detail and reached the conclusion, in part based on the
20 testimony of the 9/11 mastermind Khalid, that the setup was
21 highly compartmentalized and they specifically avoided any sort
22 of advance notice or setting up a support network.

23 THE COURT: Well, but still, someone would have to
24 provide them with the kind of assistance that they needed,
25 given the fact that they were in a strange country without

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1 being able to speak the language, had no place to live, and
2 couldn't even open a bank account.

3 MR. KELLOGG: So --

4 THE COURT: Is there any evidence that someone else --

5 MR. KELLOGG: If there's --

6 THE COURT: -- was prepared to --

7 MR. KELLOGG: It's a complete blank, the 15 days
8 between the time the hijackers arrived at LA airport and the
9 day that they met Bayoumi, an encounter I should stress that
10 the 9/11 Commission said, the only reason we know about this is
11 because Bayoumi himself volunteered the information.

12 THE COURT: But wouldn't it logically -- and not
13 necessarily evidence that the parties might have, but wouldn't
14 it logically make sense that someone else was ready, willing,
15 and able to provide that assistance for these individuals who
16 have arrived in the United States without job, bank account,
17 place to live. And the logic of, well, let's just take our
18 chances and see if we can find somebody to dupe doesn't seem to
19 be the kind of planning that is consistent with what was done
20 there.

21 MR. KELLOGG: Well, as the FBI concluded when they
22 closed the file, they were unable to determine any additional
23 assistance received by them.

24 Now, the logical advice to give to them when they
25 arrived is to go to a mosque and seek out help from fellow

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1 Muslims. And in fact, we do know that they did that in that
2 15-day period. They went to the King Fahd Mosque where they
3 ran into an individual who introduced them to Fahad al
4 Thumairy, who was the imam of that mosque, briefly introduced
5 them. And then there's testimony that that individual helped
6 the hijackers drive around and find a place to live and that
7 sort of thing. So they got assistance from a number of
8 different areas, but none of it was at the direction of Saudi
9 officials.

10 THE COURT: Well, again, I'm not sure in the abstract
11 I understand the argument, but I'm not sure what kind of
12 assistance that you're arguing that they got from someone else
13 other than Bayoumi and Thumairy.

14 MR. KELLOGG: That's all in the record, your Honor.

15 THE COURT: Give me an example of it because I'm
16 not -- what kind of assistance that was comparable to the
17 assistance that --

18 MR. KELLOGG: He drove them to the bus station.

19 THE COURT: Who drove him to the bus station?

20 MR. KELLOGG: The individual, Johar.

21 THE COURT: Johar drove them to the bus station to do
22 what? To take the bus from San Diego to --

23 MR. KELLOGG: Take the bus from Los Angeles to San
24 Diego is my recollection.

25 THE COURT: All right.

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1 MR. KELLOGG: I'm sorry, your Honor. I just have not
2 mastered all the details.

3 THE COURT: Neither have I.

4 MR. KELLOGG: But Mr. Rapawy I know has.

5 THE COURT: All right. I have some questions for the
6 other side too, but I assume that they're going to argue that
7 the evidence indicates that the only person that provided
8 substantial assistance to these hijackers was Bayoumi.

9 MR. KELLOGG: No, that's not true at all.

10 THE COURT: So what substantial assistance did who
11 provide?

12 MR. KELLOGG: There are a number of individuals
13 identified by the FBI, all of whom were deposed. I'm not sure
14 to what extent I can mention their depositions and their names,
15 but there were --

16 THE COURT: But just give me the type of assistance
17 that some other individual provided to them that was comparable
18 to the significance --

19 MR. KELLOGG: Drove them to places, helped them
20 find --

21 THE COURT: We can't talk over each other.

22 That is comparable to the nature of the assistance
23 that Bayoumi provided to them. Again, I'm not interested in
24 the source of the information. I'm interested in what it is
25 that you say the record reflects -- and I can look at it if it's

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1 there — what it is that the record reflects that someone other
2 than Bayoumi provided substantial assistance to these
3 hijackers. And you're putting them on the bus, okay, that's
4 something. But it's not comparable to finding them a place to
5 live and cashing their checks.

6 MR. KELLOGG: Well, even if we can't identify
7 everybody who helped the hijackers, that doesn't mean that
8 Bayoumi did, other than the very limited three respects that he
9 acknowledged to the FBI and that the FBI confirmed.

10 THE COURT: Well, I mean, the issue seems to be — and
11 you can refocus me if I'm not focusing appropriately — but the
12 issue doesn't seem to be whether or not Bayoumi provided
13 assistance. The issue seems to be what was the purpose of
14 providing that assistance, and what did he know about the
15 nature of their intended activities in the United States and
16 whether or not there was some direction by --

17 MR. KELLOGG: Correct your Honor.

18 THE COURT: -- government officials --

19 MR. KELLOGG: There's no --

20 THE COURT: -- for him to assist them.

21 MR. KELLOGG: No one denies that Bayoumi offered
22 limited assistance. The key question was that it's at the
23 direction of senior Saudi officials. Was he acting as an
24 agent? To act as an agent there has to be consent on both
25 sides and specific direction. And there's nothing in the

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1 record that supports that whatsoever. And as I said, the one
2 who helped the hijackers the most was this fellow Abdussattar,
3 who was an FBI informant, ran a rooming house, gave them a room
4 and a place to stay.

5 THE COURT: Well, I'm not sure why that's greater
6 assistance than what Bayoumi provided.

7 MR. KELLOGG: Well, Bayoumi helped them find a place
8 to live.

9 THE COURT: Right. So did --

10 MR. KELLOGG: Helped them open a bank account.

11 THE COURT: And no one else did.

12 MR. KELLOGG: And helped them with the cashier's
13 check.

14 THE COURT: Right. So why is that less of an
15 assistance than --

16 MR. KELLOGG: Well --

17 THE COURT: -- the others?

18 MR. KELLOGG: -- assistance that caused the 9/11
19 attacks, and it's --

20 THE COURT: I'm sorry. Which was the assistance that
21 caused the 9/11 attacks?

22 MR. KELLOGG: Bayoumi's helping them find an
23 apartment.

24 THE COURT: Right.

25 MR. KELLOGG: Under the ATA, you have to commit

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1 violent acts or acts dangerous to human life committed with
2 actual knowledge or deliberate indifference. Now --

3 THE COURT: Right. So the only question we're
4 discussing that's critical to this argument is what his
5 knowledge was, not what he did. If his knowledge was
6 sufficient to make him liable under the statute, there's
7 nothing about the nature of this assistance that's de minimis
8 and did not assist the hijackers and move them forward toward
9 their goal.

10 MR. KELLOGG: Your Honor, the issue is not just
11 whether he provided knowing assistance; it's also whether he
12 was directed to do so by a senior Saudi official --

13 THE COURT: I agree.

14 MR. KELLOGG: -- with sufficient direction that
15 Bayoumi was essentially acting as an agent of the Saudi
16 official. Now, they have no clue who that senior Saudi
17 official is. They said it was al Jarrah, and that turned out
18 to be correct.

19 In this latest stage of briefing, they've thrown out
20 nine other names, none of which there's any evidence for that
21 they provided direction. And the whole reason they throw out
22 so many names is because they don't have a clue who supposedly
23 directed that assistance.

24 THE COURT: Well, they also rely on the activities and
25 the nature of the employment of Thumairy. They also say

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1 Thumairy had a role in directing that activity on behalf of the
2 Saudi government.

3 MR. KELLOGG: Yes. There's no allegation of
4 assistance provided by Thumairy. There's only allegations that
5 he told other people to provide assistance.

6 THE COURT: Well, that's --

7 MR. KELLOGG: That's denied.

8 THE COURT: That's the part we're talking about,
9 whether or not there was a government official who directed
10 others to provide the assistance.

11 MR. KELLOGG: A high level government official.

12 THE COURT: So your argument is that Thumairy is too
13 low on the totem pole to be such a person to give that
14 direction?

15 MR. KELLOGG: Well, I think that's actually true. But
16 more to the point, there's just no evidence whatsoever that
17 Thumairy himself directed anybody to help the hijackers. He
18 met them briefly once for about a minute, sort of here's our
19 imam, and that's it. And Bayoumi himself, there's no evidence
20 that he acts with the relevant scienter as to what the
21 hijackers were planning and what they were up to.

22 And you know, the 9/11 Report, the 9/11 Review
23 Commission, the joint FBI/CIA report, and the FBI's closing
24 investigative memorandum in 2021 are all admissible evidence,
25 and they all refute the suggestion that Saudi Arabia, a

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1 longtime ally of the United States, had any intention of
2 helping someone attack their most important ally.

3 THE COURT: Well, let me just go back for a second to
4 Bayoumi. Because my understanding is that the way we're
5 discussing this there's more detail to this. Bayoumi, my
6 understanding is that Bayoumi not only found them an apartment,
7 but cosigned their lease as guarantor.

8 MR. KELLOGG: Correct. That's my understanding as
9 well.

10 THE COURT: And transferred \$9,900, just below the
11 \$10,000 reporting -- excuse me, ladies and gentlemen. I do the
12 talking, not you.

13 And that he transferred almost \$10,000 into the bank
14 account as a friendly gesture to these strangers.

15 MR. KELLOGG: No, that is not true, your Honor.

16 THE COURT: Okay. That's why I'm asking. I want to
17 know what's true.

18 MR. KELLOGG: He helped them open a bank account.
19 They had cash which they used to pay for the cashier's check
20 and reimbursed Bayoumi on the spot, so he gave them no money
21 whatsoever.

22 THE COURT: I know. But he transferred --

23 MR. KELLOGG: That's a very clear finding of the FBI
24 and the two review commissions.

25 THE COURT: But for them to pay --

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1 MR. KELLOGG: For an apartment.

2 THE COURT: -- at least part of the lease, he
3 transferred \$9,900 from his bank account to a bank account that
4 was opened in their name; is that correct? Or do I have that
5 wrong?

6 MR. KELLOGG: No, that's not correct, your Honor.

7 THE COURT: That's not what happened?

8 MR. KELLOGG: He bought a cashier's check in that
9 amount.

10 THE COURT: Okay.

11 MR. KELLOGG: Which they could use to give to the
12 motel to pay for their room.

13 THE COURT: Okay.

14 MR. KELLOGG: And they reimbursed him at that same
15 time.

16 THE COURT: How much was the room?

17 MR. KELLOGG: I believe that it was \$9,000.

18 THE COURT: For what period of time did they rent a
19 \$10,000 room? For what period of time did they rent a \$10,000
20 room?

21 MR. RAPAWY: I'm sorry, your Honor. I think --

22 THE COURT: Put your notice on the record.

23 MR. RAPAWY: Certainly. Gregory Rapawy for The
24 Kingdom of Saudi Arabia, your Honor.

25 The \$9,900 is the amount that is the cash deposit.

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1 And this is in our response to -- this is actually plaintiffs'
2 averment, paragraph 1637, and our response to the averment. We
3 don't dispute this part. \$9,900 is the cash that the hijackers
4 had for the purposes of opening their account. And that is
5 what the amount that al Hazmi and al Mihdhar put into the
6 account at that date.

7 THE COURT: So they gave him \$9,900 cash?

8 MR. RAPAWY: No, sir. No, sir. Your Honor, they were
9 opening an account. They had cash that they gave to the bank.

10 THE COURT: How much?

11 MR. RAPAWY: This is \$9,900.

12 THE COURT: All right. So they had on them \$9,900 in
13 cash that they took to the bank.

14 MR. RAPAWY: That they took to the bank to open their
15 account. That's where that figure comes from.

16 THE COURT: And they put that money in that account
17 that day.

18 MR. RAPAWY: Yes.

19 THE COURT: And then that was before or after they met
20 Bayoumi?

21 MR. RAPAWY: It would be -- so this is the --

22 THE COURT: And he accompanied them to the bank?

23 MR. RAPAWY: He did accompany them to the bank.

24 THE COURT: I'm sorry. I didn't hear that.

25 MR. RAPAWY: Yes, your Honor, he did accompany them to

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1 the bank.

2 THE COURT: Okay. So for the purpose of doing this
3 rental transfer?

4 MR. RAPAWY: Yes. So he was trying to help them
5 finish the transaction. He did accompany them to the bank.
6 Paragraph 1637 is the \$9,900. That's the cash that the
7 hijackers gave the bank. It is not cash that Bayoumi gave them
8 or they gave Bayoumi.

9 THE COURT: What was the amount of the rental?

10 MR. RAPAWY: The necessary certified check - this is
11 in paragraph 1638 - is \$1,558, 1558.

12 THE COURT: Okay.

13 MR. RAPAWY: First month's rent, security deposit, and
14 the application fee.

15 THE COURT: In total, 1500 or so dollars?

16 MR. RAPAWY: Yes. That's the certified check that
17 they needed to give to Parkwood Apartments.

18 THE COURT: All right. You're saying they put \$9,900
19 in a new account that they opened in their name?

20 MR. RAPAWY: Yes. That's plaintiffs' allegation, in
21 fact, and we don't dispute it.

22 THE COURT: And so then Bayoumi transferred \$9,900
23 from his bank account into their newly formed bank account?

24 MR. RAPAWY: No, sir.

25 THE COURT: No, that's not --

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1 MR. RAPAWY: I don't know what your Honor is citing
2 for that. And if you'll point me to a part in the record, I'm
3 happy to address it, but he did not transfer any money to their
4 account.

5 THE COURT: Okay.

6 MR. RAPAWY: They opened their account. They gave him
7 the \$1,500.

8 THE COURT: Not 1,500 --

9 MR. RAPAWY: So basically, they needed to get the
10 1,500 in the form of a certified check, but the bank wouldn't
11 issue the certified check because they just opened their
12 account. So they gave him the 1,500 to deposit in his account,
13 and he got the 1,500 back out of his account in the form of a
14 certified check.

15 THE COURT: Okay. Certified check made out to?

16 MR. RAPAWY: It would have been to the Parkwood
17 Apartments, I assume, your Honor. But it went to the Parkwood
18 Apartments.

19 THE COURT: So he did not transfer -- the information
20 I have is incorrect, he did not transfer \$9,900 from his bank
21 account into their bank account?

22 MR. RAPAWY: I am aware of no evidence to support that
23 statement, your Honor.

24 THE COURT: All right. That's why -- thank you.

25 MR. RAPAWY: Could I --

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1 MR. KELLOGG: Correct something? Sure.

2 MR. RAPAWY: I want to add four more cites to evidence
3 in the record with regard to questions your Honor previously
4 asked. With regard to the others who assisted the hijackers,
5 some of these are individuals who moved for their depositions
6 to be kept under seal, so I'm hesitant about saying their
7 names.

8 THE COURT: That's fine. I don't need their names.

9 MR. RAPAWY: But the individual who drove them around
10 in LA, the assistance that he provided is discussed at
11 paragraphs 81 to 86 of our averment.

12 The individual who socialized with them and helped
13 them apply to flight schools is discussed at paragraphs 124 to
14 133 of our averment.

15 Abdussattar Shaikh — who is deceased, his name isn't
16 under seal — and who helped, not only gave them a place to
17 stay, but also helped them renew their visa, is discussed at
18 paragraph 141 of our averment and our response to plaintiffs'
19 averment, paragraph 1742.

20 And then a list of other people who assisted them who
21 are not alleged to have been directed by al Bayoumi is at
22 paragraph 146 of our averment. So I just wanted to make sure
23 that your Honor had all the record cites in response to your
24 question. And I appreciate the Court's indulgence.

25 MR. KELLOGG: Your Honor, as I noted, the plaintiffs

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1 have come up with nine different officials that they claim
2 either assisted the hijackers or directed others to assist the
3 hijackers. All of those individuals were deposed. All of them
4 testified that they never received any instructions, nor
5 instructed anybody else to assist the hijackers.

6 And indeed, aside from Bayoumi and Thumairy, none of
7 the other officials ever even met the hijackers or knew who
8 they were prior to 9/11. There's not a single document or
9 percipient witness indicates that any of these individuals
10 knowingly assisted the hijackers, much less that they did so at
11 the behest of a senior Saudi official or anyone within the
12 scope of their agency or employment.

13 In closing its two-decade investigation in May 2021,
14 an investigation the FBI claimed was its most thorough and
15 comprehensive in history, the FBI found, based on the
16 information it gathered, that not only did Thumairy, Bayoumi,
17 and al Jarrah did not knowingly conspire to assist the al Qaeda
18 hijackers, but also that nearly 20 years after the attacks, the
19 FBI has not identified additional groups or individuals
20 responsible for the attack other than those currently charged.

21 The FBI further found that the information about the
22 hijackers was highly compartmentalized and unlikely to have
23 been shared with anyone outside that limited circle, so --

24 THE COURT: But you're not arguing that I should find
25 that simply because the FBI found that --

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1 MR. KELLOGG: No, the Court will draw its own
2 conclusions. My point is only that that's admissible evidence.
3 And it should give the Court some comfort that after decades of
4 comprehensive investigation, all relevant investigative
5 authorities and panels have rejected plaintiffs' claims that
6 Saudi Arabia had any complicity in the 9/11 attacks.

7 THE COURT: Well, let me focus a little bit on
8 Thumairy. They characterize him basically as someone who had a
9 motivation to assist the hijackers because of his jihadist
10 beliefs. And they also indicated that -- relied on the
11 evidence that he utilized what they characterized as secret
12 phones in order to communicate with others. What is --

13 MR. KELLOGG: Let me take those one at a time, your
14 Honor.

15 THE COURT: Yes.

16 MR. KELLOGG: The idea that he's an extremist is not
17 based on any record evidence. He was an adherent of quietist
18 function of Islam which abhors violence and rejects violence.
19 The only reason that the FBI at first thought is that they had
20 a witness who said that he was a radical. But that witness did
21 not speak Arabic, and had never heard or understood one of
22 Thumairy's sermons. And when asked at his deposition what was
23 the basis for you claiming extremism? He said, well, that he
24 didn't celebrate Thanksgiving, as if that was a sign that he's
25 an extremist in Islam and therefore may be a terrorist.

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1 So much of the plaintiffs' argument here is based on
2 the equation of Islam with terrorism and the idea that anybody
3 who's an adherent to Islam is an extremist. And yet there's no
4 evidence to back that up. Indeed, Saudi Arabia, plaintiffs'
5 own experts concede, follows the quietist branch of Islam that
6 rejects violence, rejects violent jihad. Anything done in that
7 regard would be contrary to Saudi Arabia. And particularly,
8 any affiliation with al Qaeda, which was itself a deadly enemy
9 of the Saudi regime, and bin Laden himself had condemned the
10 king as an apostate, which essentially meant that he should be
11 killed.

12 (Continued on next page)

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1 MR. KELLOGG: And Saudi Arabia, undertook more
2 measures than any other country to bring bin Laden to book
3 before the 9/11 attacks. It froze its asset, it stripped him
4 of his citizenship, it sought to extradite him from Sudan and
5 Afghanistan, and when Afghanistan reneged on a deal to turn him
6 over, it cut off diplomatic relationships with Afghanistan.

7 So the idea that in helping the hijackers, even if
8 Bayoumi knew, which there is no evidence that he did, that he
9 was somehow helping or acting at the direction of Saudi Arabia
10 is truly without any basis in fact and quite contrary to all
11 the relevant evidence.

12 The plaintiffs have had ample time and unprecedented
13 discovery from the Kingdom and from the U.S. to meet their
14 burden of coming forward with evidence, admissible evidence,
15 not FBI 302s, not hearsay, but admissible evidence that the
16 jurisdictional requirements to the statute are met. That is,
17 that an agent or employee of the Kingdom committed a relevant
18 tortious act within the scope of their agency or employment
19 that caused the 9/11 attacks. They have utterly failed to do
20 that.

21 THE COURT: I was going to go to the phones. What
22 were the purpose of what they characterized as the secret
23 phones and the phone calls that that were made on that phone?

24 MR. KELLOGG: Mr. Rapawy is going to go through that
25 and detail the phone evidence. But, basically, they're

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1 counting as phone calls from the relevant parties phones that
2 were not even owned or controlled by them. For example, at his
3 mosque, there were two phones that anybody in the mosque could
4 use and, by his own testimony, was there maybe once a week,
5 once every other week, yet they're claiming that every single
6 phone call from the mosque phones was from Bayoumi and they're
7 trying to draw an adverse inference from that fact.

8 The same thing is true for Thumairy where they're
9 talking about two phones that were not his phones that made a
10 number of phone calls. I think once the evidence is whittled
11 down to its proper proportions and they had to change -- they
12 come up with six different or four different charts of what
13 phone calls -- we pointed out errors, they came up with new
14 charts, we pointed out that there were more errors, they came
15 up with another set of charts. That evidence is highly, highly
16 manipulated and not at all persuasive.

17 THE COURT: Let's discuss the Washington, D.C. trip.
18 What do you say that the evidence indicates with regard to what
19 Bayoumi was doing in Washington, D.C., particularly in
20 relationship to the video taken of government buildings?

21 MR. KELLOGG: So he was in Washington to take some
22 classes towards a master's certificate, which he got. The 9/11
23 Commission characterizes Bayoumi as the videotape carrying
24 Bayoumi. He liked to videotape a lot of things, including
25 soccer games, a trip to SeaWorld that he took with his son and

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1 with two visiting Imams. They even tried to make something of
2 that because while they're there, they're looking at a
3 beautiful pastoral scene, and Bayoumi asked one of the Imams to
4 give us a poem, and he recites a passage from the Koran about
5 paradise and the beauties of paradise, and they claim that
6 that's a martyr's video.

7 With respect to the tourist video in Washington, D.C.,
8 anybody who watches that - it's over an hour long - will
9 quickly realize that this is a video taken by somebody who
10 likes to walk around and carry on a constant narrative of what
11 he's seeing and pointing out, that there's a school over there,
12 aren't these fountains nice, look at all these great flowers,
13 here's the Saudi Embassy, here's the mosque in
14 Washington, D.C., and here's the Capitol, and here's the White
15 House.

16 THE COURT: So my recollection is that with regard to
17 the government buildings, and I don't remember specifically the
18 comments on the video, but the comments on the video were not
19 with regard to terrorist information with regard to those
20 buildings. He was citing other things about those buildings
21 that one naturally, as a tourist, would not necessarily be
22 commenting on.

23 MR. KELLOGG: In Bayoumi's case, I think if you watch
24 the whole video, you'll see that it is in keeping with the way
25 that he acts and presents himself. The idea that that's at all

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1 helpful as a casing video for the 9/11 attacks --

2 THE COURT: Do you remember what the comments were
3 that he made on that portion of the video when he was
4 videotaping the government buildings?

5 MR. KELLOGG: He pointed either at the White House or
6 the House of Representatives, called them demons.

7 THE COURT: Is it more of a quotation of what he
8 exactly said?

9 MR. KELLOGG: Mr. Rapawy can give you a full account
10 of that if you want, your Honor.

11 THE COURT: Yes, sir.

12 MR. RAPAWY: With regard to the video, the quote that
13 Mr. Kellogg was remembering was, they say, our children are
14 demons, these are the demons of the Capitol. I think it's a
15 pretty unfortunate thing to say. I also think that it's not
16 something I think people in America might not say about Saudi
17 Arabia.

18 THE COURT: Just stating that at this point, it's not
19 what I would expect any particular tourist to think is
20 important to comment upon if they are simply there for the
21 pretty buildings.

22 MR. RAPAWY: Well, I think that if -- it's an
23 hour-long video. If you look at the parts of it that
24 plaintiffs have cut out of context, you can come to one
25 impression. If you watch the whole thing and see him talking

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1 about the ducks and the moon and the trees and little remote
2 controlled toy boat, you see there's one bit where plaintiffs
3 claim that he says that -- or who he says -- he takes a picture
4 of the Washington Monument and he says, I'll report back to you
5 on this later. They'll say that -- they say that's sinister.
6 Well, okay. Then he goes over he to the Washington Monument
7 and he goes inside. And what does he videotape in the
8 Washington Monument? What does he spend the most time on? He
9 holds his video camera up to get the historical pictures on the
10 March on Washington and the other big demonstrations.

11 I think that it's possible that some nuance of the
12 statements are lost in translation.

13 THE COURT: What does the evidence indicate that he
14 was talking to?

15 MR. RAPAWY: There is no evidence in the record about
16 who he was talking to. The video was produced late enough that
17 we didn't --

18 THE COURT: When he says he's going to report later
19 on, what does the evidence indicate, direct or circumstantial,
20 that who he's going to report to and what he was going to
21 report to?

22 MR. RAPAWY: So I think that the circumstantial
23 evidence -- there's no direct or circumstantial evidence of who
24 he was going to report to, but he also has a bit where he has
25 somebody else hold the camera and he gets a picture of himself

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1 in front of the Capitol and he says, Omar Bayoumi, coming to
2 you from Washington, D.C., which is a very odd thing to do if
3 it's being prepared for terrorist purposes, to get out and
4 identify yourself on the video like that.

5 I would say that my best guess, and it's really no
6 more than a speculation because we don't -- we haven't been
7 able to can ask him about it or, rather, we haven't been able
8 to get his testimony about it, would be that he is taking
9 pictures he was going to show to his friends back in San Diego.
10 He does refer to his esteemed brothers, but the term "brothers"
11 is not a suspicious one. It's -- devout Muslims use the word
12 "brothers" to refer to one another all the time. You actually
13 can see that in the other video, the one that's taken at his --
14 at the hijackers' apartment where everybody is calling
15 everybody else brother.

16 In any event, I think if you watch the thing as a
17 whole, you will not come with away with the impression that
18 plaintiffs want to give you from the pieces that they've taken
19 out of it, and there is certainly no evidence in that video
20 that it was made at the direction of any senior Saudi official.

21 I also think that it's useful in this context to look
22 at some of the evidence that's in the record in our expert
23 report, Mr. Sageman's expert report about what a real Al-Qaeda
24 casing report looked like. He talks about some that were
25 prepared by an individual named Dhiren Barot who came up with

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1 these 35-page detailed explanations of plans of attack that --
2 and if you look and -- let me see if I can get the Sageman
3 cites. Yes, it's at pages 257 to 259. I think that if you
4 look at that, you will see that what's on that video just does
5 not bear comparison to what Al-Qaeda actually did when it was
6 trying to case a target.

7 The last point I want to make with regard to the video
8 is that it was made in -- it's allegedly made in June or July
9 of 1999. That was far too early in the process for anyone
10 outside of the very core of Al-Qaeda to have information about
11 the planning of the 9/11 attacks. The hijackers themselves did
12 not know what they were being sent to do until much later, in
13 some cases until even the very eve of the attacks.

14 THE COURT: That doesn't necessarily preclude a
15 direction to an individual who they should make a video of
16 Washington, D.C. monuments.

17 MR. RAPAWY: It does not preclude it, your Honor, it
18 but it does suggest that it is unlikely that al Bayoumi would
19 have been given information about potential targets at a time
20 when that information was closely held within Al-Qaeda itself.

21 THE COURT: There's still no blueprint for destroying
22 the World Trade Center. So, to sort of say it's not consistent
23 with how other activities, terrorist activities might take
24 place, that doesn't give a whole lot of guidance because no one
25 could imagine this is taking place until it happened.

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1 MR. RAPAWY: Well, I mean, your Honor, we're arguing
2 circumstantial evidence at this point, and I think one
3 important piece of circumstantial evidence is the
4 compartmentalization of information that was found by the FBI
5 in its May 2021 closing report that was -- it's also in the
6 Khalid Sheikh Mohammed statement, which plaintiffs introduced
7 as an exhibit. So it's in the record for what it's worth, I'm
8 not saying he's credible on his own, but it's there. And it's
9 consistent with Sageman's study of other Al-Qaeda tradecraft in
10 which he talks about the way in which Al-Qaeda
11 compartmentalized information and the fact that they didn't use
12 local support networks.

13 I would refer the Court for more evidence on
14 compartmentalization to paragraph 57 of our averment and
15 paragraphs 490 and 1372 of our response to plaintiffs'
16 averment. Again, I do appreciate the Court allowing me to
17 address this point briefly.

18 THE COURT: Thank you, sir.

19 Anything further, Mr. Kellogg?

20 MR. KELLOGG: Unless the Court has further questions.

21 THE COURT: Not at this time. Thank you.

22 Do you want to go to plaintiff or anyone else from the
23 defense?

24 Yes, sir.

25 MR. SIMPSON: Good morning, your Honor. Gavin Simpson

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1 for the 9/11 plaintiffs. I would like the opportunity to
2 address the Court in response to Mr. Kellogg's submissions.

3 THE COURT: Sure.

4 MR. SIMPSON: In doing so, I'd like the opportunity to
5 use audiovisual assistance, please.

6 THE COURT: Sure.

7 MR. SIMPSON: For that purpose, I would like to
8 request the courtroom tech to help me get connected.

9 THE COURT: I don't know if our courtroom tech is here
10 at the moment.

11 (Pause)

12 Are we ready to proceed?

13 MR. SIMPSON: Yes, your Honor.

14 THE COURT: Yes, sir.

15 MR. SIMPSON: May it please the Court, Gavin Simpson
16 for 9/11 plaintiffs. Thank you, your Honor.

17 In addition to responding to and answering the points
18 made by Mr. Kellogg on behalf of Saudi Arabia, I should like to
19 begin by informing the Court that plaintiffs have in fact
20 answered the agency question that your Honor posed in 2018
21 regarding the witting support provided by Fahad al Thumairy,
22 Omar al Bayoumi, and their subagents in the scope of their
23 agency for the Kingdom of Saudi Arabia.

24 There is substantial evidence, indeed compelling
25 evidence, your Honor, that both Thumairy and Bayoumi were

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1 working within and reporting to a hierarchy of Saudi government
2 religious officials. As the FBI found in its July 2021
3 electronic communication, it was a Saudi Salafi militant
4 extremist network created, funded, directed and supported by
5 the Kingdom of Saudi Arabia and its affiliated organizations
6 and diplomatic personnel within United States.

7 In the years leading up to the 9/11 attacks, your
8 Honor, this Saudi government network had a militant and
9 extremist and anti-United-States mission, and plaintiffs have
10 submitted specific detailed evidence, not only of the names and
11 positions of Saudi government officials who belonged to this
12 network, and with whom Bayoumi and Thumairy communicated and to
13 whom they reported, but also, plaintiffs have presented
14 evidence of the very character of the wrongful enterprise
15 undertaken by Saudi Arabia itself inside the U.S.; its militant
16 extremist network that was responsible for furnishing the very
17 forms of support that your Honor has asked about to the 9/11
18 hijackers, Nawaf Al-Hamzi and Khalid Al-Midhar.

19 Your Honor, the one thing that Saudi Arabia got right
20 in its pleadings was that there was a plan. In fact, it was a
21 carefully formed, meticulous plan that accorded closely with
22 Al-Qaeda's own objectives in attacking the United States. Your
23 Honor asked the question about the arrival of the hijackers in
24 the United States. Plaintiffs have provided evidence that
25 Fahad al Thumairy was indeed the trusted point of contact and

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1 the host in Los Angeles who would subsequently hand over the
2 hijackers to a similarly trusted contact and host in San Diego.
3 Contrary to Saudi Arabia's pleadings, these two men acted in
4 coordination with and reported to a larger network, in
5 particular, run out of the Saudi Embassy in Washington, D.C.

6 Your Honor, the head of the Ministry of Islamic
7 Affairs office in that embassy, the Saudi Embassy in
8 Washington, D.C., his name is Khalid Al Sowailem, was one of
9 those to whom both Thumairy and Bayoumi commonly reported in
10 the course of providing their support to the hijackers. Their
11 reporting lines, which also included reports to and through
12 MOIA officials and diplomats at the Saudi Embassy, namely
13 Mutaib al Sudairy and Adel al Sadhan, among others, was
14 furnished to coincide precisely with the very junctures of the
15 support that Saudi Arabia was providing. And I will
16 demonstrate specific examples as to how this evidence satisfies
17 the Court's questions.

18 Your Honor, it seems apt to begin with the day on
19 which the hijackers arrived in the United States, January 15th,
20 2000, a full 20 months prior to the 9/11 attacks.

21 But, your Honor, nothing about their arrival or the
22 subsequent provision of support was coincidental. Al-Qaeda, as
23 found by this nation's premier law enforcement and intelligence
24 agencies, adopted meticulous and adaptable planning before
25 deploying its operatives into the United States. Hazmi and

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1 Mihdhar were not any ordinary Al-Qaeda operatives, they were
2 hardened and trained veterans of Jihad, hand picked by Osama
3 bin Laden for the "Planes Operation" that would become 9/11.

4 Your Honor, Al-Qaeda acknowledged that Hazmi and
5 Mihdhar did not speak English and were unfamiliar with the
6 western environment, in particular the United States into which
7 they would be deployed. And so, it follows that Al-Qaeda would
8 have prepared carefully for there to be a support network in
9 place and that trusted points of contact would receive the
10 hijackers not only immediately upon their arrival in
11 Los Angeles, but in all their efforts thereafter to further the
12 plot, to assimilate into United States' society, and to obtain
13 the very support that they would need to perpetrate the acts.

14 Your Honor, in December of 1999, there was a series of
15 20 phone calls instigated by Fahad al Thumairy. These have
16 been referred to by the FBI as the "setup calls." Plaintiffs
17 have offered the expert report of Bassem Youssef, former FBI
18 communications chief who has conducted detailed analyses of the
19 phone calls evidence in this case, notwithstanding the derisory
20 words of Saudi Arabia's counsel. Saudi Arabia proffered no
21 expert evidence of its own phone calls, and has pointed to no
22 specific phone call that it say is materially incorrect. It is
23 true, on the contrary, your Honor, that plaintiffs have
24 furnished errata where we have identified good-faith errors and
25 that explains why there are different phone charts at issue.

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1 However, the underlying evidence is clear. At
2 significant moments in the preparation and provision of support
3 to Hazmi and Mihdhar, Thumairy and Bayoumi coordinated directly
4 with other senior Saudi government officials. In the setup
5 calls referred to, which occurred between December 27th and
6 29th of 1999, Bayoumi and Thumairy were in a calling chain
7 together with Khalid Al Sowailem, the head of the Ministry of
8 Islamic Affairs office in the embassy in D.C.

9 They were also in a calling chain with two individuals
10 whose names I will mention because they arise from many
11 sources, including productions quite apart from the FBI. Anwar
12 Aulaqi, an acknowledged Al-Qaeda terrorist leader and at the
13 time an avowed jihadist who preached anti western, anti Jewish
14 sermons, and who recruited young men to the jihadist cause.
15 And another man, Fathi Aidarus, who had newly arrived in the
16 United States and had been recruited and groomed by Saudi
17 Arabia through its agents, Bayoumi and Thumairy, for the
18 specific purpose of providing support to the hijackers.

19 Your Honor, I want to demonstrate exactly the
20 mechanism by which Saudi Arabia went on to provide this
21 support. With your Honor's permission, I'd like to use the
22 presentation of some video evidence and some accompanying
23 demonstratives.

24 Your Honor, in assessing the support provided by Omar
25 al Bayoumi, Saudi Arabia omitted to mention a very important

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1 event. On February 17th, 2000, in the apartment that Omar al
2 Bayoumi himself had arranged for the hijackers, Bayoumi held a
3 welcome party for Hazmi and Mihdhar's arrival in the United
4 States, to honor them and bless their mission.

5 Your Honor, Omar al Bayoumi recorded video footage of
6 the event in question. Not only did he record it, he also
7 edited it, he also preserved copies, and he formed a
8 documentary report of the event as a basis for much of the
9 support that would go on to be provided.

10 The Metropolitan Police Service of the United Kingdom,
11 alerted by the FBI upon the statements of several witnesses in
12 San Diego, raided the properties of Omar Bayoumi in the United
13 Kingdom 10 days after the 9/11 attacks. Bayoumi was, on
14 September 21st, 2001, arrested, detained in the custody of the
15 MPS and interrogated for a statutory 7-day period.

16 At the same time, a trove of items seized in evidence
17 by the Metropolitan Police Service were retrieved, were
18 analyzed together with the FBI, and in 2022 and 2023, the MPS
19 produced many of those materials in this case. It is what we
20 refer to as the MPS production. It is among the
21 contemporaneous items of evidence that plaintiffs have put
22 forward in this case and it enables your Honor as well as the
23 watching public and the 9/11 families to perceive for
24 themselves the mechanism by which Saudi Arabia provided support
25 to the 9/11 hijackers.

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1 I want to begin with the statements, the admissions,
2 your Honor, of Omar al Bayoumi on the videotape that he filmed
3 of the welcome party for the hijackers. The man you see
4 sitting in the center of the room in the video footage I'm
5 about to screen is Omar al Bayoumi.

6 (Video played)

7 Your Honor, since the speech is in Arabic, plaintiffs
8 have provided certified transcription and translations in the
9 record at exhibit 10K. Bayoumi states: "We are welcoming the
10 brothers, in fact, whom we have not yet had the pleasure of
11 meeting, and they too will soon be traveling."

12 Your Honor, one of plaintiffs' central submissions in
13 this case, and in particular at this stage of the case, is that
14 all of the evidence should be viewed in its totality. In order
15 to understand the statements made by Omar al Bayoumi at the
16 welcome party, one has to examine the record of how the
17 hijackers came to be there and indeed how the attendees at that
18 welcome party came to be there.

19 The 9/11 commission conducted an inadequate analysis
20 of the welcome party, your Honor. It was only able to
21 identify, by name, five individuals among a group that it
22 estimated to have been around 20 male members of the Muslim
23 community of San Diego. Plaintiffs have submitted evidence
24 that there were in fact 29 individuals present at the welcome
25 party. As I will go on to demonstrate, they were hand-picked

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1 by Bayoumi and other agents of Saudi Arabia in order to provide
2 to the hijackers precisely the forms of support they needed in
3 order to be able to assimilate and to further their
4 preparations for the 9/11 attacks.

5 How do we know the identities of those 29 individuals,
6 your Honor? Because Omar al Bayoumi demanded that each man
7 should state his name on the videotape and that they should
8 introduce themselves to the hijackers by name. That's the next
9 clip I will play.

10 (Video played)

11 Omar al Bayoumi's statement, your Honor, is that
12 "everyone should state his name so that the brothers will get
13 to know his name." Those 29 individuals, with the exception of
14 Hazmi and Mihdhar, were members of the same Muslim community of
15 San Diego. Plaintiffs have submitted in evidence exhibit 709,
16 which demonstrates that the very same individuals had been
17 attending inter-mosque communal events, recreational events,
18 sending their children to the same schools, participating in
19 the same activities, including Ramadan activities and annual
20 Eid sermons, for at least five years, the period during which
21 Omar al Bayoumi was operating an extremist cell in San Diego
22 out of initially the Islamic Center of San Diego, the mosque to
23 which the hijackers traveled on February 2nd, 2000 after
24 meeting with Bayoumi in Los Angeles, and at another mosque,
25 which Saudi Arabia helped establish, Al Madina mosque in

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1 El Cajon, San Diego, where Omar al Bayoumi played a pivotal
2 role as its general supervisor.

3 Your Honor has asked the right questions about Omar al
4 Bayoumi because nothing that Saudi Arabia has averred in this
5 case can be taken at face value when it comes to Omar al
6 Bayoumi. We are talking about an agent of Saudi Arabia who
7 operated under deep cover. He was deployed to the United
8 States and installed in fertile territory for extremism in
9 San Diego in 1994. He immediately made contact with the then
10 leader of the extremist cell, a convert by the name of Omar
11 Hamerman, whose duties he would eventually take over in
12 operating the extremist network in San Diego. In return, he
13 would arrange for Hamerman to go to Saudi Arabia and train
14 there as a religious official himself, a propagator at the Imam
15 Mohammad University in Riyadh.

16 In 1998, an important part of this case, Omar al
17 Bayoumi took on a leadership role at a second mosque, as I
18 mentioned, Al Madina Mosque. In that capacity, he hosted, over
19 the course of the ensuing three years, more than 25 Ministry of
20 Islamic Affairs officials directly deployed to the United
21 States by Saudi Arabia. These were what Saudi Arabia calls its
22 Duah, its propagators. They are the activists who pushed Saudi
23 Arabia's religious agenda around the world, the agenda itself
24 known as *Da'wah*.

25 In rebuttal to Saudi Arabia's point that plaintiffs

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1 have somehow equated Islam with terrorism, plaintiffs
2 strenuously object. We have done nothing of the sort. We have
3 characterized the narrow exclusivist brand of Islam that Saudi
4 Arabia advocates over the moderate and mainstream creed of
5 Islam, and we have accurately depicted the ways in which Saudi
6 Arabia, through its Ministry of Islamic Affairs, fomented and
7 cultivated extremism upon its Ministry's platforms overseas.

8 In the United States, it did so notably through its
9 embassy in Washington, D.C., which had a sizeable presence of
10 Ministry of Islamic Affairs – or MOIA – officials. Its head,
11 the aforementioned Khalid Al Sowailem. Two diplomats deployed
12 to that office in June of 1999, Mutaib al Sudairy and Adel al
13 Sadhan, whom I will mention further in a moment.

14 And indeed, from its consulate in Los Angeles, the
15 Islamic Affairs presence at its consulate in Los Angeles,
16 including Ismail Mana, depicted by Saudi Arabia as a secretary
17 at its consulate, but admitted by Bayoumi in his
18 contemporaneous handwritten listings to be an Islamic official
19 and not the only one at the consulate in Los Angeles. Other
20 Islamic affairs officials such as Abdullah al Awad and Saad al
21 Jabreen were also close associates of Bayoumi in his
22 propagation of this Wahhabi brand of Islam.

23 It's important to note, your Honor, that this brand of
24 Islam, the platform that the Ministry of Islamic Affairs
25 created for its propagators and for extremists within its

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1 government agencies included the very types of extremism that
2 Mr. Kellogg claimed Saudi Arabia abhorred, in particular, its
3 embrace of Jihad, its embrace of fighting the enemies of Islam
4 wherever one may find them, and, in particular, the infidel
5 United States, which was Osama bin Laden and Al-Qaeda's
6 greatest target through the 1990s.

7 THE COURT: What is the nature of the evidence in the
8 record that supports your conclusion with regard to Bayoumi's
9 role?

10 MR. SIMPSON: Thank you, your Honor.

11 Firstly, the question should be what work did Omar
12 Bayoumi actually perform for Saudi Arabia in the relevant
13 period. We have heard the submissions that he was a student or
14 that he was an accountant seconded to a cover organization in
15 the United States. None of those is his actual role, your
16 Honor. Those are merely forms of cover adopted by Bayoumi in
17 order to conceal the real activities he was performing. Omar
18 Bayoumi spent the majority of his time, he made the majority of
19 his work records, including his contact ledgers, in pursuit of
20 his agenda as an agent of the Ministry of Islamic Affairs and
21 Saudi Arabia's religious program.

22 For one example, your Honor, the MPS seized Omar
23 Bayoumi's handwritten address book. It's submitted in evidence
24 as Plaintiff's Exhibit 12AA. It is a handwritten address book
25 combining both Arabic and English entries for which, again,

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1 plaintiffs have provided a certified translation which details
2 over 100 Saudi government officials in Omar Bayoumi's personal
3 handwriting, including their affiliations with specific
4 government ministries, notably the outposts of the Ministry of
5 Islamic Affairs and indeed all the way up to the minister's
6 office in Riyadh. It details propagators, as I mentioned,
7 upwards of 25 who visited Omar al Bayoumi in San Diego, many of
8 whom also visited Fahad al Thumairy in Los Angeles in the same
9 period, and it tracks the movements of those propagators not
10 only from their original home base in Riyadh, but to their
11 various assigned work places in the United States,
12 demonstrating that these were Bayoumi's work records that he
13 maintained continuously and on an ongoing basis because of the
14 continual work relationship he fostered with these very
15 individuals.

16 Khalid Al-Sowaillem, a man whom Bayoumi said he could
17 not remember, is listed in Bayoumi's handwritten address book
18 not only with multiple telephone numbers, including his
19 cellphone number on which Bayoumi called him at important
20 moments in the provision of support, he's also listed by a
21 familial name, a kunya, as it's called, which combines a prefix
22 with the name of the individual's firstborn son. Bayoumi's own
23 kunya, Abu Emad, which you will have read in the papers; Khalid
24 Al-Sowaillem's kunya, Abu Abdulrahman. Kunnas are not
25 information that are shared liberally with a wider populous,

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1 your Honor, they are shared intimately and, in particular,
2 between the men in the Muslim communities who consort closely.

3 On that subject, your Honor, consorting with
4 extremists is an excellent showing of an individual's own
5 extremism. Omar al Bayoumi and Fahad al Thumairy in the
6 relevant period not only consorted with, not only met with in
7 private meetings at their mosques, in their private offices, at
8 the library affiliated with King Fahad Mosque, for example, but
9 also harbored literature, extremist literature about the Holy
10 War, the Jihad, in their respective possession, and conducted
11 common activities together with these acknowledged extremists
12 in support of the hijackers.

13 I will go imminently to a common plan that Bayoumi
14 implemented together with Sowailam, Sadhan, and Sudairy at the
15 embassy in Washington, D.C., which speaks to that very form of
16 coordination and reporting that your Honor has inquired into.

17 It should be noted that the FBI itself found that
18 Sadhan and Sudairy had a nexus with Al-Qaeda, and also that an
19 Al-Qaeda cleric, Sheikh Al-Wadi had visited with Fahad
20 Al-Thumairy in Los Angeles and had held private meetings with
21 him there, as witnesses in our case have testified.

22 And, your Honor, Saudi Arabia blithely dismisses the
23 eyewitness testimony of percipient witness Usman Madha, a
24 long-term employee of the foundation that runs both the King
25 Fahad Mosque and its predecessor, the Ibn Taymiyyah Mosque,

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1 both of which Fahad Al-Thumairy was posted to during his time
2 in the United States. Madha was not some peripheral observer,
3 your Honor, he was an employee who, on a day-to-day basis, saw
4 Thumairy in action together with the members of his extremist
5 cell. He saw in particular the relationships that Thumairy
6 nurtured with Mana at the Los Angeles consulate and other
7 extremists, including Khalid Cherif and Abdo Ghanem, whose
8 names I mention to you today, sir, because they also have
9 appeared from sources other than the FBI's own investigations.

10 If I may return, your Honor, to the welcome party, I
11 think it's tremendously significant when one understands the
12 orbit of persons with whom Bayoumi and Thumairy were working to
13 provide support to the hijackers.

14 THE COURT: Well, don't we have to start with the
15 general premise that within the Saudi government, there are
16 those who are pro-U.S. and those who are anti-U.S., and that
17 there's a variety on that spectrum of views with regard to
18 extremism and with regard to Saudi Arabia government's
19 relationship with the U.S.?

20 MR. SIMPSON: Well, your Honor, you used the word
21 "spectrum," and I think that's very important to address. In
22 terms of its religious agenda and its religious activism, Saudi
23 Arabia does not have any form of diverse spectrum, let alone
24 any practice of what Mr. Kellogg referred to as "quietism."
25 That is a phony concept, your Honor. It was developed as a

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1 means of explaining why religious scholars in Saudi Arabia
2 stayed out of politics. They stayed out of politics by virtue
3 of the pact which led to the foundation of the modern Saudi
4 state between the royal ruling family and the religious
5 establishment, the ash-Sheikh. The ash-Sheikh has always
6 purveyed this narrow doctrine, which is referred to as
7 Wahhabism, it is not a pejorative term, it is merely the term
8 which refers to Saudi Arabia's practice of Islam because it
9 derives from ibn Abd al-Wahhab, hence Wahhabism.

10 But that brand of Islam, in particular during the
11 activist phase of the 1990s, forced the king into establishing
12 a ministry that would bring forth the very extremist
13 undercurrents and place them on platforms where they could more
14 aggressively propagate Wahhabism around the world. That had,
15 as its consequence, the establishment of extremist networks,
16 the one we know about from the production in this case was
17 inside the United States.

18 I will show a graphic, your Honor, which plaintiffs
19 have submitted to this Court merely as a summary exhibit as
20 exhibit 701 with our sur-reply pleadings, which shows the sheer
21 scope of this particular network. We have submitted with this
22 exhibit two pages of citations to our underlying averment
23 exhibits and our pleadings, which show that each of these
24 individuals had roles and relationships connected to Bayoumi
25 and Thumairy in the provision of support to extremists and

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1 ultimately to the 9/11 hijackers.

2 The persons who recruited Bayoumi and Thumairy were
3 themselves part of this network. They appointed in particular
4 Thumairy to his position in Los Angeles precisely because of
5 his extremist credentials, and he went to an existing extremist
6 cell in Los Angeles that Saudi Arabia had also supported, going
7 back to the days of "The Blind Sheikh," Abdel-Rahman, who was
8 involved in the perpetration of the first attack on the World
9 Trade Center in 1993, and who visited Los Angeles in the 1990s,
10 and was hosted by the very same extremist cell that Thumairy
11 would subsequently take leadership of.

12 As I stated, your Honor, it's important to see all of
13 these events in their proper context and in the totality of the
14 evidence. I mentioned previously our expert Bassem Youssef.
15 He performed roles for the FBI as a counterterrorism
16 supervisory special agent during the 1990s, and in fact
17 observed some of the very extremist actors and their cells in
18 San Diego and Los Angeles that would later become relevant to
19 the facts in this case.

20 Your Honor, there are persons mentioned on this chart,
21 in particular above the line at which you see Bayoumi and
22 Thumairy who hold senior positions within the Saudi government
23 structure. There are, for example, the heads of the Ministry
24 of Islamic Affairs; its two ministers, Minister Turki and
25 Mr. Ash-Sheikh, who propagated their own religious extremism

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1 through instrumentalities of Saudi Arabia such as the Muslim
2 World League and al-Haramain. Ash-Sheikh, as deputy minister
3 and later Minister of the Ministry of Islamic Affairs was in
4 fact double-hatted. He was not only the minister, he was also
5 the general supervisor of al-Haramain. You'll recognize the
6 resonance in that term, your Honor, "general supervisor." The
7 very title that ash-Sheikh had at al-Haramain was the title
8 that Bayoumi assumed at Al Madina mosque in El Cajon,
9 California. It is a title which carries resonance with those
10 who know about the extremist network.

11 I want to point out again that the Ministry of Islamic
12 Affairs deployed, as part of its official activities, more than
13 25 propagators to southern California in the very period in
14 which Thumairy and Bayoumi were in post, and those, your Honor,
15 are only the ones we know about. We know about them because of
16 the careful assembly of evidence by the Metropolitan Police
17 Service that has gathered videos, photographs, thousands of
18 pages of contemporaneous documents and Omar al Bayoumi's own
19 correspondence. And Bayoumi, as befits the agency within which
20 he was operating for Saudi Arabia, corresponded with senior
21 officials up to and including the minister of Islamic Affairs
22 himself, repeatedly corresponding with senior officials at the
23 embassy, including Khalid Al-Sowailem, Majid Ghesheyan, and
24 Musaed Al Jarrah, and officials at the Los Angeles consulate,
25 including its Consul, Mohammed Salloum, and its Islamic Affairs

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1 officials, the aforementioned Ismail Mana, Abdullah Awad, and
2 Saad al-Jabreen.

3 Your Honor, this is anything but the faceless
4 allegations that Saudi Arabia characterizes. We have put
5 forward detailed and specific evidence about the roles and
6 relationships of these Saudi government officials and we are
7 further demonstrating how they operated in coordination, how
8 they tasked and reported to one another in the performance of
9 the support to the hijackers that forms the basis of this tort.

10 If I may, your Honor, I should like to return to the
11 welcome party. The welcome party provides perhaps the most
12 vivid visual representation of the mechanism of this support
13 network in action. I want to begin by using a demonstrative
14 that plaintiffs have developed based only on the video evidence
15 produced by the MPS to show how we identify the 29 individuals
16 in the room.

17 (Video played)

18 (Continued on next page)

19
20
21
22
23
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1 MR. SIMPSON: Bayoumi instigated a round of
2 introductions on the basis that everyone should state his name
3 so that the hijackers could get to know his name. He began by
4 introducing a man who had been installed at the al Madina
5 Mosque as the new imam, an acknowledged extremist cleric,
6 Sheikh Abdulrahman Barzanjee, reported in factual findings of
7 the FBI to have been a leader of the Ansar al-Islam terrorist
8 organization and al Qaeda affiliate. These are the terms in
9 which Omar al Bayoumi introduced Barzanjee.

10 (Video played)

11 MR. SIMPSON: Referring to Barzanjee as "our sheikh,"
12 Bayoumi announces to the attendees of the welcome party that he
13 has succeeded in an enterprise to install Barzanjee at al
14 Madina Mosque, the mosque that Saudi Arabia helped to found and
15 which it helped to fund and direct in El Cajon, California.

16 In particular, Bayoumi referred here to having made
17 efforts dating back over one year to install Barzanjee. The
18 evidence shows that Barzanjee was selected for his extremist
19 credentials as well as other attributes that made him suitable
20 to preach at that particular mosque, the congregation of which
21 was predominantly Kurdish.

22 He was an Arabic-speaking imam with extremist
23 credentials whom Bayoumi and other Saudi agents had identified
24 as being the cleric who should be in place at their base in San
25 Diego for the arrival and the duration of the stay of the two

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1 hijackers, Hazmi and Mihdhar. It is significant, your Honor,
2 that Bayoumi's introduction of Barzanjee occurred not only in
3 the presence of this wider community, but in the presence of
4 the two 9/11 hijackers who are seated and standing in this
5 room, as I will now demonstrate.

6 Bayoumi states: We have already gotten to know Sheikh
7 Abu Musleh, so we should proceed with the remainder of the
8 introductions. And you will see the full room in which the
9 party was hosted coming into view.

10 (Video played)

11 MR. SIMPSON: You can hear Omar al Bayoumi's voice
12 coming over the top of the video stating to the camera operator
13 "don't film here." He was indicating that the left side of the
14 room contained individuals whose presence was such a sensitive
15 issue that he did not want it to be captured on this videotape.
16 I will address that matter in a moment.

17 (Video played)

18 MR. SIMPSON: Notwithstanding Bayoumi's instruction,
19 the camera operator did, in fact, film the left-hand side of
20 the room and reveal the identities of the persons who were
21 seated on that side. They will now introduce themselves by
22 name as the others did too.

23 (Video played)

24 MR. SIMPSON: Similarly, the cameraman's movements
25 enabled us to perceive those seated on the other side of the

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1 room. And using accurate digital reconstruction of the
2 underlying video footage itself, we're able to complete the
3 identifications of all 29 individuals.

4 Significant in this round of introductions is the man
5 in the baseball cap seated at the doorway. He is 9/11 hijacker
6 Nawaf al-Hazmi. And he introduces himself by name using his
7 first name and father's name, Nawaf Mohammed. You will hear
8 that momentarily.

9 (Video played)

10 MR. SIMPSON: Your Honor, you heard the verbal
11 introductions, many of which were in Arabic. But you also
12 heard the unmistakable voice of Omar al Bayoumi as the master
13 of ceremonies at this party and, in particular over this round
14 of introductions, greeting al Qaeda operative and 9/11 hijacker
15 Nawaf al Hazmi in the name of Allah. Bayoumi's statement on
16 the videotape, "Nawaf, may God greet you, Nawaf."

17 This evidence again shows that the purpose of this
18 party was to welcome the hijackers and that it had a religious
19 tenor consistent with the preparations made by Bayoumi in
20 conjunction with other Saudi government officials for this very
21 event. The round of introductions will complete, your Honor.

22 (Video played)

23 MR. SIMPSON: Your Honor, we are using the names of
24 all 29 individuals at this party in court because they derive
25 from notably the MPS production of the video itself and

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1 multiple other sources, which confirm the roles of these
2 individuals in Bayoumi's network.

3 I will point to several specific examples momentarily
4 of individuals at this party who went on to provide specific
5 forms of support in answer to the question that you directed to
6 Saudi Arabia, your Honor. The nature of the assistance that
7 Bayoumi first provided by himself in conjunction with Sowailem,
8 with Sadhan, and Sudairy, with Thumairy and other Saudi
9 government officials, and, furthermore, enlisted the persons at
10 this party and others to provide was specifically tailored to
11 meet the needs that al Qaeda and Saudi Arabia had identified as
12 being pertinent to the furtherance of the 9/11 plot.

13 Before we get to the support, there is a submission in
14 the record, your Honor, that the hijackers were not part of
15 this event, that it was somehow a coincidence or an accident
16 that it was hosted in the hijackers' apartment. That
17 submission, your Honor, is not credible in light of the video
18 evidence plaintiffs have provided.

19 In particular, when the 9/11 commission arrived at its
20 account of the welcome party, it did not appear to have
21 adequately or sufficiently analyzed the video evidence. It
22 appears to have had incomplete footage. And, in particular, it
23 does not appear to have listened to and analyzed the Arabic
24 speech on the video, which is key to understanding and
25 interpreting the events.

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1 Your Honor, the 9/11 commission used the term
2 "sequestered" to describe the isolation in which Omar al
3 Bayoumi had described the hijackers operating on this evening.
4 Bayoumi told the commission, and it accepted his account that
5 they were sequestered in a back room and did not partake in the
6 events at the party. That submission is wholly untrue, your
7 Honor.

8 It is firstly contradicted by percipient eyewitness
9 testimony of Kaysan Morgan, the camera operator at the party,
10 who stated from the outset that this was a welcome event for
11 Hazmi and Mihdhar, the two men who Bayoumi had led him to meet
12 with at the cafe in Los Angeles on February 1.

13 But it is also contradicted, your Honor, by the video
14 evidence itself. And my next visual will show how Hazmi and
15 Mihdhar were not in some back room. They were rather prominent
16 participants in the party who moved at ease through the room,
17 interacting with other guests and assisting in the preparation
18 and service of food, as well as other ceremonies at the party,
19 including greeting and honoring the extremist Sheikh Barzanjee,
20 and another sheikh, the person whose identity Omar al Bayoumi
21 sought to protect, Sheikh Muhammad al Qahtani, a Ministry of
22 Islamic Affairs Saudi government religious official, who sat in
23 the room with the hijackers on this evening.

24 Qahtani's presence, your Honor, explodes the myth that
25 this was a coincidence or some hastily arranged backup plan.

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1 Qahtani's presence demonstrates that none of the support
2 Bayoumi provided was provided by Bayoumi alone. At every step,
3 at every juncture Bayoumi acted in coordination with the Saudi
4 government network that tasked him, that he reported to, and
5 that he coordinated with to ensure that the hijackers received
6 the support they needed.

7 The two hijackers, Khalid al Mihdhar and Nawaf al
8 Hazmi, are depicted in the next graphic. It's a diagram of
9 movements of Nawaf al Hazmi and Khalid al Mihdhar on the party
10 videotape. The center of the screen is a floor plan showing
11 the party. The first sighting of Hazmi occurs three minutes
12 into the footage, passing through the center of the room.

13 The second marked "N2" shows Hazmi serving dates to
14 the extremist cleric, Abdulrahman Barzanjee. When Bayoumi
15 begins one of the party's principal ceremonies to hand out
16 token plaques to certain persons in attendance, while everyone
17 else is seated around the room, three persons are standing:
18 Bayoumi himself, together with Hazmi and Mihdhar, again
19 confirming their prominent role as the very guests of honor at
20 this event.

21 Hazmi, in the black shirt sleeve, you can see now is
22 accompanied by Mihdhar at Bayoumi's shoulder. At N4, when
23 Hazmi was seated in the round of introductions, another
24 significant fact, the person seated to Hazmi's right is none
25 other than Omar al Bayoumi's own teenage son, Emad al Bayoumi.

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1 You see him in a polo shirt. The video shows evidence of
2 intimacy between Hazmi and Emad al Bayoumi, intimacy that is
3 indicative of a close existing relationship that preceded the
4 welcome party itself. That is because, your Honor, the
5 hijackers stayed at Bayoumi's own home on their first night in
6 San Diego.

7 Hazmi's hand, his baseball cap, and his shirt sleeve
8 can be seen gesturing and talking in conversation with Emad al
9 Bayoumi and another close acolyte, Khalid al Yafai. We will
10 come to him in a moment.

11 Now, while a piece of poetry is being recited, in
12 never-before-seen footage, 9/11 hijacker Khalid al Mihdhar
13 walks right in front of the camera through the center of the
14 room. You can see him there, your Honor, in a white shirt and
15 dark green pants.

16 Both Hazmi and Mihdhar incidentally were dressed
17 smartly for this event. It had been prearranged. It had been
18 pre-coordinated. They knew they were going to be the subjects
19 of this welcome party. It is not, as Saudi Arabia and Omar al
20 Bayoumi himself has submitted, some last-minute event because
21 of a social mishap. The party was planned, your Honor, for the
22 very specific purpose that I will go on to describe.

23 When the food is served, in addition to the delivery
24 of lamb and rice, Khalid al Mihdhar stands next to Omar al
25 Bayoumi and prepares a green salad. Nawaf al Hazmi in the

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1 black shirt and light, cream-colored pants shuttles back and
2 forth from serving guests in the room to the kitchen where he
3 and Bayoumi and Mihdhar worked together to provide service to
4 the guests, all of which is orchestrated and coordinated by
5 Bayoumi himself, the master of ceremonies, whose very demeanor,
6 as Mr. Kellogg submitted, is instructive, instructive not of
7 some innocent or innocuous purpose, your Honor, but instructive
8 of a man who is deeply devoted to the extremist agenda and the
9 task in hand of introducing, providing safety and support for,
10 and caring for these hijackers.

11 Now let me show you what that support looks like.

12 (Video played)

13 MR. SIMPSON: So we return to a visual which shows all
14 29 persons at the party and identifies them by name. It is
15 critical to know the names of these 29 individuals because only
16 then can one correlate their identities with the evidence of
17 the support that was provided to the hijackers.

18 Plaintiffs have submitted that it was through the
19 mechanism of this party, as well as through other individuals
20 to whom Bayoumi, Thumairy, and other Saudi agents introduced
21 the hijackers that the key forms of support were provided.
22 Those other individuals who were not present on this evening
23 itself but who worked together with Bayoumi in this regard are
24 shown here: Anwar al Aulaqi, the extremist jihadi cleric;
25 Dr. Abdussattar Shaikh, whom Saudi Arabia submitted was an

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1 example of someone who didn't originate from Bayoumi's network.
2 The contrary is true. Omar al Bayoumi nurtured a relationship
3 with Abdussattar Shaikh that went back, according to the video
4 evidence, at least two years prior to the arrival of the
5 hijackers.

6 And most significantly, it is not a coincidence that
7 the hijackers would stay at the rooming house of Abdussattar
8 Shaikh in Lemon Grove, California. It was a plan that had been
9 carefully and meticulously developed by Bayoumi in conjunction
10 with other Saudi government officials. I point you to the
11 evidence in the record of the visit to Southern California of
12 Sadhan and Sudairy, the two MOIA officials who would later be
13 posted to the embassy in Washington, D.C.

14 Plaintiffs' expert, Bassem Youssef, and the FBI both
15 identify Sadhan and Sudairy as an advance team. They traveled
16 in the footsteps that the hijackers would later tread in their
17 visit in December 1998 and January 1999. They first went to
18 Fahad al Thumairy in Los Angeles, just as the hijackers would
19 do on January 15, 2000. They then transferred from Los Angeles
20 to San Diego into the care of Omar al Bayoumi, who was their
21 host in San Diego, just as the hijackers did.

22 They attended the King Fahd Mosque in Los Angeles and
23 al Madina Mosque in San Diego, just as the hijackers did. And
24 they stayed in the rooming house of Dr. Abdussattar Shaikh in
25 Lemon Grove, California, just as the hijackers did.

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1 After the visit of Sadhan and Sudairy, Omar al Bayoumi
2 reported on their visit to a plethora of senior Saudi
3 government officials. He wrote, your Honor, to Minister Turki
4 himself, the Ministry of Islamic Affairs, he wrote to Khalid al
5 Sowaillem, the head of the MOIA office in the United States. He
6 wrote about the coordination and advance planning that had
7 allowed this mission to be a success.

8 And then, in a very instructive letter written on
9 February 12, 1999, Omar al Bayoumi corresponded with his
10 contact in the al Haramain Organization, Saad al Habib, a
11 Riyadh-based religious official who worked with Bayoumi to
12 establish al Madina Mosque. And he said that --

13 THE COURT: What do you claim is the content of this
14 written communication?

15 MR. SIMPSON: We have the letter, your Honor, because
16 Omar al Bayoumi's copy was seized by the Metropolitan Police
17 service when it raided his work files in September of 2001.

18 The letter contains a report on Sadhan and Sudairy's
19 visit to al Madina Mosque, and it uses very particular language
20 in Arabic. It says (speaking Arabic). In Arabic those words
21 mean "their base was our mosque." But note the word used for
22 base in Arabic, *qaeda*. "Their *qaeda* was our mosque."

23 This was Bayoumi's means of communicating through
24 common understanding to persons of a similar religious leaning
25 and involved in the operational coordination that the mosque

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1 and the plan to host extremists in Southern California had
2 received a green light.

3 THE COURT: That was written when? In which exhibits?

4 MR. SIMPSON: That is Plaintiffs' Exhibit -- I'll
5 provide the number for you, your Honor.

6 THE COURT: What was the date of that communication?

7 MR. SIMPSON: The date of the communication is
8 February 12 of 1999.

9 THE COURT: Of '99? So that was the year before.

10 MR. SIMPSON: Yes, your Honor.

11 In fact, the visit of Sadhan and Sudairy took place a
12 full 13 months before the arrival of the hijackers. The report
13 in question, February 12, '99, approximately a year before, as
14 you say. Its timing, highly significant.

15 Because again, if I may urge this Court to analyze the
16 evidence in its totality and its proper historical context, al
17 Qaeda was engaged in the very plans that would lead to the 9/11
18 planes operation, the plot, in that particular period. In
19 early 1999, as the 9/11 Commission Report found, al Qaeda was
20 engaged in detailed operational planning, including Bin Laden's
21 instruction to three operatives, Hazmi, Mihdhar, and a third
22 man, Walid bin Attash, who were his hand picks to infiltrate
23 the United States to perform this great act of jihad that would
24 become the 9/11 terrorist attacks.

25 We know that Attash applied for a visa but was

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1 rejected, whilst Hazmi and Mihdhar submitted applications for
2 United States visas in early April 1999. And those
3 applications were granted respectively on April 3 and April 7,
4 1999. The destination cited on Hazmi's and Mihdhar's visa
5 applications, your Honor, Los Angeles, California.

6 Plaintiffs show that that citing of Los Angeles was a
7 direct result of the advance team mission that Sadhan and
8 Sudairy had undertaken, as tasked by the Ministry of Islamic
9 Affairs. Notably, one of the deputy ministers, Sudairy's own
10 brother, Tawfiq al Sudairy, was responsible for deploying those
11 men to the United States and reported on, as I mentioned, to a
12 whole series of senior government officials including the
13 minister and officials at the embassy and the consulate in the
14 United States.

15 On the day that Khalid Mihdhar received his United
16 States visa, Omar al Bayoumi wrote again, and this time he sent
17 two letters to the very members of the advance team. He wrote
18 to Sudairy and he wrote to Sadhan. And in that correspondence,
19 he referred to having written directly to the minister. The
20 language of those letters, your Honor, is again very carefully
21 tailored to its operational purpose. And Bayoumi mentions a
22 very obscure place of worship, the Masjid Ibn Uthman Mosque,
23 the Uthman Mosque in Lemon Grove, California, which he is
24 seeking the minister's personal approval for.

25 The man who founded it and ran Masjid Ibn Uthman was

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1 none other than Dr. Abdussattar Shaikh, the same man who ran
2 the rooming house to which the hijackers would later move, and
3 the same man who had hosted the advance team itself.

4 Your Honor, in the context of all this evidence, the
5 evidence in its totality, those letters in April of '99 show
6 that Bayoumi was conveying to other Saudi government officials
7 that the plot had begun. The 9/11 preparations were now moving
8 into a very careful planning phase, and the actions that
9 Bayoumi then went on to undertake later in April '99, going to
10 Los Angeles, meeting Thumairy, meeting Khalil al Khalil,
11 meeting Soliman Al-Ali, recruiting members of the network that
12 would provide support to the hijackers, one month later
13 returning to Los Angeles to visit Thumairy at the Ibn Taymiyyah
14 Mosque with Dr. Abdussattar Shaikh, the man who was now
15 approved to be one of the hosts of the hijackers in San Diego.

16 And Bayoumi would continue throughout 1999 to take
17 active steps in furtherance of this 9/11 support enterprise.
18 And as I mentioned, he never acted alone. He acted in careful
19 coordination with and reported to Sowaillem, the head of MOIA at
20 the embassy, Sadhan, and Sudairy, the two MOIA officials who
21 would be posted as diplomats, as well as the other persons
22 shown on Plaintiff's Exhibit 701, the chart of the Saudi
23 government extremist network.

24 I will continue with this exhibit because it also
25 shows in vivid form exactly how the support was administered.

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1 Other individuals whom Bayoumi recruited, together with his
2 Saudi government counterparts, included Ramez Noaman. Again,
3 I'm mentioning his name because it is revealed on video footage
4 that Bayoumi filmed and that was later seized by the MPS in the
5 U.K. Noaman was recruited, among other means, by a seminar
6 that Bayoumi and Thumairy jointly attended in Los Angeles in
7 April of 1999, just four days after the hijackers' visas had
8 been granted.

9 And another man whose name I am mentioning because it
10 is a matter of public record. Contrary to Saudi Arabia's
11 submissions, the fact that Mohdar Abdullah provided support to
12 the 9/11 hijackers was already reported in 2004 in the 9/11
13 Commission Report, including the specific forms of support that
14 he went on to provide.

15 Let me address those forms of support. At the bottom
16 of this visual, you will see a summary of plaintiffs' pleadings
17 in its opposition brief, in our opposition brief, and in our
18 surreply pleadings. We have shown that this support network in
19 San Diego and in Southern California generally supported the
20 hijackers in providing housing or lodging, including a safe
21 house, followed by an apartment, followed by a rooming house.

22 Provided support with banking, including the opening
23 of the hijackers' bank accounts and means by which the
24 hijackers would receive wire transfer funds from al Qaeda.

25 Medical support, including dental services for Khalid

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1 Mihdhar, who had a painful missing tooth.

2 And sustenance, including recreation activity and the
3 companionship that the hijackers received from other young men
4 recreated by Bayoumi and Thumairy.

5 Transportation, including being picked up from the
6 airport, LAX, by Mohamed Johar, who was tasked by Fahad al
7 Thumairy to do so. But then it didn't stop there. They were
8 also transported around in San Diego by trusted persons
9 selected by Bayoumi and Thumairy and the Saudi support network.

10 Language assistance because the hijackers didn't speak
11 English. They were assisted in filling out forms, including
12 their lease agreement at the apartment. They were assisted in
13 filling out immigration forms by Dr. Abdussattar Shaikh at
14 Bayoumi's behest. They were assisted with important documents
15 such as obtaining driver's licenses that would provide them
16 with state IDs, one of which was used to board the plane,
17 American Airlines Flight 77, that they flew into the Pentagon
18 on 9/11.

19 Assimilation, taking the general form of accompanying
20 the hijackers to various sights of interest around Southern
21 California. Let me restore the picture.

22 Communications assistance, including telephones, a
23 cell phone, calling cards, including the setting up of an
24 internet connection in their apartment and a telephone line,
25 which they would use notably to call al Qaeda. Also

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1 communications assistance in allowing them to use other
2 persons' phones including a phone used by Omar al Bayoumi
3 himself, which the hijackers used to remain in touch with other
4 members of the network.

5 Flight lessons.

6 Religious guidance and orientation aligned with their
7 own religious doctrine, the jihadi doctrine.

8 And your Honor, if you need any indicator as to
9 whether these persons themselves were extremists, the Saudi
10 government officials who acted in support of the hijackers,
11 consider this: Al Qaeda would never have deployed its
12 operatives to a network that it could not trust. It needed to
13 identify persons who shared the same beliefs or orientation,
14 the same direction, whom it could trust.

15 Your Honor, Second Circuit authority in analogous
16 organized crime cases points you to the person who is the
17 trusted first point of contact as the person whose affiliation
18 will reveal the criminal scheme at issue. Plaintiffs say that
19 the very same is true of Thumairy's and Bayoumi's support to
20 the hijackers. They were approved. They were vetted. They
21 were verified as trusted points of contact into whose care the
22 al Qaeda hijackers could be placed. That included at two
23 mosques in San Diego itself. And as I mentioned, never to be
24 forgotten, Bayoumi did not act alone. At this party was
25 another Ministry of Islamic Affairs official.

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1 You'll now see the forms of support that each of these
2 individuals provided. Your Honor the record is replete with
3 evidence of these concrete averments by plaintiffs of the very
4 forms of material support that were required by the hijackers
5 to further their preparations for 9/11. In each of these
6 instances, you will see that the symbols are not attached to
7 one individual alone, but rather to multiple – because these
8 individuals acted in concert, they acted in coordination.

9 One example, Saudi Arabia misstated the date on which
10 the hijackers opened their bank account. That was, in fact,
11 February 4, 2000. On February 4, 2000 when Bayoumi accompanied
12 the hijackers to the Bank of America, his local branch, around
13 the corner from the Parkwood Apartments, he did so in
14 coordination with both Fahad al Thumairy and Anwar Aulaqi.
15 Aulaqi, in fact, called the branch in advance of their visit
16 there, as the evidence shows in its totality, to assist in the
17 opening of the account.

18 I mentioned also that Fahad al Thumairy and Khalid al
19 Sowaillem were among the senior officials with whom the support
20 was coordinated. It's shown on this graphic, your Honor, that
21 Thumairy did provide forms of support himself. He arranged the
22 transport that picked up the hijackers from LAX airport. He
23 arranged the housing at which the hijackers stayed during those
24 15 days in Los Angeles.

25 Mr. Kellogg referred to having a "complete blank" as

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1 to what the hijackers did in those 15 days. The answers are in
2 plaintiffs' papers, your Honor. The hijackers stayed with
3 Mohamed Johar.

4 In fact, the hijackers were in Mohamed Johar's care to
5 the point that Johar testified that he was relieved when they
6 left Los Angeles because of the extent to which he had had to
7 support them, provide lodging and transportation for them. And
8 Johar admitted in statements to his friend Akram Alzamari, that
9 the hijackers came "through Sheikh Fahad." Sheikh Fahad, your
10 Honor, is Sheikh Fahad al Thumairy. The support that Johar
11 provided was provided because he was tasked by al Thumairy.
12 And the FBI's factual findings, including in their 2016 ENCORE
13 Report, confirm that fact.

14 So Thumairy's own assistance is depicted here, but
15 he's also placed on this graphic next to another senior Saudi
16 government official, Khalid al Sowailem, at the MOIA office in
17 the Saudi embassy in D.C. That is because both Bayoumi and
18 Thumairy reported directly to Sowailem.

19 In the context of the welcome party held on
20 February 17, 2000, Omar al Bayoumi called Khalid Sowailem to
21 render his report on February 18 and February 19, 2000, on the
22 evening and on a weekend, using Sowailem's personal cell phone,
23 the same cell phone number that he had recorded in his
24 handwritten address book.

25 It's the evidence of what Bayoumi was actually doing

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1 that matters, your Honor; it is not the cover story that Saudi
2 Arabia has sought to put before the Court. And Bayoumi's own
3 testimony on these points has also been directly discredited.
4 At his deposition, Bayoumi provided two false alibis to
5 distance himself from the provision of support to the
6 hijackers.

7 He first stated that he had gone to Washington, D.C.
8 for so-called academic courses in late February and in
9 March 2000, at the very time that he was, in fact, in San Diego
10 living in the Parkwood Apartments with the hijackers a few
11 doors away, providing support to them through this very
12 network. He also stated that he had been in the United Kingdom
13 during June of 2000 when, in fact, he had returned to San Diego
14 on May 31, 2000 from Saudi Arabia, and on that day assisted the
15 hijackers in moving out of the Parkwood Apartments and into the
16 rooming house of Dr. Abdussattar Shaikh.

17 The examples are abundant, your Honor, of the kinds of
18 support that was subsequently provided. I'm going to show a
19 couple of examples. First example is Fathi Aidarus. In
20 December of '99, when the call chain between different Saudi
21 Arabia officials took place, Fathi Aidarus was at its center.
22 He was a resident of an apartment complex close to the
23 hijackers' own Parkwood Apartments. Fathi Aidarus provided, by
24 his own statement, companionship and sustenance to the
25 hijackers, including taking them for coffee and meals and so

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1 on, because Bayoumi asked him to do so.

2 And in early March 2000, Fathi Aidarus' telephone was
3 used both to place calls and to receive calls with the
4 correspondent switchboard for al Qaeda in Yemen. Fathi Aidarus
5 was groomed by Bayoumi in order to be a companion who could be
6 trusted to help the hijackers keep in touch with their base and
7 to report on their activities.

8 As I mentioned, Aidarus did so in coordination with
9 other government officials. At the party he sat next to Sheikh
10 Muhammad al Qahtani. Your Honor, Fathi Aidarus told the FBI
11 that he had hosted two Saudi sheikhs in December of 1999,
12 shortly before the hijackers arrived. At the time those
13 statements were received in production, the presence of Sheikh
14 Muhammad al Qahtani at the welcome party was not known. It
15 only became known by the production of this video by the MPS.

16 But to have a MOIA religious official sitting in the
17 party next to the man whose telephone was used to call al Qaeda
18 on behalf of the hijackers is, again, direct evidence of the
19 support that was provided through this MOIA enterprise. Fahad
20 Thumairy, Khalid Sowailem, Omar al Bayoumi, and Anwar al Aulaqi
21 are also highlighted on this slide because they all
22 participated in this common round of setup calls with Aidarus
23 that directly preceded the hijackers' arrival.

24 A further example, Ahmad Mustafa, who was seen on the
25 party videotape reciting a poem. Bayoumi arranged for him to

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1 move in with the hijackers in the same apartment shown on the
2 video as their roommate for two weeks in March 2000. Mustafa
3 told the FBI that Bayoumi had regularly visited and brought
4 them food and other sustenance and supplies.

5 But Mustafa was also handpicked for a very specific
6 purpose. He set up the telephone line, the internet
7 connection, and the digital communications capacity in the
8 hijackers' apartment which Mihdhar and Hazmi used to
9 communicate with al Qaeda contacts in the Gulf.

10 Maen Alkhawaja. He was, in short, Bayoumi's transport
11 guy. On video footage that Bayoumi shot later in the year
12 2000, he identified Maen Alkhawaja as a dealer and trader in
13 the trade and rental of cars. Maen Alkhawaja was responsible
14 for brokering the transaction by which Hazmi and Mihdhar
15 purchased their car, the Toyota Corolla that they would
16 subsequently drive in San Diego, Southern California, that
17 Hazmi would drive across country, and that was found by the FBI
18 parked in the lot at Dulles Airport on 9/11.

19 Alkhawaja did so by introducing Hazmi to another
20 Bayoumi associate, a man named Azeddine Abaddi, who was
21 described in the 9/11 Commission Report erroneously as having
22 helped a fellow Muslim brother. In fact, Abaddi, too, was a
23 close associate of Bayoumi, as video evidence in this case
24 shows. And between Alkhawaja and Abaddi, Bayoumi coordinated
25 the transportation support that the hijackers needed to further

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1 the plot.

2 Saad al Tarabishi, your Honor, a dentist in San Diego
3 who in March 2000 provided an expensive root canal surgery on
4 Khalid al Mihdhar, the al Qaeda hijacker. Tarabishi was a
5 longstanding associate of Bayoumi, and there is no evidence
6 that that surgery was actually paid for. It was done in
7 furtherance of the support that Bayoumi arranged for the
8 hijackers to receive.

9 Bilal Kamel, your Honor. He was a convenor of
10 recreational events in San Diego. As video evidence showed, he
11 organized volleyball and other sports in which Muslim youth
12 would participate. Your Honor, the hijackers played soccer in
13 San Diego in the very same community that Bilal Kamel convened,
14 and Bayoumi invited him to the welcome party, again, in
15 furtherance of the support that they needed.

16 Adel Rafeea, a secretary at the Islamic Center of San
17 Diego introduced at the welcome party to the hijackers by
18 Bayoumi, who on April 19, 2000 received a wire transfer in the
19 value of \$5,000 from al Qaeda. The sender was Ammar al
20 Baluchi, currently indicted at Guantanamo Bay before the
21 military commissions, who sent successive similar transactions
22 to other hijackers in the United States. But al Hazmi was the
23 first person to whom he sent the money, and he did so through a
24 mechanism that Bayoumi arranged through his associate Rafeea in
25 San Diego.

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1 Mohdar Abdullah, who was mentioned previously. He
2 arranged flight lessons, called flight schools on behalf of the
3 hijackers, assessed the viability for non-English speaking
4 operatives to take flight lessons in the United States. He
5 also assisted in acquiring the driver's license that al Hazmi
6 received on April 19, 2000.

7 And again, in support of my earlier submission that
8 none of this support was administered in isolation, after the
9 dual forms of support on April 19, the wire from al Qaeda, and
10 the obtaining of a driver's license, Anwar al Aulaqi and Fahad
11 al Thumairy were involved in a chain of telephone reporting
12 about the furtherance of the support.

13 And this happened, your Honor, notwithstanding Omar al
14 Bayoumi's absence from the country at that time. He was in
15 Saudi Arabia, but he had left his cell phone in Nawaf Hazmi's
16 possession in order that the reporting and coordination chain
17 would be unbroken.

18 As I mentioned, the calls between Bayoumi and Sowailem
19 coincided precisely with the welcome party at which the support
20 network was furthered. Bayoumi also called Sowailem at other
21 critical junctures. In June of 2000, shortly after Mihdhar
22 departed the country on a flight back to the Gulf, June 13,
23 2000, Bayoumi called Sowailem to report.

24 And although Bayoumi fleetingly left the country in
25 October 2000 on the premise that he was going to study in

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1 England, Bayoumi, in fact, returned at the end of November,
2 just about two weeks before Hazmi would leave San Diego. He
3 went to his office at al Madina Mosque, and on December 2, he
4 called not only Thumairy, but again Khalid Sowailem, his
5 reporting line in the MOIA enterprise.

6 I'll conclude this part of the presentation by
7 reiterating that these individuals were not only in touch with
8 Bayoumi. The names highlighted on the chart now - and I shall
9 read them for the record - Saad al Tarabishi, Nawaf al Hazmi,
10 Maen Alkhawaja, Khalid al Mihdhar, Luwam Nour, Fathi al
11 Aidarus, Sheikh Abduljalil Mezgouri, Dr. Abdussattar Shaikh,
12 Ramez Noaman, and Mohdar Abdullah - have in common the fact
13 that they knew both and were in communication with both Bayoumi
14 and Thumairy.

15 These were not simple members of a San Diego community
16 that was somehow stumbled upon by the two hijackers in
17 isolation. On the contrary, Thumairy, remember, he's based as
18 the Ministry of Islamic Affairs delegate in Los Angeles. He
19 had direct telephone contact with at least six of the persons
20 who were at this welcome party. And those are only the
21 examples that we know about.

22 He was also in frequent contact with Aulaqi, the
23 jihadist cleric. He also received calls in the summer of 2001
24 from Mohdar Abdullah. And throughout the record that
25 plaintiffs have presented, these forms of communication are

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1 replete.

2 Your Honor, plaintiffs have stated that nothing
3 happened by coincidence. There was no happenstance encounter
4 in a Mediterranean restaurant. There was no coincidental
5 bumping into or running into Bayoumi at the mosque. And the
6 very reason why there are no coincidences, why there are no
7 happenstances is because al Qaeda's planning, and Saudi
8 Arabia's planning too, left nothing to chance.

9 Your Honor, you also asked about Bayoumi's Washington
10 trip in June of 1999. And I think the evidence in this regard
11 is significant enough to also engage your Honor on this point.

12 First of all, I want to state to the Court that the
13 purpose for which Omar al Bayoumi traveled to Washington, D.C.
14 in June of 1999 is clear by the evidence and the record before
15 this Court. I'm going to show exactly how.

16 First, your Honor, Plaintiff's Exhibit 312, which is
17 Omar al Bayoumi's travel itinerary to Washington, D.C. in June
18 of 1999. I'm hoping to restore the image. Your Honor,
19 Plaintiff's Exhibit 312, in relevant part, is an itinerary for
20 Omar Bayoumi to travel from San Diego to Washington, D.C. on
21 June 20, 1999.

22 Bayoumi made these plans in advance. The itinerary
23 was printed on June 17. And in a handwritten annotation on his
24 itinerary, Bayoumi wrote down the telephone number that he
25 connected with a person he describes here in the English

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1 transliteration "Assudairi." The individual in question is
2 Mutaeb al Sudairy, the MOIA official who had just deployed to
3 Washington D.C. as a diplomat at the Saudi embassy.

4 Sudairy and Sadhan together deployed on June 13, 1999.
5 When Bayoumi traveled to Washington, D.C., he was traveling for
6 work. He was traveling to meet with and work with Sadhan and
7 Sudairy and to meet with and report to his reporting line
8 contact, Khalid al Sowailem. The number that Bayoumi wrote
9 down, incidentally, for Sudairy was not one of the home or cell
10 phone numbers listed in Bayoumi's telephone book. It was, in
11 fact, the number for a hotel in Alexandria Virginia, Ramada
12 Plaza Hotel, Pentagon.

13 Bayoumi marked the videotape, which is submitted in
14 evidence as Plaintiffs' Exhibit 10F, as "Washington trip." He
15 wrote on it, June 23, 1999 through July 4. Those were not the
16 dates of his travel, your Honor; those were the dates of his
17 work for Saudi Arabia.

18 And the videotape is a document on which Bayoumi
19 reported on the work he performed in Washington, D.C. for Saudi
20 Arabia. The evidence shows that he was tasked by Khalid al
21 Sowailem through Sadhan and Sudairy to perform the work he
22 undertook in Washington. It didn't only comprise his casing of
23 the United States Capitol Building; it also comprised pertinent
24 discussions with Sowailem, Sadhan, and Sudairy about the
25 running of al Madina Mosque in San Diego where Bayoumi would

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1 return in July and would perform the overhaul of its
2 administration and the installation of the Imam Barzanjee, who
3 would be there when the hijackers would arrive.

4 But the video footage about which you asked speaks for
5 itself, your Honor. It is not a tourist video. It does not
6 bear any of the characteristics of the activities of a tourist
7 visiting the sights of Washington, D.C. On the contrary, and
8 as I will show in relevant part, Bayoumi exhibited the very
9 form of tradecraft that al Qaeda operatives who produced other
10 casing videos themselves showed.

11 You heard Saudi Arabia refer to the case of Dhiren
12 Barot, whom Saudi Arabia's expert cited as an example of casing
13 from previous law enforcement investigations. Your Honor,
14 Barot was arrested and subsequently tried and convicted in the
15 United Kingdom. His case was put together by the Metropolitan
16 Police Service, and the Met's evidence in that case did indeed
17 show that Barot had engaged in written reporting. He had put
18 together reports about the means by which targets could be
19 attacked, the structural and security features of his potential
20 targets.

21 But what Saudi Arabia didn't mention is that there was
22 also a videotape found in Barot's seizure, and that while Saudi
23 Arabia's expert never saw that videotape, plaintiffs' expert,
24 Bassem Youssef did. And plaintiffs' expert Bassem Youssef
25 found that, in fact, Bayoumi's videotape bore all the

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1 characteristics, the hallmarks of al Qaeda casing of a
2 terrorist target, among other attributes.

3 It shows Bayoumi documenting in detail the structural
4 features of the U.S. Capitol Building, its columns, its means
5 of egress and ingress, its lines of approach, its gates, its
6 barriers, its adjacent areas, its surroundings. It shows
7 Bayoumi capturing the patrols of security guards, both inside
8 and outside the Capitol, and characterizing their movements and
9 their operations at the Capitol site. It furthermore
10 demonstrates the symbolic importance of the Capitol as a target
11 for a terrorist attack.

12 Bayoumi refers to it as the most important building.
13 He refers to it as the place where decisions are made and
14 procedures are effected. He says that its inhabitants include
15 approximately 500, the lawmakers, your Honor, in Bayoumi's
16 words "deciding the fate of the nation here." And he uses
17 language when filming inside the Capitol which characterizes
18 its inhabitants in these terms, he says: It is a workshop.
19 Senators, employees, security personnel, visitors, all of them
20 respectable.

21 Your Honor, the evidence shows that he is
22 characterizing them as respectable targets for a terrorist
23 attack. In particular, Bayoumi's utterances in his narration
24 on the video betray his true purpose. He shows his religious
25 defiance of the symbols of American power. In this instance,

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1 while filming the Capitol, he states, "There is no power nor
2 strength except through Allah."

3 And as Saudi Arabia conceded, he uses the terms of
4 "demons." He uses an Arabic phrase, (speaking Arabic), which
5 invokes Satanic connotations to describe the demons of the
6 White House; in other words, the infidel government of the
7 United States of America.

8 Bayoumi also shows in his video that he was again
9 operating under a cover. The submissions that Saudi Arabia has
10 made, that somehow because a squirrel ran across the frame or
11 because Bayoumi filmed what Mr. Kellogg called aesthetically
12 pleasing trees, that this turns the purpose of the video into
13 some sort of tourist folly.

14 On the contrary, your Honor, when you watch the video
15 footage, you will see that Bayoumi is, in fact, documenting
16 carefully his true target, the Capitol, and at times veering
17 off, presumably upon fear of detection by the very security
18 guards whose movements he is tracking, and films flower beds
19 and trees and other frivolous subjects.

20 That is not, however, the purpose. That is Bayoumi
21 using cover again. And the best example of this occurs at a
22 juncture in the video where Bayoumi is focusing on what Saudi
23 Arabia's papers have obsessed over, water fountains. Your
24 Honor, he films a water fountain and states, "These are the
25 water fountains found in many places around here," before

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1 panning to the right and stopping himself as he realizes his
2 vantage point is off.

3 He then resumes the footage and repeats verbatim the
4 very same words about the water fountain, purely the premise
5 upon which to pan around and film the forecourt of the rear
6 part of the Capitol, a security gate, an important line of
7 approach, and security officers performing their evening
8 patrols.

9 Your Honor, plaintiffs' papers set forth the details
10 about this casing video, including the fact that he uses a
11 timestamp: Capitol Hill. Time is 6:00 p.m., including the
12 fact that he refers to a plan. When filming the senators' cars
13 parked at the rear of the Capitol, he says, "You said that in
14 the plan." Operating according to a checklist, upon a tasking,
15 an assignment that he's performing.

16 We already heard the words, "I will get over there and
17 I will report in detail what is there." But what Saudi Arabia
18 failed to mention is that when he performs a full 360-degree
19 panorama of the Capitol and encounters a building whose name he
20 doesn't know, he states, "I don't know its name as of yet.
21 However, I will provide you with the results soon." Reporting,
22 providing results, operating according to a plan, these are the
23 hallmarks of a work assignment on which Bayoumi was casing the
24 United States Capitol.

25 And lest there should be any doubt, Bayoumi admits

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1 that his purpose is work on the videotape itself. When filming
2 an employee leaving the building, he states, "The working day
3 is about to end. Theirs, of course, not mine."

4 We heard Saudi Arabia's submission that Bayoumi's
5 presence on camera is somehow again a reason that we should not
6 regard this as casing. On the contrary, your Honor, Omar al
7 Bayoumi appends a signature to the Capitol casing footage, that
8 of a dutiful foot soldier who wants credit for performing the
9 assignment. He says three things. He says his name, Omar al
10 Bayoumi. He delivers a religious greeting, peace and the
11 blessings of Allah. And he says "from the United States of
12 America," not from Washington, D.C. This was not for his
13 friends in San Diego or his family. That was, your Honor, for
14 the persons he addresses as "esteemed brothers," (speaking
15 Arabic). In Arabic the phrase is used to denote deference, to
16 denote communion, to denote common purpose, brotherhood. And
17 Bayoumi uses that in his signature when he says, "Oh, beloved,
18 esteemed brothers, a greeting to you from Omar al Bayoumi."

19 He mentions Capitol Hill, the fact that it's the
20 center of the senate members, the fact that it's the American
21 Congress, in ways that differ from any other subject of his
22 footage on the video.

23 It's true that he went to other buildings. He went,
24 for example, to the Islamic Center of Washington. And
25 importantly, he went to the Saudi embassy. But the ways in

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1 which he films the Saudi Embassy, when placed in contrast to
2 the ways in which he films the Capitol, demonstrate the
3 divergence of the purpose for which he's there at the Capitol.

4 He exudes religious defiance. His narration is
5 careful documentation of the vulnerabilities of a symbol of
6 American power. And he cases that building with hostility.
7 When visiting the Saudi embassy, he states the Saudi embassy is
8 in this location at what he describes as the heart of the
9 American Capitol, the famous street in America. He exudes
10 pride at the fact that the government for which he works has a
11 place in the middle of Washington's prime real estate.

12 And then he films the Saudi flag, including the
13 *Shahada*, the proclamation of Islamic faith. The flag here,
14 fluttering up high. *Allahu akbar*, Allah is the greatest.
15 Glorifying the flag of the nation in whose agency he's
16 performing his assignments.

17 (Continued on next page)

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1 MR. SIMPSON: Your Honor, Omar Bayoumi's photo
2 collection also included his reporting on his trip to
3 Washington, D.C. Three photographs were recovered by the
4 Metropolitan Police Service.

5 The first showed Bayoumi in his business attire
6 outside the Saudi embassy, about to meet with Khalid Sowailem,
7 Mutaeb Sudairy, Adel al Sadhan, his Ministry of Islamic Affairs
8 colleagues. The other two photos show Bayoumi at the front and
9 at the back of the United States Capitol, memorializing his
10 presence there in performing a task he believed would further
11 the terrorist enterprise he was supporting.

12 Your Honor, as I stated earlier, nothing that Omar al
13 Bayoumi did in this case was his action alone. At every stage,
14 at every juncture, he called, he wrote, and he compiled video
15 reports on the very actions he was taking to prepare for and
16 provide support to the hijackers.

17 I'm happy to answer your Honor's questions on any of
18 those specific forms of support if you should have any further
19 inquiries based on this presentation.

20 There are a couple of further points I should like to
21 make, and if your Honor indulges before a potential lunch
22 break, I should just like to address those briefly.

23 THE COURT: Yes.

24 MR. SIMPSON: Thank you, your Honor.

25 Firstly, the submissions by Saudi Arabia talked about

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1 agency in a very dismissive fashion. Plaintiffs have shown
2 that Bayoumi and Thumairy were acting in the scope of their
3 agency when performing all of these actions. The "direction"
4 that your Honor anticipated in your 2018 decision has been
5 amply evidenced by the showings of reporting, of coordination,
6 and of joint actions by these Saudi government officials who
7 are demonstrated in the extremist network chart that I showed
8 earlier.

9 Among them are propagators who came to San Diego and
10 who again espoused the very doctrine that we talked about
11 earlier, the Jihadi doctrine. What Saudi Arabia described as a
12 quaint Qur'anic recital, by two propagators whom in fact
13 Bayoumi and Thumairy both hosted, again shortly before the
14 hijackers arrived — their names Abdullah Al Jaithen and Majed
15 Al Mersal — is in fact again an admission of the religious
16 orientation of the persons involved in this enterprise.

17 When asked to give a recital, the Sheikhs in fact
18 returned with a particular item of Qur'anic script, which is at
19 the heart of the Wahhabi Jihadi ideology. It is the "othering"
20 of the infidels. He states, when looking at a flowerbed at
21 SeaWorld in San Diego: "This is *their* paradise in this life,"
22 while *ours* awaits us "in the hereafter." It is the language,
23 your Honor, that mirrors extremist literature found in the
24 possession of Omar al Bayoumi at Al Madina Mosque, a book, a
25 pamphlet of the Ministry of Islamic Affairs known as Al Jihad,

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1 the Book of Jihad, and its concepts of martyrdom of Holy War,
2 mirror closely the ideology we hear being articulated by those
3 Sheikhs. And percipient witness testimony of the Usman Madha
4 confirms that extremist literature was also in the possession
5 of Fahad Al Thumairy. The very same doctrine, the Jihadi
6 doctrine, was in Saudi Arabia's texts that its propagators,
7 that its delegates, and that its agents not only used and
8 preached from, but also disseminated in their networks in
9 southern California.

10 We heard also that Saudi Arabia was purportedly an
11 ally of the United States, and therefore that it would never
12 have partnered with Al-Qaeda to attack its friend. Your Honor,
13 there's no credibility whatsoever to those submissions and
14 plaintiffs strenuously object to their characterization in
15 court.

16 Saudi Arabia was no ally of the United States in the
17 period in the 1990s when America needed its help most in
18 combating terrorism. Saudi Arabia paid mere lip service to the
19 demands that successive administrations made of Saudi Arabia.
20 Plaintiffs submitted the evidence of former National Security
21 Council Counterterrorism Director Steven Simon, who was
22 personally party to those bilaterals in the period in question
23 in the 1990s.

24 He wrote in his expert report that when asked for
25 exactly the forms of counterterrorism support that would have

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1 been needed to quell this acknowledged extremism problem within
2 the Ministry of Islamic Affairs, Saudi Arabia in fact further
3 pursued its agenda, its propagation, and poured oil on the
4 inferno. Simon's expert report carefully sets out the
5 alternative that Saudi Arabia was a transactional partner that
6 collaborated with the United States on certain ventures when it
7 suited Saudi Arabia, but in terms of counterterrorism, it was
8 in fact supportive of the extremist agenda that was being
9 pursued on its platforms, in particular overseas.

10 And here's the watershed, your Honor. Saudi Arabia's
11 response to Al-Qaeda terrorism and this form of virulent
12 extremism only changed in 2003 when Saudi Arabia was attacked
13 on its own territory. Prior to that point, its cooperation had
14 been lackluster, disingenuous, insufficient to help America in
15 combating Al-Qaeda.

16 When it was attacked on its own soil in 2003, Saudi
17 Arabia made a 180-degree turn and started to clamp down on the
18 extremism that was rife within its own ranks. And, in
19 particular, in Saudi Arabia's own account of its effort to
20 quell that extremism, it noted that there were hundreds of
21 extremists, Jihadis inside the Ministry of Islamic Affairs,
22 including the very propagators amongst the Sheikhs who had come
23 on visits to the United States; and that it needed to purge
24 them in order to protect itself from terrorism; and it
25 acknowledged that its own instrumentality, al-Haramain, had

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1 been involved in the 1998 Al-Qaeda bombings of the United
2 States embassies in Kenya and Tanzania.

3 Saudi Arabia's acknowledgement after the fact does
4 nothing to help the victims of terrorism who were unfortunately
5 targeted by its supported entities, its extremist networks, and
6 its agents, including those whom I've mentioned before the
7 Court today. And the submissions of Saudi Arabia in this case
8 that try to rewrite that history are totally inadequate to meet
9 that criteria.

10 Your Honor, I'm available to answer any further
11 questions and I may return to show further visual evidence
12 after the lunch break.

13 THE COURT: Thank you.

14 MR. SIMPSON: Thank you, your Honor.

15 THE COURT: Who else wants to be heard further and how
16 long do you anticipate?

17 MR. RAPAWY: Your Honor, my intent was to present a
18 rebuttal. I will try to keep it brief. There's obviously a
19 lot that's just been said, so I'll need to answer a fair amount
20 of it.

21 THE COURT: What do you consider brief?

22 MR. RAPAWY: Less than an hour. I'll try to keep it
23 under an hour if I can.

24 THE COURT: That's more specific.

25 Yes, sir.

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1 MR. KRY: Your Honor, of course we have Dallah Avco's
2 motion, as well. I expect our opening presentation on that
3 will be in the order of an hour.

4 THE COURT: Then we're going to take the lunch break.
5 We'll reconvene at 2:20 and see if we can finish this up.

6 Thank you.

7 (Luncheon recess)

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AFTERNOON SESSION

2:20 p.m.

THE COURT: Yes, sir.

MR. SIMPSON: Your Honor, we have attempted during the break to resolve the technical issue. I believe we may be able to now use the portal from the bench in order to conclude. I would propose, with your Honor's permission, to spend 15 minutes just concluding the presentation of plaintiffs' case.

THE COURT: Okay. You don't have to repeat yourself though.

MR. SIMPSON: Thank you. Your Honor, Gavin Simpson for plaintiffs again. I'll proceed with or without the visuals. We are having some technical difficulties in broadcasting, so we'll proceed to the final few points.

Firstly, your Honor, there is a very important item of evidence regarding the circumstances under which Omar Bayoumi met the 9/11 hijackers, which was the subject of one of your questions in the earlier part of the argument.

What Saudi Arabia has failed to recognize is that Omar al Bayoumi in fact traveled to Los Angeles on two consecutive days. The second of those days, February 1st, 2000, was the day he met the hijackers at the Mediterranean café. On the previous day, January 31st, 2000, the evidence shows that Bayoumi attended the L.A. consulate in order to submit his

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1 passport renewal application. That occurred on the Monday and
2 Bayoumi attended that appointment together with his family
3 members, his wife and three children, all of whose passports
4 were issued simultaneously with Bayoumi's. The means of
5 issuance of the passports, for all five family members, was
6 that they were dispatched in an envelope from the L.A.
7 consulate to Bayoumi's home address in San Diego, and the
8 postmark on that envelope, which was retrieved by MPS in its
9 seizure of Bayoumi's possessions, was February 2nd, 2000.

10 In light of that evidence, your Honor, Bayoumi's story
11 as to how he met the hijackers is a fiction. It's a fiction
12 that has been manufactured in order to disguise the fact that
13 the meeting with the hijackers was planned. It was planned in
14 advance through the same mechanisms I described earlier, the
15 coordination between Bayoumi and other Saudi government
16 officials. Notably, in this instance, Saudi Arabia used the
17 premises of its Los Angeles consulate, an important aspect for
18 agency, your Honor, the use of its facilities to advance the
19 plot. Bayoumi held meetings at the Los Angeles consulate on
20 both January 31st and February 1st, 2000. Those meetings, your
21 Honor, were with separate individuals, both of whom were
22 collaborating with Bayoumi in furtherance of this plot.

23 On January 31st, 2000, as Saudi Arabia's own
24 production confirms, Bayoumi met with Abdullah Al Awad.
25 Abdullah al Awad was introduced to Bayoumi by Khalid Al

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1 Sowaillem, head of the MOIA office in the Saudi Embassy in
2 Washington, D.C. Documents found in Bayoumi's possession note
3 that relationship: Abdullah Al Awad "through" Khalid Al
4 Sowaillem.

5 Bayoumi took his family with him on a trip to
6 Los Angeles on that day and the MPS recovered video evidence of
7 that trip. In particular, the video evidence shows that while
8 he went around Los Angeles with his wife and three children,
9 the clothing they're wearing is the same clothing that is then
10 featured in the passport photographs in the passports issued
11 from the consulate the following day. The children in
12 particular are wearing clothes that conform exactly with their
13 passport photographs. On that day, Bayoumi's meeting with
14 Abdullah Al Awad was for the purpose of having the passports
15 renewed and issued, which took care of his purported reason for
16 heading to Los Angeles.

17 The following day, when Omar Bayoumi traveled to L.A.
18 with Kaysan Morgan, the purpose of his trip had nothing to do
19 with the passport. He could neither submit an application nor
20 pick up an issued passport. Instead he went to the L.A.
21 consulate, as Saudi Arabia's answers to interrogatories
22 confirm, together with Morgan, and Morgan was not included in
23 the production when it mentioned Bayoumi's meeting with
24 Al Awad. These were, your Honor, different days and different
25 meetings.

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1 On February 1st, the day that Bayoumi met the
2 hijackers, his meeting in private at the L.A. consulate was
3 with Ismail Mana, the Islamic affairs official at the Saudi
4 consulate. Morgan was not party to the content of their
5 conversation, but Morgan identified Mana in testimony before
6 this Court. Furthermore, Bayoumi and Mana would meet again
7 later in the day together with Fahad Al Thumairy, and that
8 meeting took place after the meeting with the hijackers.
9 Again, the evidence showing that Bayoumi was reporting on the
10 meeting he held with the hijackers to Thumairy and to Mana.

11 There is also significant corroborating evidence in
12 the form of the phone calls. Eyewitness testimony from Morgan
13 confirmed that Bayoumi called home as they were about to depart
14 from Los Angeles to San Diego. That call is recorded on the
15 evening of February 1st, the day when Bayoumi and Morgan were
16 traveling back from having met the hijackers. Calls with the
17 consulate in that period in fact reflect coordination for a
18 purpose entirely different from the issuance of a passport.
19 Over six successive workdays, Omar Al Bayoumi was in telephone
20 contact with the Saudi Embassy, its Islamic affairs officials.
21 Those six business days include the end of the preceding week,
22 up to January 28th, and through his meetings with Al Awad and
23 Mana and with the hijackers the following week.

24 While we're on the subject of phone calls, your Honor,
25 Saudi Arabia has represented that the phone calls evidence is

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1 unreliable. In fact, its submissions are based on several
2 mischaracterizations of the actual record evidence.

3 Firstly, Omar Al Bayoumi was installed at Al Madina
4 Mosque where he performed his work for Saudi Arabia in a
5 dedicated office, with a dedicated single-line telephone, which
6 was kept locked from all the other congregants who would use
7 the main mosque phone in order to make their calls. The call
8 records for Bayoumi's mosque office telephone track with his
9 periods of presence in San Diego and in fact show no usage
10 during his periods of absence from San Diego. They also
11 correspond with calls placed on Bayoumi's other telephones,
12 including his cellphone, and the numbers dialed from that
13 mosque office phone correspond with the evidence of numbers
14 Bayoumi recorded in his handwritten address book as seized by
15 the Metropolitan Police Service. There should be no dispute
16 that the caller, when calls are made from that number, is Omar
17 Al Bayoumi. And indeed, there is no other person at the Al
18 Madina Mosque who would be calling officials, including
19 Thumairy, and Sowaillem, and Sudairy, and there is no other
20 person who would be placing calls to Saudi Arabia. Plaintiffs'
21 expert, Bassem Youssef, who conducted our phone calls analysis
22 concluded that these were the calls of Bayoumi and indeed that
23 they were for the work purpose of reporting on his activities
24 in support of the hijackers. I mentioned previously the
25 December 2nd calls. Saudi Arabia has represented that Omar

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1 Bayoumi had left the country. In fact, he was back, he was in
2 San Diego at the time that the hijackers were about to leave,
3 and he was using this mosque office phone to place calls to his
4 work colleagues.

5 As for Fahad Al Thumairy, Thumairy used two cellphones
6 during the period in question. The first, which was subscribed
7 to in the name of another Saudi government official, one Faisal
8 Al Muhanna, was a number that was recorded in Omar Al Bayoumi's
9 handwritten address book admitting that it belonged to Fahad Al
10 Thumairy. Bayoumi kept, as I mentioned earlier, continuously
11 updated records regarding his key work contacts, and for
12 Thumairy, he had home, mosque, and cellphone numbers recorded.
13 And indeed, there are upwards of 60 calls between Bayoumi and
14 Thumairy using those numbers in the period in question. The
15 FBI itself found that there were 67 calls between Bayoumi and
16 Thumairy, which it characterized as coordination calls in the
17 period that the hijackers were in southern California.

18 Production in this case, your Honor, has expanded that number
19 yet further because the MPS produced calls of Bayoumi's phones
20 in the United Kingdom and demonstrated that Bayoumi in fact
21 remained in contact and in coordination with Fahad Al Thumairy
22 up through September 2001. Nine days before the 9/11 attacks
23 on Sunday, September 2nd, 2001, Bayoumi used a phone calling
24 card, which was seized from his possession by the MPS, to dial
25 Fahad Al Thumairy's home number. Thumairy, on that Sunday,

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1 received a call for 2 minutes and 40 seconds from Bayoumi, and
2 then flew to Saudi Arabia where documentation in the KSA
3 production proves that he arrived the following day, September
4 3rd, and was indeed out of the country at the time of the 9/11
5 attacks. This demonstrates, your Honor, that this was not some
6 fleeting coordination, some fleeting venture that expired after
7 a period of time, but rather that this was continuous and it
8 did indeed continue all the way through the 9/11 attacks.

9 Toward that end, I would like to conclude my
10 presentation by presenting two exhibits. I'm told we don't
11 have the ability to show them on the screen, so I'm going to
12 characterize them for you, your Honor.

13 The first is an aviation drawing. This is Plaintiffs'
14 Exhibit 11N. Your Honor, we can provide a hard copy to the
15 bench.

16 MR. POUNIAN: May I approach, your Honor.

17 THE COURT: Yes.

18 MR. SIMPSON: Your Honor, this is an aviation sketch
19 and accompanying mathematical calculations that Omar Bayoumi
20 prepared. He admitted this was his handwritten sketch and
21 calculations at his deposition. It's on a United States yellow
22 notepad in Bayoumi's handwriting. It contains the words that
23 he is calculating the height of the plane from the earth in
24 miles and the distance of the plane to the horizon. He also
25 accompanies it with a sketch of an airplane.

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1 Plaintiffs have submitted the expert analysis and
2 opinion of pilot Captain Barry Schiff with upwards of seven
3 decades of aviation experience. Captain Schiff testified that
4 the equation Bayoumi wrote in his notepad is an aviation flight
5 planning tool used by pilots prior to takeoff in order to
6 establish the approximate altitude and distance at which they
7 would be able to make visual sighting of a particular waypoint,
8 destination, or target on the ground.

9 On the handwritten sketch, your Honor, you'll see
10 certain numbers. Captain Schiff provided an analysis of these
11 numbers, including that the numbers Bayoumi input into this
12 flight planning tool were highly significant to the
13 perpetration of the 9/11 terrorist attacks. Bayoumi was
14 calculating the height at which a pilot would have to fly above
15 ground in order to be able to see an object, such as a
16 building, at a range of between 50 and 70 miles. This is the
17 square root calculation that is directly beneath the aircraft.
18 Captain Schiff confirmed that the 50-to-70-mile range chosen by
19 Bayoumi was highly significant because it's within that range
20 that the hijacker pilots would want to first establish their
21 targets and pick up visual cues in order to fly aircraft into
22 those targets.

23 Captain Schiff also analyzed the flight path
24 information for the hijacked airliners on 9/11. By way of
25 example, he found that American Airlines Flight 11, which was

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1 crashed into the World Trade Center, began its descent at about
2 67 miles -- therefore, within the 50-to-70-mile range that
3 Captain Schiff confirmed. There was also the same altitude
4 information that the hijackers on board United Flight 93, which
5 was destined for the Capitol building, input into their cockpit
6 controls.

7 Your Honor, Captain Schiff also found that Bayoumi
8 made a second highly significant flight planning calculation,
9 and you can see that on the left-hand side of the aviation
10 sketch. It reads 52 minus 8 equals 44. Your Honor, the
11 navigation beacon at Robbinsville in New Jersey is a
12 significant flight planning point for pilots flying in the
13 tristate area. Bayoumi's calculations matched the distances
14 that pilots would require to calculate the distance from the
15 Robbinsville navigation beacon to the World Trade Center:
16 Specifically, 52 is the distance from Robbinsville to LaGuardia
17 Airport; 8 is the distance short of LaGuardia that the World
18 Trade Centers are; giving 44 miles from the beacon to the
19 target.

20 Saudi Arabia has mischaracterized Captain Schiff's
21 opinions and testimony in its papers, your Honor. We again
22 point to the fact that this evidence was seized in Al Bayoumi's
23 possession. At his own deposition, Bayoumi was unable to
24 provide any explanation as to why he had written down these
25 calculations and this diagram. As an aspect, your Honor, of

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1 foreknowledge, the fact that Omar Al Bayoumi created this
2 flight planning tool demonstrates that he was aware of some
3 element of the modus of the attack.

4 And I want to conclude with a final item of evidence
5 which is contained in plaintiffs' papers. It's in our exhibit
6 706, and it pertains to the cross-country trip undertaken by
7 the hijackers, in this case Nawaf Al-Hazmi and the pilot
8 hijacker from Flight 77, Hani Hanjour.

9 Hani Hanjour and Hazmi drove from Mesa, Arizona to
10 Falls Church, Virginia, between the period of March 31st and
11 April 3rd, 2001. On March 31st, 2001, Omar Al Bayoumi placed a
12 30-minute call to a number in Columbia, Missouri in the
13 midwest, which belonged to the embassy MOIA official Mutaib Al
14 Sudairy. Sudairy's number is written in Bayoumi's handwritten
15 address book as well as in his other papers. Importantly, a
16 document found in Bayoumi's green folder, which the MPS seized
17 in September 2001, appears to correspond with the call he made
18 to Sudairy on March 31st. The timing, your Honor, confirms
19 that this call was made in order to assist with the planning of
20 the hijackers' cross-country trip.

21 Bayoumi wrote Sudairy's name and coordinates, and
22 three cities on the hijackers route east. He wrote Kansas
23 City, he wrote St. Louis, and he wrote Columbia, Missouri. On
24 the same piece of paper, Bayoumi also wrote the number for a
25 second MOIA official Adel Al Sadhan, the same MOIA official

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1 that had visited with Sudairy to southern California in
2 December '98 and January '99, the same MOIA official whom
3 Bayoumi filmed on his Washington trip video footage with
4 Sudairy in Washington, D.C., who was staying at the time in
5 Alexandria and who had just been deployed to the embassy as a
6 diplomat. The number he wrote for Sadhan had a "917" New York
7 area code. Sadhan was assigned to work places in both Oklahoma
8 and Kansas by Saudi Arabia during the period in question. He
9 was, like Sudairy, however, attached to the Saudi Embassy and
10 reported directly to Khalid Al Sowailem.

11 We know the trajectory of the hijackers' cross-country
12 trip because on April 1st, Hazmi, the driver, received a ticket
13 that placed him in Oklahoma. We also know that they arrived in
14 Front Royal, Virginia, by April 3rd because Hani Hanjour
15 performed an ATM transaction. On the days between April 1st
16 and April 3rd, the evidence shows that Hazmi and Hanjour likely
17 met with Sadhan and Sudairy, the two MOIA officials and Saudi
18 diplomats, in their respective locations.

19 The evidence also shows that Bayoumi was the person
20 who helped to plan and coordinate this trip. In a document
21 found in Bayoumi's handwritten address book, Bayoumi referred
22 to this trip in two items of text, which he circled on his
23 page. The first was the location of Mutaib Al Sudairy:
24 Columbia, Missouri. That was the assigned workplace where
25 Sudairy also lived earlier, in the year 2000, for four months

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1 with an Al-Qaeda logistics man, Ziyad Al Khaleel. But in March
2 and April of 2001, the purpose of Bayoumi's planning was for
3 Sudairy to meet with someone different. In the second boxed
4 text on his handwritten note, he wrote down in Arabic the name
5 Rabi'ah Ibn Ka'ab.

6 Your Honor, I referred earlier to the concept of a
7 kunya, a name that is used by persons familiar with one another
8 within the Arabic-speaking community. Al-Qaeda also used
9 kunyas and they used them for operational purposes. Saudi
10 Arabia's own exhibits included the text of an account by Yosri
11 Fouda, a journalist who interviewed Khalid Sheikh Mohammed and
12 Ramzi bin al-Shibh, and among other items extracted from them
13 were the kunyas of all 19 9/11 hijackers. For Nawaf Al Hazmi,
14 he wrote that he was named after a servant of the Prophet,
15 Rabi'ah Ibn Ka'ab. The 9/11 commission confirmed that "Rabi'ah
16 Al-Makki," in other words Rabi'ah of Mecca, Saudi Arabia, was
17 the name by which Hazmi would be known among the other 9/11
18 operatives.

19 Your Honor, this is not knowledge that is shared in
20 public. This is not the name by which Hazmi registered himself
21 in the San Diego phone book, and this is not knowledge that
22 would be made available to anyone other than those involved in
23 the operational elements of the plot. Omar Al Bayoumi knew
24 that Nawaf Hazmi was Al-Qaeda, he knew his Al-Qaeda code name,
25 his kunya, and he wrote it down in connection with a meeting

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1 planned with another Saudi government official, Mutaib Sudairy
2 of MOIA.

3 The hijackers' cross-country trip demonstrates looming
4 proximity in both time and geography to the sites of the 9/11
5 attacks. When the hijackers arrived in Virginia, they were
6 hosted by what the FBI described as an "East Coast network,"
7 which, again, had nexus to the west coast support that had been
8 provided by Saudi Arabia and its agents. In particular, in
9 June 2001, a call was placed by members of that "East Coast
10 network" to Ismail Mana, the same Saudi consulate official that
11 Bayoumi met with the day before he met the hijackers.

12 The common denominator between the West and East Coast
13 networks was also the radical Jihadi cleric, Anwar Aulaqi, who
14 as Imam at the Al-Ribat Mosque in San Diego, is known to have
15 provided various forms of support to Hazmi and Mihdhar,
16 including helping them set up their bank accounts and including
17 introducing them to others who would provide material support
18 together with Bayoumi and Thumairy. Aulaqi was transferred to
19 Falls Church, Virginia, which was the destination of Hazmi's
20 cross-country trip, and where he would attend the Dar Al-Hijrah
21 Mosque to which Saudi Arabia installed Aulaqi and funded him
22 there under the World Association of Muslim Youth.

23 Your Honor, it may seem at times a lot of information
24 to get one's arms around because there are indeed many Saudi
25 government officials involved in this enterprise, in this

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1 network of support in various different roles and
2 relationships. But I should like to conclude my presentation
3 on behalf of plaintiffs by reminding your Honor that the burden
4 that plaintiffs hold at this stage of the proceedings is a
5 burden of production, and we have more than amply met that
6 burden of production by the evidence that we have furnished to
7 the Court together with our papers, our opposition papers, and
8 our sur-reply papers to Saudi Arabia's renewed motion to
9 dismiss.

10 As a reminder, your Honor, everything that the MPS
11 seized directly from Omar Al Bayoumi is hard evidence:
12 Bayoumi's handwritten address book, which provides a Rosetta
13 Stone for the understanding of the network within which Saudi
14 government officials operated to provide support; the aviation
15 sketch, which the MPS provided by means of a crime scene
16 photograph immediately after the raids on Bayoumi's residences,
17 but which did not figure in the 9/11 commission's report or the
18 FBI's investigations until at least a decade after the attacks;
19 the video of Omar Al Bayoumi casing the United States Capitol;
20 the video footage of Omar Al Bayoumi's welcome party for the
21 hijackers in San Diego. All of these items are hard evidence,
22 your Honor, and plaintiffs have furnished them for your
23 consideration in this case. In response, Saudi Arabia has
24 provided the stock denials according to carefully crafted
25 formulaic questions of its own witnesses at depositions. And

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1 as plaintiffs have demonstrated by juxtaposing that testimony
2 with the raw evidence, Saudi Arabia's depositions constitute a
3 pattern of lies and deceit.

4 In light of what plaintiffs have shown in their
5 pleadings, most of the denials of relationships and roles in
6 Saudi Arabia's deposition testimony have become incredible.
7 Fahad Al Thumairy claiming he did not know Omar Al Bayoumi.
8 Omar Al Bayoumi claiming that while he knew Fahad Al Thumairy,
9 he didn't know he worked for Saudi Arabia. Ismail Mana
10 claiming that he didn't know that Fahad Al Thumairy worked for
11 Saudi Arabia. The deputy ambassador, Ahmad Al Qattan claiming
12 that he didn't know the Ministry of Islamic Affairs had an
13 office in the Saudi Embassy. Your Honor, these are incredible
14 denials and they should not be credited in this case. What
15 should be credited is the raw, hard evidence that plaintiffs
16 have produced, and we submit that for your consideration.

17 Your Honor, we remain available for questions after
18 the other parties have made their pleadings and thank you for
19 your time.

20 THE COURT: Thank you.

21 MR. RAPAWY: Good afternoon, your Honor. For Saudi
22 Arabia, may it please the Court.

23 The presentation you have just heard from plaintiffs,
24 despite the closing characterization, is in fact long on
25 assertions and short on evidence. I cannot address every

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1 misstatement that was made to you orally, I will do my best to
2 get the highlights, but I'd be up here for more than an hour if
3 I tried.

4 But every statement is addressed in our response to
5 their averment and has been shown to be either contrary to
6 evidence, speculation, or based solely on hearsay, such as the
7 preliminary FBI reports. There is in fact no evidence of
8 direction. Indeed, none that any senior Saudi official,
9 including Khalid Al Sowailem, who has finally emerged as their
10 candidate at oral argument, even knew who the hijackers were.

11 If the Court reaches the question, there is also no
12 evidence that Al Bayoumi knew the hijackers were terrorists or
13 that he supported terrorism. And there's no evidence that
14 Fahad Al Thumairy did anything at all to help the hijackers,
15 much less that he was a supporter of terrorism, quite the
16 contrary.

17 I will begin with the lack of direction point. And I
18 do think it is necessary to start by noting that the U.S. and
19 Saudi Arabia are in fact long-standing strategic partners. And
20 you don't have to take that from me, your Honor, you can look
21 at the U.S. reports at paragraph 8 of our averment or
22 plaintiffs' own experts' statements, before they were retained
23 as experts, in paragraph 9.

24 So Mr. Nakhleh published an article in 2019 referring
25 to Saudi Arabia and its allies, including the United States,

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1 and Mr. Simon before he was a retained -- called Saudi Arabia
2 in 2016 a staunch ally of Saudi Arabia. Sorry. The U.S. was a
3 staunch ally of Saudi Arabia since 1945 and Saudi Arabia is a
4 longtime U.S. partner with a close intelligence relationship
5 essentially for combating terrorism. Now he changed his mind
6 in his report, but I submit that his previous statement is more
7 reliable.

8 There is also ample evidence that Saudi Arabia and
9 Al-Qaeda recognized each other as bitter enemies throughout the
10 1990s, and I would refer the Court to paragraph 62 of our
11 averment and 53 of our response to plaintiffs' averment, and
12 that includes as early as 1990 and an eyewitness hearing
13 bin Laden tell a member of the Royal Family that he doesn't
14 recognize Saudi Arabia, the king, the crown prince, or the
15 Royal Family. The declaration of Jihad in 1996, which
16 condemned both the United States and Saudi Arabia as -- this is
17 written by bin Laden, to be clear. He condemned both the
18 United States and Saudi Arabia as enemies of Islam. In
19 February 1998, the report from bin Laden urging Muslims to kill
20 Americans and their allies, and he surely included Saudi Arabia
21 in that. The 2004 joint FBI -- CIA/FBI assessment and, again,
22 plaintiffs' expert Nakhleh, who conceded at his deposition that
23 before the 9/11 attacks, there was a long and intense history
24 of hostility between Saudi Arabia and Osama bin Laden.

25 I want your Honor to keep that in mind as you consider

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1 the likelihood of this scenario you've been presented in which
2 there were literally dozens of employees of Saudi Arabia who
3 Al-Qaeda trusted enough to disclose the identities of its
4 hijackers and its attack plan to.

5 That is not plausible, your Honor, in light of many
6 other facts, including the adverse actions that Saudi Arabia
7 took against bin Laden in the 1990s, stripping him of his
8 citizenship, freezing his assets, attempting to extradite him
9 from Afghanistan, and there were even reports that Saudi Arabia
10 tried to assassinate bin Laden more than once. Although, I
11 can't speak to the truth of those, it's not in the record, but
12 I can say that it's significant that bin Laden appears to
13 believe them as the 9/11 report notes on page 63.

14 One of the -- not only was there political opposition
15 between Saudi Arabia and Al-Qaeda, but there was also strong
16 religious opposition. Plaintiffs have argued that -- they used
17 the term Wahhabism, which we objected to, it is not a word that
18 Saudis use to describe their own religion, but the correct term
19 would be Hanbali Salafism, Salafism meaning referring to the
20 teachings of the Prophet and the generations that followed him
21 after immediately -- it could be equated to fundamentalism in
22 the U.S. vocabulary -- and then Hanbali being one of the schools
23 of Islamic jurisprudence.

24 We presented evidence at pages 5, 6, 7 -- I'm sorry.
25 Paragraphs 5, 6, 7 of our averment that western scholars

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1 recognize that there is a spectrum of opinions, as Mr. Simpson
2 denied, among Hanbali Salafis, and that many of them are
3 quietists, and that quietists do not in fact support attacks on
4 western allies. And that's supported not only by our own
5 evidence and our own experts, but by the testimony and the
6 admissions of their own experts.

7 Returning for a moment to Al Sowailem, there is no
8 evidence that Khalid Al Sowailem knew who the hijackers were -
9 paragraph 184 of our averment. There is no evidence that he
10 ever directed either Al Bayoumi or Al Thumairy to help the
11 hijackers - that's pages 722 to 723 of Bayoumi's transcript,
12 and 491 to 492 of Thumairy's transcript.

13 Now, the contrary evidence that plaintiffs come
14 forward, is they say, well, these phone calls were suspicious.
15 And I would like to address the phone call evidence, which
16 Mr. Simpson alluded to near the end of his presentation.

17 Plaintiffs' evidence of phone calls is pervasively
18 unreliable and it is inadmissible as a whole. Youssef's
19 original phone charts created -- had contained massive errors
20 about who made calls to whom and when. We pointed those out in
21 detail on our opening brief, pages 26 to 28 in footnotes 27 to
22 29. So they came back with new charts in their opposition,
23 including 26 new charts. Sorry. 26 charts, some of which are
24 new, others of which overlap with Youssef, Youssef which
25 contain changes, they made other changes on May 8th. The 26

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1 phone charts on which they rely for their phone evidence are
2 not original documents. So if they are admissible evidence to
3 this court, and everyone agrees that plaintiffs need evidence
4 at this stage, they would have to be summary exhibits. Summary
5 exhibits must faithfully represent underlying evidence, and
6 they cannot contain argumentive inferences. We've cited the
7 John Wiley case, 2018 WL 8996333 for that point in our briefs.

8 In addition, the underlying evidence has to be
9 admissible. So they cannot rely on hearsay and then swoop it
10 into their chart, and then claim that the chart itself is
11 evidence of whom called whom on which date.

12 And plaintiffs have repeatedly asserted that
13 purportedly important calls occurred based on unreliable
14 evidence. None of the following calls that they have put
15 forward in their papers appears in any contemporaneous record.
16 The alleged call from Malaysia to Al Thumairy, which is based
17 on a hearsay FBI document citing an anonymous source –
18 paragraph 1401 of our response to their averment. The
19 speculative conference call, again based on hearsay documents,
20 among Al Bayoumi, Al Thumairy, and Mana, there is no evidence
21 that that call happened, and the very document that they cite
22 questions the reliability of the information it contains –
23 paragraph 1262 of our response to their averment.

24 And the alleged call from Al-Hazmi to Al Bayoumi, the
25 only phone contact they allege between Bayoumi and Al-Hazmi is

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1 also based on hearsay -- and that's paragraph 1750 of our
2 response to their averment. There is no evidence, even
3 hearsay, of any calls between the hijackers and Al Thumairy,
4 the hijackers and Mana, the highjackers and Al Sowailem, or
5 anyone else at the Saudi Arabian embassy or consulate.

6 With regard to the attribution of calls, you heard
7 today about the handwritten phone book that was -- is part of
8 Plaintiffs' Exhibit 12AA. That document is inadmissible
9 hearsay. There is no record evidence as to the creation and
10 maintenance of it. You can credit them with the assumption
11 that Al Bayoumi wrote it, but there is no evidence that he
12 wrote it within -- in a manner that would support its admission
13 as a business record, and there was no evidence that his
14 creation of it was within the scope of his employment for Saudi
15 Arabia. So as against Saudi Arabia, it is inadmissible
16 hearsay.

17 You heard about the telephone call -- the telephone
18 and the fax at the Al Madina mosque. They claim he was the
19 only one who made calls.

20 (Continued on next page)

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1 MR. RAPAWY: That assumption leads to absurd results.
2 Their own phone charts, therefore, show that that number
3 calling al Bayoumi, so he must be calling himself, according to
4 their assumption. That's their Exhibit 12A, the call at
5 January 24, 2000 at 4:33 p.m.

6 And as for the question of whether he was the only one
7 who could use that phone line, his testimony is that the phone
8 ending in 3142 -- that's the mosque line -- was shared by two
9 office telephones at the mosque, not just the one in his
10 office, and anyone could use it. So plaintiffs say that maybe
11 the one in the office was just his, but there's another phone
12 on the same line, which they completely ignore.

13 With regard to the cell phones that they attribute to
14 al Thumairy, this came up in your discussion with Mr. Kellogg.
15 I have the record cites for it. There is no evidence that
16 Faisal al Muhanna or Saleh al Hatlani were frontmen who
17 supplied al Thumairy with phones. We discussed this at
18 paragraphs 738 and 739 of our response to their averment, and
19 Sageman discusses it in pages 628 and 29 of his report.

20 But more than that, it doesn't make any sense because
21 these phones were calling the same numbers that al Thumairy
22 called from phone numbers that were registered in his own name.
23 Why would he get a secret telephone through a frontman and then
24 use it to -- and then use his own phone to make operational
25 calls to the same number as he was reportedly trying to

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1 conceal?

2 And in addition, the allegation that the 077 number
3 belonged to a frontman is inconsistent with the evidence that
4 al Thumairy later registered the number after the 9/11 attacks
5 in his own name. The logical inference of that is that he used
6 the 077 number later. It is not that he was attempting to
7 conceal his association with the 077 phone number, because he
8 could have done that by not registering it in his own name.

9 And lastly, I want to point out that on plaintiffs' --
10 for example, in a number of places, but for example, in
11 Plaintiff's Exhibit 12C --

12 THE COURT: Could you slow down a little bit.

13 MR. RAPAWY: I'm sorry, your Honor. I'm a little
14 worked up, I suppose.

15 On Exhibit 12C, plaintiffs allude to the Saudi
16 embassy, calls to the LA consulate, the Saudi Cultural Mission,
17 and individual Saudi employees who never have been alleged to
18 have anything to do with the 9/11 attacks. And there are
19 innocent explanations for the phone contacts that are real, the
20 phone contacts that did occur.

21 The witnesses almost invariably don't recall the
22 calls. That's unsurprising after 20 years. So we have to look
23 to likely explanations. One explanation is that Salafi Muslims
24 often call imams for religious advice about prayers, worship,
25 and ritual. Al Bayoumi testified that he made calls like that

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1 to both al Thumairy and al Aulaqi, either asking his own
2 questions or to pass on those to congregants at the mosque.

3 Faisal al Muhanna gave similar testimony. And al
4 Thumairy testified that he received calls of that kind. And
5 I'll refer the Court to paragraphs 318, 583, 744, and 1254 of
6 our response to their averment for the detailed testimony on
7 those subjects.

8 In addition — and this is a point that Sageman makes
9 in his report at page 463 — a lot of these calls occurred
10 during Ramadan. In fact, the number of calls that al Thumairy
11 received about doubled during Ramadan, not quite, but almost
12 doubled. It's very common for observant Muslims to call each
13 other during Ramadan, and it's particularly common for them to
14 call imams because a lot more religious questions come up.

15 It's like a rabbi getting more calls during the high
16 holy days or a pastor getting more calls during Christmas.
17 It's their busy time of year. So if you want an answer to why
18 some of the people who plaintiffs claim were part of the
19 support network and who were religious Muslims, many of them
20 imams, were talking more often during the month of Ramadan, you
21 don't have to look very hard.

22 Al Bayoumi also had innocent reasons to call the
23 embassy and the consulate, especially when you take into
24 account that a lot of the calls were due to the Cultural
25 Mission, which handles Saudi students in the U.S., their

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1 educational records, and assists them within education that
2 they're pursuing. He was in touch with the embassy and the
3 cultural missions to get his educational records certified.
4 And I believe he was also in contact with the Islamic affairs
5 individuals because he was seeking support for the al Madina
6 Mosque where he volunteered. I'll get back to his volunteer
7 work in a little bit, but it provides an innocent reason for
8 him to be in touch with these people.

9 And for analysis of those phone patterns, Mr. Simpson
10 made the statement that we'd submitted no expert evidence on
11 this topic. That's not true. I would refer you to pages 43
12 and 84 of Sageman, and 665 and 66 of Sageman and much of the
13 surrounding part of his report. He goes through the phone
14 calls in a fair amount of detail.

15 And al Thumairy of course had innocent reasons to call
16 the embassy and the consulate, not just about religious
17 questions, but also about administrative matters. Al Sowailem
18 was his nominal supervisor. And you know, they were
19 frequently -- he testified that they were frequently in touch
20 about things such as vacations.

21 And as far as their reliance on Youssef is concerned,
22 we've moved to exclude him as unreliable. The main point I
23 want to make to your Honor today is that when we tried to ask
24 Mr. Youssef about the nature of his methodology for analyzing
25 these phone calls and making these extremely aggressive

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1 statements about what happened during phone calls, what people
2 were thinking, whether they were lying, he said his methodology
3 was classified and he wouldn't testify about it.

4 So I would urge the Court not to give Youssef's
5 analysis weight, even if you find it admissible, because it was
6 not properly subject to cross-examination that would expose its
7 weaknesses.

8 Now, I want to touch for a little bit on some of the
9 statements that were made about Adel al Sadhan and Mutaeb al
10 Sudairy, who were the purported advance teams. There is no
11 basis for that accusation, for that allegation. To begin with,
12 plaintiffs have no coherent theory of what purpose an advance
13 team would even have served, if these individuals were sent
14 there in late 1998 and early 1999.

15 Advance teams would have been acquiring information
16 that was relevant to the hijackers' plans such as English
17 language schools and flight schools. They have no evidence
18 that that happened. The hijackers were looking for English
19 language schools and flight schools while they were in San
20 Diego.

21 There is no evidence that al Sadhan and al Sudairy had
22 any contact with al Qaeda. Plaintiffs have given you two
23 things which I'd like to address on that subject.

24 One of them is a hearsay statement in a preliminary
25 FBI report that the two of them had a nexus to al Qaeda.

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1 There's no evidence to support that. It's just some FBI agent
2 speculation. And the other is that al Sudairy was roommates
3 later on with a man named Ziyad al Khaleel, who allegedly
4 helped Osama bin Laden get a satellite phone. But there is no
5 evidence that al Sudairy knew about that. It's pure guilt by
6 association. It happened years before they allegedly shared a
7 room, and there's no evidence to be drawn, no inference to be
8 drawn from the mere fact that they happened to be roommates.

9 I want to talk a little bit about the correspondence
10 from al Bayoumi that plaintiffs have alleged was suspicious.
11 The letters back and forth between the embassy — these were
12 previously under seal, but pursuant to your Honor's order,
13 they're now unsealed — are innocuous. They're letters of
14 thanks.

15 Al Bayoumi testified that when somebody comes to
16 visit, we thank everyone. And that is what he did. He wrote
17 letters, including to the minister of Islamic affairs thanking
18 him for sending two Ramadan imams to the al Madina Mosque. Did
19 the minister read the note? I rather doubt it, but it was
20 rather polite of al Bayoumi to send it.

21 And the letter to Saad al Habib, you heard several
22 times the statement made that Saudi Arabia funded the al Madina
23 Mosque. That is not supported by the record, and there is no
24 evidence of it. The evidence shows that Saad al Habib is the
25 one who funded the mosque. And allegedly he was associated

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1 with al Haramain, but I'm not aware of any evidence in the
2 record to support that. And even if he were, al Haramain is
3 not Saudi Arabia, as your Honor ruled in the March 2018 order.

4 The letter to al Habib was sent in February 1999,
5 before the 9/11 plot was even conceived. And I want to make
6 sure that's clear because there are, again, some statements
7 made that are unsupported by the record about when the planning
8 for the 9/11 attacks occurred. And let me make sure I have the
9 cites to hand. And I apologize if the citations are tedious,
10 your Honor, but I need to be able to point you to the parts in
11 the record where this material is actually discussed so that it
12 doesn't become one lawyer making argumentative statements
13 against another, but you can go and look and see what support
14 they actually have for these statements. And you will
15 conclude — I think if you do, when you do, maybe you have
16 already — that there is no support for them.

17 So the record has two reasonably possible dates for
18 the beginning of the 9/11 plot. We discussed this at
19 paragraphs 54 to 56 of our averment, and 1008 and 1013 of our
20 response.

21 The 9/11 supports a date no earlier than March 11,
22 which was the date on which bin Laden told Khalid Sheikh
23 Mohammed that al Qaeda would support his proposal. But the
24 targets of the attacks were not known at that time, and they
25 became clear only after further discussions. That's pages 154

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1 to 155 of the 9/11 report.

2 Khalid Sheikh Mohammed's statement used in the
3 Moussaoui trial, which plaintiffs themselves submitted as an
4 exhibit, gives the same March or April 1999 date. That's
5 Plaintiffs' Exhibit 31, paragraph 6. Parenthetically, after
6 they submitted that, they realized it was a harmful document to
7 them, so they tried to withdraw it. Our position is they
8 waived objections to its admission, and it's in the record.

9 And Sageman also talks about some later discovered
10 papers that weren't available to the 9/11 Commission -- this is
11 at pages 125 and 126 of his report -- that support a date, as he
12 explains, of a conception date of the plot of November 1999.
13 But whether it's March or November 1999, the letter to al Habib
14 in February 1999 could not have been part of the plot. It's
15 simply too early.

16 You also heard allegations that al Bayoumi arranged
17 for al Sudairy and al Sadhan to stay with Abdussattar Shaikh.
18 All of the relevant witnesses testified that this did not
19 occur. Bayoumi and Sudairy and -- in fact, Sudairy testified
20 that Shaikh approached them in the mosque and offered to host
21 them. That's pages 164 to 170 of his transcript.

22 There is also no evidence to support the allegation
23 that either of them ever met the hijackers on their trip across
24 the country, as was presented to you towards the end of
25 plaintiffs' presentation. The assertions to the contrary are

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1 pure speculation.

2 Now, there is a publically released document that
3 shows that Hanjour and al Hazmi went from Oklahoma City to
4 Falls Church, Virginia in April 2001. And Youssef asserts that
5 the shortest route goes through Missouri, and that it would
6 have been possible, they could have gone a hundred miles out of
7 their way to meet with al Sudairy. That's paragraph 1849 of
8 our response to their averment.

9 Our Exhibit 287 shows that's not actually the shortest
10 route. The shortest route would go through Arkansas, at least
11 in terms of time. But they're pretty close, so maybe they went
12 through Missouri. But there's no evidence that they went to
13 Columbia, none whatsoever.

14 And with regard to the allegation that al Bayoumi used
15 the so-called code name in his notes, the purported code name
16 is Rabia al Makki. That's the name the 9/11 Commission has for
17 Hazmi's al Qaeda code name. The source that plaintiffs cite
18 states that Rabia al Makki was named after Rabi'ah ibn Ka'ab,
19 but it does not say anywhere in the record that al Hazmi ever
20 used Rabia ibn Kab as a code name.

21 And Rabia ibn Kab was one of the companions of the
22 prophet. He's an important historical figure in Islam. The
23 use of his name is not incriminating. And furthermore, even
24 the association of that name with Columbia, Missouri is pretty
25 dodgy, your Honor. This is Exhibit MPS783_5. It is a very

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unclear document. It's handwritten notes on a bank statement.

The name Rabia ibn Kab is also next to the phrase "mathematics director" and Ahmed air conditioning. So by plaintiffs' logic, there was also a mathematics director who met with Hazmi and Hanjour, and they had something -- their plot was also somehow linked up with an air conditioning business. That is just an example of the way in which the presentation you have heard is based on speculation, rather than on reasonable inference. Okay.

Oh, yes. I also wanted to address the statement that the hijackers got their visas for LA in April 1999. That is inaccurate. I would point the Court to paragraph 1179 of our response to their averment, the actual visa applications had been destroyed, but the evidence that's available to us shows that -- I believe one for Los Angeles and one for New York, so there's no evidence that they were going together to Los Angeles at that time. And also the Khalid Sheikh Mohammed statement states that the two of them got the visas before they even knew about the 9/11 attacks, which is consistent with the other evidence that information about the 9/11 attacks was highly compartmentalized.

If your Honor has any questions on direction or agency before I move to another topic.

THE COURT: No.

MR. RAPAWY: I'll try to keep it moving fast, your

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Honor.

There is no evidence that any assistance that al Bayoumi provided was within his scope of employment. We've talked about the evidence that he was an accountant with the PCA. He was seconded to its contractor to pursue his education in the United States. There is plenty of documentation of that in paragraphs 13, 19, 20, 21, and 26 of our averment.

There's also documentation and testimony that his secondment and education were part of this well-recognized Saudization program. In fact, plaintiffs' own witness Mr. Coombs, testified that he knew of 50 other students who were similarly -- from the PCA were similarly paying for their education. And that's, I believe, in both our paragraph 18 of our averment and 629 of our response to their averment.

He did, in fact, ultimately get a master's degree. He never finished his Ph.D. And to your Honor's question about his employment after the return, I would point you to paragraph 717 of our response to their averment and pages 300 to 303 of the Sageman report.

And the short of it is he did go back to the PCA. He didn't get Alp Karli's job, which is the one that he wanted, but he was promoted in due course and spent the rest of his career working as an accountant and as a more senior person in finance at the PCA.

There is no evidence that al Bayoumi's work for Saudi

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1 Arabia had anything to do with the embassy or the consulate.
2 He certainly visited the embassy and the consulate and he had
3 phone contacts there. But as I've just discussed before, in
4 the context of the phone calls, there were innocent reasons for
5 him to be making those contacts. And the number of contacts
6 that he actually made are exaggerated by plaintiffs' inflated
7 phone call counts.

8 There was also no evidence that he ever worked for the
9 Ministry of Islamic Affairs. He work at the al Madina Mosque
10 was volunteer work. It was not part of his paid work. That's
11 supported at paragraph 29 of our averment and page 151 of
12 Bayoumi's transcript. And oh, I mentioned Saad al Habib
13 before. Paragraph 1159 is the evidence that al Habib was the
14 one who funded the mosque, not Saudi Arabia.

15 Now, al Bayoumi's work as a volunteer sometimes
16 brought him in contact with MOIA. He sent letters asking for
17 help for the mosque trying to get them to send religious
18 materials, trying to get them to contribute funds. And he
19 thanked them when they did provide support such as sending the
20 Ramadan preachers. But there is no evidence that that was part
21 of his work for Saudi Arabia, which is the key point here.

22 I touched on the phone book. Okay.

23 There's also no evidence that al Bayoumi knew the
24 hijackers were terrorists or that he was part of the 9/11 plot.
25 I will do the allegations about him being part of the plot

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1 first. So you saw Exhibit 11N, the so-called flight planning
2 exhibit, a notebook page that was found in a search of al
3 Bayoumi's belongings in the United Kingdom.

4 I think the most important piece of context here is
5 that that exact equation is used frequently in high school math
6 textbooks to teach students how to solve quadratic equations.

7 UNIDENTIFIED SPEAKER: Come on.

8 MR. RAPAWY: I will ask that your Honor direct the
9 audience to remain quiet while I'm speaking.

10 THE COURT: If there are any more outbursts, that
11 person is going to be asked to leave.

12 MR. RAPAWY: Paragraph 243 of our averment,
13 subparagraph A, in the exhibits to the mosque report, which
14 provide specific examples from the math textbooks in which that
15 exact quadratic equation is written out. The information on
16 this page was not found in the hijackers' belongings, and
17 there's no evidence that it was ever given to the hijackers.
18 And in fact, the idea that Bayoumi would have been helping them
19 with flight planning at the time that he was in contact with
20 them is inconsistent with the evidence of compartmentalization
21 of information about the attacks.

22 I'll quote the FBI's May 2021 closing memo at page 9,
23 "To avoid discovery, the hijackers did not know about the
24 operation until shortly before the attack," also discussed at
25 paragraphs 129 to 130 of Sageman's report.

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1 The line of sight -- as to the expert testimony
2 concerning the line of sight equation, both sides had experts
3 on this point, Barry Schiff for plaintiffs and Doug Moss for
4 Saudi Arabia. When Schiff was cross-examined, he admitted he's
5 never used the equation to navigate the airplane in 28,000
6 hours of flight time, page 36 of his transcript. The equation
7 is not used in any of the six foundational aviation
8 publications, which he was well familiar with as a flight
9 instructor. That's pages 18 to 31 of his transcript.

10 It's not used in any of the dozen aviation books he's
11 written, including the three-volume *Proficient Pilot*, 39 to 42
12 of his transcript. He's never tested any other pilot on
13 knowledge of the occasion, despite teaching a few hundred
14 pilots to fly, 32 to 33 and 35 and 36 of his transcript.

15 And the equation was an advanced technique in aviation
16 that would go above and beyond what you would expect others to
17 do, paragraphs 36 and 37 of his transcript. And the hijackers,
18 of course, were novice pilots, particularly al Hazmi and al
19 Mihdhar, my point is were novice pilots. They wouldn't have
20 been using advanced techniques.

21 THE COURT: I'm not sure I understand what you say the
22 evidence indicates was the purpose of his having this in his
23 possession.

24 MR. RAPAWY: So al Bayoumi does not remember. He did
25 not remember at his deposition. But we think the most

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1 plausible inference is that he was helping his teenager — he
2 had a 14-year-old son at the time — with his high school math
3 homework and that that was being used in one of the high school
4 math textbooks that are set forth in the exhibits to the Moss
5 report.

6 THE COURT: Well, but is that his lawyer's supposition
7 or is there some basis in fact on which that's reasonably
8 inferred?

9 MR. RAPAWY: There is no basis in fact. There's no
10 direct evidence from him in the record. You have the dueling
11 experts. I point you to the bits where Schiff was
12 cross-examined, which I think underline his credibility. And
13 you have the fact that this equation is -- although it is not
14 used by the vast majority of pilots, it is used by the vast
15 majority of high school math students.

16 THE COURT: Well, he wasn't a high school math
17 student.

18 MR. RAPAWY: His son was, your Honor. He had a
19 14-year-old son.

20 THE COURT: I know. But if he didn't testify that
21 this belonged to his 14-year-old son, why should we suppose
22 that it does?

23 MR. RAPAWY: If there is no admissible testimony that
24 it was flight planning for the 9/11 attacks, why should you
25 assume that it is?

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1 THE COURT: It depends on what the other evidence is
2 that's consistent or inconsistent with that. I mean, we could
3 suppose that it belonged to his next door neighbor, but unless
4 there's some basis to point me in that direction, his response
5 is that he doesn't remember doesn't direct me to it belongs to
6 his son.

7 MR. RAPAWY: No, certainly not, your Honor. He
8 doesn't remember. There's no dispute about that.

9 Let me go back to what the expert said. They both
10 agree that the hijackers did not actually use a line of sight
11 equation to fly their planes in the 9/11 attack, paragraph 1913
12 of our response to the averment. Both experts agree the
13 hijackers likely used VOR navigation to navigate the planes
14 close to the targets. And from within a certain range, they
15 would have been able to see the targets and than manually fly
16 the planes at the target.

17 THE COURT: You have to slow down.

18 MR. RAPAWY: The flight path for American Airlines 77
19 confirms this because the hijackers made a sudden turn toward
20 the Pentagon at less than 5 miles away, not 50 to 70 miles
21 away, paragraph 1907 of our response. And the actual flight
22 paths of the hijackers did not match the solutions to the
23 equation, paragraph 1905, citing both Moss and Schiff.

24 And furthermore, a couple more things from Schiff's
25 cross-examination I just want to highlight for your Honor, this

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1 is all in the record, but paragraphs 51 to 52, "If I saw that
2 in and by itself, I would have had no reason to believe it had
3 anything to do with anything."

4 So his expertise as an aviation expert, which is the
5 expertise that he has, doesn't permit him to draw any
6 conclusions about this. Now, plaintiffs showed him a bunch of
7 documents saying that -- that they say support their theory
8 that al Bayoumi was a terrorist. And from that, he inferred
9 that it could have been used in the 9/11 attacks. But his
10 expertise as an aviation specialist did not allow him to draw
11 that conclusion. And he's no better off to figure out the
12 other question than your Honor is as finder of fact.

13 And then, when he was further asked how and why the
14 hijackers would have used the information on the page, the
15 equation in the calculations, this is page 116 of his
16 transcript. "I don't know that they would have been important
17 at all, but that doesn't mean that in the beginning when they
18 were planning this event, that different pieces of information
19 could come in handy. Who knows how and when they would. I
20 don't know." That's the sound of an expert speculating, your
21 Honor. And that evidence is not admissible to show that al
22 Bayoumi participated in the flight planning for the 9/11
23 attacks.

24 I have covered previously the so-called casing video.
25 I believe that read in its entirety or viewed in its entirety,

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1 it supports our position, not theirs. But I will not trouble
2 the Court with going over that again.

3 As to the supposed evidence that al Bayoumi knew who
4 the hijackers were, there is no evidence that he supported
5 terrorism. He testified that he never did, paragraph 25 of our
6 response to their averment. And the 9/11 Commission found no
7 credible evidence that he believes in violent extremism or
8 knowingly aided extremist groups, paragraph 108 of our averment
9 and page 218 of the 9/11 Report.

10 I want to talk a little bit about the book that was
11 allegedly found in his office. He did not recall that document
12 or where it came from. The testimony here is discussed as 890
13 and 898 of our response to their averment. And there's no
14 evidence introduced to show that was actually a document that
15 was found in his office. That's an assertion by plaintiffs,
16 but there's nothing in the record that will support it.

17 He did testify that he recalled keeping a file of
18 documents in his office that would be destroyed later
19 consisting of documents that contained material that the mosque
20 did not align with or support, including anything that
21 pertained to violence.

22 And regardless of where the Book of Jihad came from, I
23 will also say there's no evidence that it's produced by the
24 government of Saudi Arabia – that's plaintiffs' assertion – if
25 there's a reference to Kingdom of Saudi Arabia on it, but it's

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1 not clear whether that's the government of Saudi Arabia or the
2 geographical location, Kingdom of Saudi Arabia.

3 It is not an al Qaeda text. It specifically includes
4 a traditional prohibition on killing women and children. And
5 to the extent that traditional Islamic theology discusses
6 violent jihad, it treats it as the collective use of force in
7 defense of the community has to be authorized by the head of
8 state, and here that would be the king. King Fahd never
9 declared jihad on America, to say the least.

10 And as a result, it would have been unlawful for a
11 loyal Saudi and a believer in traditional Islamic religion,
12 including Hanbali Salafism, to attempt to engage in jihad
13 against the United States. I know you've heard to the
14 contrary, but that is simply a distortion of what the vast
15 majority of people in Saudi Arabia who are people of good faith
16 believe about Islam and the world.

17 THE COURT: Let me just go back to the note that's
18 disputed by the experts. Is there evidence in the record that
19 this is his handwriting?

20 MR. RAPAWY: Yes. Yes, he recognized it as his
21 handwriting. He didn't deny that.

22 I wanted to also go back to the point that your Honor
23 raised earlier about evidence that al Bayoumi had innocent
24 reasons to help the hijackers find lodging. There was
25 testimony not just from al Bayoumi, but from multiple

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1 witnesses, including some who are not Saudi Arabia's witnesses,
2 that it was customary to assist newcomers to the Muslim
3 community with matters such as finding lodging.

4 I do not have for you the name of another person that
5 al Bayoumi assisted. That doesn't mean that it didn't happen.
6 But it was 20 years ago, and I have no evidence of a specific
7 individual he helped. He did testify that when he came to the
8 community, other people helped him, including with questions
9 about cosigning on an apartment, this is pages 737 to 739 of
10 his transcript, "If you go to the community, for example, and
11 ask for someone to cosign with you or something to rent an
12 apartment, at least ten people would help without hesitation."

13 And also Mohamed Johar gave similar testimony that
14 when he helped the hijackers it was because they were
15 newcomers, that doing so was very normal, and that he'd
16 received similar assistance from when he first came to the U.S.

17 THE COURT: What kind of assistance is he talking
18 about?

19 MR. RAPAWY: So with Johar -- you've heard an argument
20 that Johar picked them up at the airport. That's not true.
21 There's no evidence to support that.

22 THE COURT: That Johar did what?

23 MR. RAPAWY: The testimony that we have from Johar is
24 that he met them for the first time at the mosque, the King
25 Fahd Mosque. That's consistent with the evidence in the Khalid

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1 Sheikh Mohammed statement that he directed them to go to look
2 for mosques for assistance.

3 And then that Johar introduced them to al Thumairy,
4 and that's significant because plaintiffs claim that al
5 Thumairy knew about it all along and that he tasked Johar to
6 help them. But the only evidence of a percipient witness who
7 remembered this interaction is Johar, and he testified that he
8 was the one who introduced them, that he introduced them
9 because they were both -- they were all three of them Saudis,
10 and he thought that al Thumairy would like to meet Saudis, that
11 they spoke for a few minutes and that was all.

12 And Johar did provide them with assistance, your
13 Honor. And this is one thing which I wanted to go back to in
14 terms of the assistance that was provided by individuals who
15 were not Saudi officials and who, contrary to plaintiffs'
16 claims, were not directed by Saudi officials to provide the
17 hijackers with any assistance. So --

18 THE COURT: I still don't know what assistance he
19 provided that we're talking about.

20 MR. RAPAWY: So he drove them around -- Johar drove
21 them around Los Angeles. He helped them find a place to stay.

22 THE COURT: Helped them find which place to stay?

23 MR. RAPAWY: His testimony was that he showed them to
24 some motels. Plaintiffs have alleged that they actually stayed
25 at Johar's apartment. He denied that, and there's no evidence

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1 in the record to show it, other than hearsay --

2 THE COURT: So if he did not allow them to stay at the
3 house, the assistance that he claims he provided was showing
4 them some hotels?

5 MR. RAPAWY: He showed them some motels. He drove
6 them around Los Angeles. I believe he helped them get some
7 food as well.

8 THE COURT: Okay.

9 MR. RAPAWY: And then he dropped them off at the bus
10 stop when they were on their way to San Diego.

11 My main point, your Honor, is that there is no
12 evidence that al Thumairy told him to do any of that. Johar
13 denies it, and al Thumairy doesn't remember meeting the
14 hijackers at all.

15 And I want to take a minute just to talk about that
16 because plaintiffs have accused al Thumairy of lying when he
17 said he didn't remember meeting the hijackers. The only
18 evidence in the record is that he met them once in January when
19 they first arrived for about five minutes. And he met many,
20 many people in his role as imam of the King Fahd mosque.

21 And there's no particular reason -- again, if you
22 assume that he was part of this elaborate support network, then
23 yes, it would be implausible that he didn't remember them. But
24 if you entertain the possibility that he's innocent, there's no
25 particular reason why he would have remembered them.

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1 He met them once. He didn't tell anyone to help them.
2 He didn't do anything to help them. Plaintiffs have claimed
3 that he met them a second time in June. That wasn't part of
4 their opening presentation, so I wasn't necessarily planning to
5 address it. But I'll refer your Honor to our papers for the
6 point that the document -- contemporary documentary evidence is
7 inconsistent with their hypothesis of a second meeting in June.

8 I also wanted to touch with regard to al Bayoumi on
9 the theory that he went to the consulate twice, because that is
10 also, your Honor, not supported by the record. The evidence of
11 how many trips there were consists of al Bayoumi's testimony
12 that he went to LA once -- we cite that in paragraph 1532 of our
13 response to their averment; Smail Mana's testimony that he saw
14 al Bayoumi in the consulate once, cited in the same place;
15 contemporaneous records from the consulate that show one trip;
16 and Sageman's report, which analyzes al Bayoumi's fuel
17 consumption during January and February 2000 and shows that
18 it's consistent with one trip rather than two, page 699 of his
19 report.

20 Plaintiffs' two-trip theory is based on an undated
21 video, which they assert must have been on January 31 -- there's
22 no evidence to support that -- and undated photos showing al
23 Bayoumi's family in Los Angeles, and their assertion that some
24 of al Bayoumi's family members are wearing the same clothes in
25 the video and the photos as in their passport photos. That's

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1 it. That's what they've got, paragraphs 1533 and 1537 to 38 of
2 our response to their averment.

3 The videos and photos, as I said, are undated. There
4 is no evidence that al Bayoumi's family was with him on the
5 trip to the consulate to renew his passport, whether that trip,
6 occurred on January 31 or on February 1. And the passport
7 photos, which are in Plaintiff's Exhibit 211 – your Honor can
8 look at them – I don't think they're high quality enough to
9 discern what clothing they were wearing.

10 But even if two of the children – it's two of them,
11 not the whole family – were wearing the same clothing in their
12 passport photos as they were in that undated video, that
13 doesn't prove a trip by the whole family on January 31. There
14 is some ambiguity in the record as to whether the trip occurred
15 on January 31 or February 1, and we talked about that in our
16 papers. But there's no evidence that two trips happened.
17 That's made up.

18 THE COURT: Well, what does the documentation
19 demonstrate with regard to dates?

20 MR. RAPAWY: So the 9/11 Report says the trip happened
21 on February 1. And I'll ask my colleagues to correct me if I
22 get any of this wrong because it's a little bit complicated.
23 Sageman goes through the evidence of when the date occurred,
24 and he concludes that it is more likely to have been on the
25 31st with a passport getting mailed to him on the 1st, and then

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1 arriving on the 2nd.

2 The document that was referred to before about
3 Ambassador al Awwad — he was then deputy consul general —
4 meeting with him is inconclusive. I believe it does support
5 the February 1 date. If it was February 1, it's not a huge
6 problem for us. But al Awwad, when asked about it, said that
7 he didn't recall the meeting occurring, pages 124 to 127 of his
8 transcript.

9 THE COURT: Well, when is the passport issued? Is
10 there a date on the passport or is there a passport
11 application?

12 MR. RAPAWY: No, the date of the passport is the 31st
13 right? February 1.

14 THE COURT: The date of the passport is February 1?

15 MR. RAPAWY: Yes. But it's unclear whether he visited
16 or put in the application on the 31st.

17 THE COURT: What's the date of the application?

18 MR. RAPAWY: It's in Plaintiff's Exhibit 211, your
19 Honor. And I can call it up or -- why don't I move on, and
20 then I'll ask for a note on that subject.

21 I do know that in terms of the question your Honor
22 asked earlier about whether it needed renewal, Plaintiff's
23 Exhibit 211 does contain the expiration date for the old
24 passport, which was in 1995. And while it's not in the record,
25 I can represent to your Honor that, to the best of my

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1 knowledge, Saudi passports renew on a five-year schedule, so it
2 would have been up in 2000.

3 THE COURT: What month?

4 MR. RAPAWY: It would have been May? May 31. But --

5 THE COURT: His passport would have expired May 31?

6 MR. RAPAWY: May 31, yes.

7 THE COURT: Of that year?

8 MR. RAPAWY: Of that year. It's on a five-year cycle.

9 THE COURT: From that year?

10 MR. RAPAWY: What's that?

11 THE COURT: That year?

12 MR. RAPAWY: That year, 2000. So previously issued in
13 1995 in May, five-year expiration date would put it in
14 May 2000. Again, the five-year expiration date is not in the
15 record. I can only represent that to your Honor to the best of
16 my knowledge, but --

17 THE COURT: But I'm not sure what you say the facts
18 are. Is it your position that they were there on the 1st, or
19 is it your position they were on the 31st, or you don't know?

20 MR. RAPAWY: We initially thought it was the 1st, your
21 Honor. Some of the evidence suggests it may have been the
22 31st.

23 THE COURT: What evidence suggests it may have been
24 the 31st? That's what I'm trying to --

25 MR. RAPAWY: The application itself is dated the 31st.

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1 That's the reason to think it might have been the application
2 on the 31st and the passport itself issued on the 1st.

3 THE COURT: And is the application signed or stamped
4 received by the consulate on the 31st?

5 MR. RAPAWY: I think if it were, this would be an
6 easier question, your Honor. I don't have the exhibit in front
7 of me. I can only refer you to Plaintiff's Exhibit 211, which
8 has the data that we have on that issue.

9 THE COURT: But you're not categorically attempting to
10 dispute whether it was the 1st rather than the 31st?

11 MR. RAPAWY: No. I think -- but what I am disputing
12 is the allegation that there were two trips. Our position is
13 that there was one trip. We don't know for sure -- we think
14 probably on the 31st, but we don't know for sure whether it was
15 on the 31st or on the 1st.

16 THE COURT: But you say that the restaurant meeting
17 occurred on the same day that they went to the passport office?

18 MR. RAPAWY: Yes, we do. There was one trip.

19 Al Bayoumi went to the consulate. Morgan went with
20 him. They met with an individual who was originally alleged by
21 plaintiffs to have been al Thumairy. Later turned out it was
22 Smail Mana. Al Bayoumi talked to him for -- al Bayoumi
23 remembers a few minutes, Mana remembers a few minutes. Morgan,
24 who is the third witness, says it was a half an hour.

25 And then they left, then they went to get lunch. Some

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1 dispute about whether there was an extra trip to the mosque in
2 there. It's very difficult to reconstruct the exact dates,
3 your Honor, because we're relying on people's 20-year-old
4 memories, and also because -- the exact course of events in one
5 day, and also because there are conflicting versions in -- the
6 hearsay FBI 302s have many different versions of what
7 happened --

8 THE COURT: Well, something you just said I wanted to
9 ask about. If there was a chance meeting at the restaurant,
10 why would they go someplace else to eat?

11 MR. RAPAWY: No --

12 THE COURT: You said then they went someplace else to
13 eat. They went someplace to eat.

14 MR. RAPAWY: I must have misspoken, your Honor.

15 THE COURT: That's why I'm asking.

16 MR. RAPAWY: The restaurant is where they went to eat.

17 THE COURT: The restaurant where they met each other
18 is the restaurant in which the family ate?

19 MR. RAPAWY: No, the family wasn't with them. I'm
20 sorry.

21 THE COURT: He and Morgan ate?

22 MR. RAPAWY: He and Morgan ate.

23 THE COURT: By themselves in that same restaurant.

24 MR. RAPAWY: So the testimony is they went looking for
25 a place to eat. Al Bayoumi tried to find a place that he

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1 remembered eating with his family. He wound up at this halal
2 meat market. The person there says, oh, there's this one other
3 place close by. They go to the other place close by. That's
4 Bayoumi and Morgan, no family involved on this trip. And they
5 run into the hijackers there.

6 THE COURT: They run into the hijackers at the second
7 restaurant?

8 MR. RAPAWY: At the restaurant where they ate, not the
9 meat market which wasn't serving food.

10 THE COURT: That's why I was confused. I thought when
11 they went to the first restaurant that's where they meet. They
12 didn't meet them in the first restaurant?

13 MR. RAPAWY: The first place was a meat market, wasn't
14 really a restaurant.

15 THE COURT: So they didn't meet in the first place?

16 MR. RAPAWY: They didn't meet anybody there.

17 THE COURT: The restaurant that they ate in is the
18 same restaurant where they met?

19 MR. RAPAWY: Yes.

20 THE COURT: Okay.

21 MR. RAPAWY: And I do think it is a little bit
22 important, your Honor. Because the testimony, undisputed from
23 both Bayoumi and Morgan, that the first place they went to
24 wasn't serving food contradicts plaintiffs' suggestion in many
25 of their earlier papers that al Bayoumi got the name of the

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1 place to go during the contact at the consulate. Because he
2 didn't wind up going to the first place -- eating at the first
3 place he tried to go. And I guess you'll hear from plaintiffs
4 that's some kind of elaborate subterfuge. But I think the far
5 simpler explanation is that he didn't actually know where he
6 was going to eat in the first instance.

7 I also want to address a little bit in that context
8 the argument about whether Morgan accompanied him as an alibi.
9 And you know, the word "tradecraft" gets thrown around a lot in
10 this case. And there's dueling expert testimony, you know,
11 we've obviously moved to exclude Youssef, they've moved to
12 exclude Sageman.

13 But I do think Sageman makes some good, common sense
14 points about the wisdom for a clandestine operative of bringing
15 an innocent person there to serve as your cover. Because al
16 Bayoumi could have kept the meeting with the hijackers if it
17 was planned, if it was an operational meeting, as plaintiffs
18 suggest. He could have kept it secret a lot more effectively
19 by not inviting a witness and not telling law enforcement about
20 it when they asked.

21 And if you look at page 218 of the 9/11 Report, it
22 says that their investigators only learned of the meeting,
23 the encounter, because al Bayoumi told law enforcement about
24 it. And he just would have had no reason to do that if he was
25 trying to keep it secret.

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1 All right. Okay. I want to touch a little bit on the
2 evidence or lack of evidence that al Bayoumi directed anyone
3 else to help the hijackers. So he testified that he did not
4 direct anyone else to help the hijackers. And the only other
5 testifying witness who had contact with both al Bayoumi and the
6 hijackers was -- the name has been used, your Honor, I will go
7 ahead and say it -- it was Mohdar Abdullah, who is also known in
8 the record as Zeid, he's changed his name a bit. And he
9 confirmed under oath that al Bayoumi never directed or asked
10 him to help the hijackers.

11 There's been allegations -- oh, and I just want to
12 point your Honor to the testimony on that. Look at
13 paragraph 132 of our averment for a collection of the testimony
14 on that.

15 There's also no evidence that al Bayoumi ever asked or
16 told Anwar al Aulaqi to help al Hazmi or al Mihdhar,
17 paragraph 140 of our averment. And in 2000, al Aulaqi was a
18 respected mainstream preacher. He only -- and there's a
19 dispute about this in the expert testimony, but before he was
20 retained, plaintiffs' expert Meleagrou-Hitchens published a
21 book on al Aulaqi in which he concluded that it was hard to
22 believe that al Aulaqi was involved in the 9/11 attacks.

23 After being retained, he told a different story. And
24 now he thinks that al Aulaqi was a radical all along and he
25 just kept it secret. But even if that's true, there's no

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1 evidence that al Bayoumi knew about it.

2 Also, contrary to what plaintiffs have said, there is
3 no record evidence showing that al Aulaqi helped the hijackers
4 move into their apartment in early February 2000, paragraphs
5 1627 to 1628 of our response to their averment. They have a
6 declarant who identifies a photo of al Aulaqi, but the
7 declaration also contains other information that's inconsistent
8 with the hypothesis that al Aulaqi was there that day. And the
9 phone records are inconclusive for reasons discussed in that
10 part of our averment.

11 On the question of the alleged welcome party, which
12 there was a great deal of video about, again, I want to just
13 urge your Honor to go to the evidence in the record and not the
14 fancy infographic, because the fancy infographic is not
15 supported by the evidence in the record.

16 You can go back through the transcript and look at all
17 the statements that were made and try to find what evidence
18 there is to support them, and you will invariably find, as I
19 said before, nothing at all or conjecture or hearsay FBI
20 reports that are inconsistent with the FBI's final conclusion
21 of no witting assistance.

22 THE COURT: But I don't understand, and maybe I
23 misunderstood our conversation earlier, but the defense didn't
24 allude to such a meeting after they met in the restaurant or at
25 the mosque. This was a meeting -- am I supposed to take from

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1 that -- and I'll look at it more carefully -- that this was a
2 meeting set up to introduce those two to these other
3 individuals?

4 MR. RAPAWY: No, your Honor. That's not supported by
5 the record. And I thought this was -- this came up a little
6 bit during Mr. Kellogg's argument, but I will go over what our
7 position is now so that it is clear for your Honor, if I may.

8 There's no dispute that al Bayoumi hosted a reception
9 in early 2000, February 2000, paragraph 118 of our averment.
10 The purposes of the reception were to thank two individuals,
11 Khalid al Yafai and Sheikh Amir, for leading Ramadan prayers at
12 the al Madina Mosque, and to honor Sheikh Barzanjee -- who has
13 been accused of being an extremist, that's based on hearsay --
14 and to bid him farewell because he was returning at that time
15 to Norway, and to bring people from the al Madina Mosque and
16 the Islamic Center of San Diego together. And the testimony is
17 at paragraph 1656 and 1683 of our averment.

18 Al Bayoumi also explained that he originally intended
19 to host the whole reception at his apartment. But because
20 there were some unaccompanied males and some mixed family
21 groups and they couldn't socialize together, he asked the
22 hijackers if they could use their apartment for the gathering,
23 for the male part of the gathering. And they reluctantly
24 agreed, paragraph 120 of our averment.

25 THE COURT: I don't understand. Why would he pick

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1 them to host this event if they were the newest people in the
2 mosque and they didn't really know anybody?

3 MR. RAPAWY: Well, they lived next door to him and he
4 just helped them get an apartment, so he owed them a favor.

5 THE COURT: I know. But why does that make more sense
6 to do it in the hijackers' apartment, rather than to do it in
7 his apartment or to do it in one of the apartments of the other
8 members who obviously already knew each other?

9 MR. RAPAWY: So first, it's actually not necessarily
10 the case that all the other members knew each other. There
11 were two different congregations there. Mr. Simpson has
12 asserted they all knew each other anyway --

13 THE COURT: But the nature of the introduction was
14 such that it was emphasized that these two people were the new
15 people.

16 MR. RAPAWY: No, your Honor. I -- that is --

17 THE COURT: That's what I took from his introducing
18 those two, as opposed to introducing himself, all these other
19 people. And I thought he indicated specifically that they were
20 new members. Maybe I had that wrong.

21 MR. RAPAWY: Your Honor, I would urge you to go back
22 and look at the video again.

23 So what's going on here is that Mr. Simpson has said
24 that when al Bayoumi meant "brothers," introducing the
25 brothers, he meant the hijackers specifically. That is his

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1 speculation.

2 THE COURT: Okay.

3 MR. RAPAWY: "Brothers" is a phrase that is commonly
4 used --

5 THE COURT: No, I understand.

6 MR. RAPAWY: -- in the Muslim community. And so when
7 he said, "I'd like all the brothers to get to know each other,
8 I'd like to introduce everyone to the brothers," he's not
9 saying just these two individuals. There is no evidence of
10 that.

11 THE COURT: I'll look at it, but I didn't see it that
12 way. Maybe I remember differently. He specifically introduced
13 these two people to the group. And what seemed to be clear to
14 me, that he was saying, I know these two people, I am
15 introducing him to the group. And I didn't get the impression
16 that this is the first time this group had ever met with each
17 other. I got the impression that most of the people were -- and
18 I have no reason to say there's any evidence of it, but the
19 impression I got that most of these people were longstanding
20 members of the mosque and probably knew each other or many of
21 each other. And the people that they clearly would not have
22 known are the two recent people that have just arrived who are
23 now hosting this meeting.

24 MR. RAPAWY: Your Honor, I would hope to shake your
25 confidence in that.

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1 THE COURT: Okay. I'll look at it.

2 MR. RAPAWY: Let me make one point that I think is
3 contrary to the story that you've been given on that. Khalid
4 al Mihdhar does not introduce himself in that video. He never
5 says his name. Nawaf al Hazmi says his name quietly and is
6 asked to speak up by others, and he doesn't give his last name.
7 He says "Nawaf" or "Nawaf Muhammed." Mihdhar does not speak
8 during the video. Hazmi doesn't appear on the video. You can
9 see little bits of him here and there, but it doesn't show his
10 face. And it shows Mihdhar for -- the two of them together for
11 less than 10 seconds out of the video.

12 THE COURT: And you say the meeting is hosted by the
13 hijackers why?

14 MR. RAPAWY: It's hosted by Bayoumi, and he asked the
15 hijackers who were his neighbors because he just found them an
16 apartment --

17 THE COURT: Why? What is different in their apartment
18 that is not available in his apartment?

19 MR. RAPAWY: The families are in his apartment.

20 THE COURT: Okay.

21 MR. RAPAWY: So the families are in his apartment. He
22 needs another space to put the unmarried male guests because
23 they can't mix because of the social convention. So he asks
24 the hijackers, can I use your apartment which I just helped you
25 get, you guys owe me a favor for the -- can I use your

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1 apartment for the male half of this gathering? Which he then
2 attends himself.

3 THE COURT: Okay. And I still am unclear about what
4 the nature of that relationship was prior to that time.

5 MR. RAPAWY: The nature of al Bayoumi's relationship
6 with the hijackers?

7 THE COURT: Yes.

8 MR. RAPAWY: So he -- they met in Los Angeles.

9 THE COURT: Right, right. I have that.

10 MR. RAPAWY: They met again in San Diego at the
11 Islamic Center of San Diego.

12 THE COURT: And that was three weeks earlier?

13 MR. RAPAWY: That was not a whole three weeks, would
14 have been about two weeks earlier.

15 THE COURT: Well, we're talking about the 31st or the
16 1st, and this meeting took place my note says --

17 MR. RAPAWY: No, you're right, your Honor.

18 THE COURT: On the 17th, right?

19 MR. RAPAWY: Closer to three.

20 THE COURT: Two to three weeks later. So the second
21 meeting was at the mosque; is that correct?

22 MR. RAPAWY: At the ICSD.

23 And by the way, I want to correct one thing. While al
24 Bayoumi did not expect to meet them again, it's not necessarily
25 the case that they weren't looking for him.

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1 THE COURT: Why wouldn't he expect to meet them again
2 if they would end up being part of the same mosque?

3 MR. RAPAWY: Well, no. No, no, no. I mean to say - I
4 may be getting ahead of myself, your Honor. What I mean to say
5 is first meeting is at the restaurant in Los Angeles. Second
6 meeting is at the ICSD the day that he helps them get their
7 apartment.

8 THE COURT: Right.

9 MR. RAPAWY: It's been suggested that's a bit of a
10 coincidence that he would be there to meet them, but they could
11 have been looking for him very easily. So the fact that he did
12 not necessarily invite them to San Diego or expect them to come
13 to San Diego, doesn't mean that they, once they came to San
14 Diego, wouldn't have thought, hey, that Bayoumi guy seems
15 pretty helpful, let's see if we can get some help out of him.

16 THE COURT: All right. So the date of the second
17 meeting was what? I had that written down.

18 MR. RAPAWY: Yes, it's the 3rd or the 4th.

19 THE COURT: Yes, I think it was the 4th. My notes say
20 when the rental check was written, that was February 4. When
21 the welcome party had happened, that was February 17.

22 MR. RAPAWY: Yes.

23 THE COURT: I don't have any recollection of any
24 testimony about the contact between them between the 4th, when
25 they signed the checks, and the 17th, when they had this

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1 meeting in their apartment.

2 MR. RAPAWY: There is -- I don't recall any specific
3 evidence of -- I mean, they might have seen each other at the
4 mosque.

5 THE COURT: Well, at what point in time did he request
6 that they host the meeting?

7 MR. RAPAWY: I assume it was at or around the time of
8 the meeting on the -- February, I think it's 18th, right? Or
9 is it 17th? 17th, February 17.

10 THE COURT: So you believe on the same date that the
11 meeting took place he sought their apartment for this meeting?

12 MR. RAPAWY: Well, based on his testimony, which is
13 the only direct evidence we have, he wound up -- he was
14 planning to host it all himself and then he --

15 THE COURT: Till when? He was planning to host it
16 until when did he change his mind about hosting it himself?

17 MR. RAPAWY: I assume when people showed up with their
18 actual families, he realized, hey, we can't put everybody all
19 together in my apartment because there's unmarried men here and
20 there's also families here.

21 THE COURT: And what happened to the wives?

22 MR. RAPAWY: They would have been in al Bayoumi's
23 apartment with his wife.

24 THE COURT: I mean, is there some evidence of that or
25 that's what you think --

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1 MR. RAPAWY: No, no. That's what he testified to. He
2 needed two apartments because we have a religious tradition
3 here under which there's gender segregation. And the women
4 needed to go one place, and the men needed to go another
5 place -- women and children.

6 THE COURT: Okay. So what, if any, contact was there
7 between them from February 5 through February 16?

8 MR. RAPAWY: I don't know that there is evidence of
9 any contact, although I also don't know that there's evidence
10 that there was no contact.

11 THE COURT: So --

12 MR. RAPAWY: The record is silent.

13 THE COURT: The likely scenario is that he helped them
14 get an apartment, helped them execute the lease on the 4th, and
15 they didn't speak again until the 17th?

16 MR. RAPAWY: I wouldn't say that, your Honor. There's
17 just no evidence in the record whether they spoke again. If
18 you think it's more -- I mean, your Honor is suggesting it's
19 likely they probably spoke again because they were at the same
20 mosque --

21 THE COURT: I mean, maybe. I don't know what their
22 activities were, and I'm just trying to figure out whether or
23 not the record gives us any indication of that.

24 MR. RAPAWY: No, the record is silent, your Honor.
25 You would have to draw an inference either way, basically.

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1 The last two things I wanted to mention about the
2 welcome party at the -- now I'm saying it, the purported
3 welcome party, alleged welcome party, is first, the person
4 taking the videotape is Kaysan Morgan, who is the individual
5 who is the allegedly innocent -- I mean, undisputedly innocent
6 person who was there with the hijackers in the first place.

7 (Continued on next page)

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1 MR. RAPAWY: So, if Al Bayoumi is holding an
2 operational meeting among coconspirators and making a record of
3 it for whatever purpose plaintiffs think he's making a record
4 of its operational meaning, why would he have an uninvolved
5 person who he'd only been using as an alibi there to take the
6 videotape?

7 THE COURT: We've asked that question as to a lot of
8 these activities, and a possible answer is so that he can make
9 that particular argument today so that he has a reasonable
10 explanation for what is going on. As I say, you can't say why
11 would all of his activities be secret and criminal as opposed
12 to why would all of his activities have a cover story so that
13 he could point to innocent activity. Depending on what the
14 evidence is, I can't suppose one or the other. For example, I
15 can't say his trip to D.C., why would he take pictures so
16 openly if he was really going to do something nefarious? Well,
17 so that he could point to the non-nefarious stuff as the cover
18 for the criminal activity.

19 So I'm not sure that inviting a person to innocently
20 take pictures who, if he's ever asked about it, is going to
21 give an innocent explanation about what he's doing and an
22 ignorant explanation about what others are doing. I'm not sure
23 that that leads me one way or the other to be more likely the
24 truth or not the truth about what was going on there.

25 MR. RAPAWY: Your Honor is the fact finder --

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1 THE COURT: You tell me what makes sense, what you're
2 asking me to conclude.

3 MR. RAPAWY: I will put one thing to you that I think
4 makes sense. If you say that everything that's purportedly
5 nefarious that Bayoumi did is really nefarious, and if you say
6 that everything innocent on its face that Bayoumi did is really
7 just a cover, then of course you'll reach the conclusion that
8 everything he did was nefarious because it was either nefarious
9 or nefarious because it was a cover. That's the --

10 THE COURT: The contrary is true too. If I assume
11 everything that he did, that the parts of it that are innocent
12 means that everything he did was innocent, that would conclude
13 that he had no actual knowledge of the -- that's what you're
14 arguing. You're arguing the converse, it's not the opposite.
15 You're saying that I should conclude that why would he be
16 involved in criminal activity if he was going to have people
17 around him at the same time who weren't involved in criminal
18 activity. The answer to that question is always or usually so
19 that he could point to the innocent stuff and have the ignorant
20 person testify, "I knew nothing about this and we weren't doing
21 anything wrong and all he did was ask me to take pictures." It
22 doesn't seem to necessarily take me in one direction or the
23 other.

24 That fact itself doesn't seem to make me think that it
25 must be innocent because there are people there who are not

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1 involved in the activity or, on the other hand, it must be
2 criminal because they were just using the innocent person to
3 cover up the criminal activity. I don't know what in the
4 record would lead me in one direction or the other, other than
5 to say, well, the answer is, it depends, it depends on what
6 they're doing, whether they're doing something wrong, and it
7 depends on whether or not they're trying to cover something up,
8 the wrongdoing.

9 MR. RAPAWY: Understood, your Honor.

10 Let me make one other point about the party, the
11 reception, which is that you heard a statement today that
12 Muhammad Al-Qahtani who attended the reception was a senior
13 MOIA official and linked the whole thing back to MOIA. That is
14 another statement -- that particular statement that Muhammad
15 Al-Qahtani who attended was a senior MOIA official is not
16 supported by evidence in the record. It is addressed in our
17 response to plaintiffs' averment. It is paragraph 1678 of our
18 response to plaintiffs' averment. The sole basis for that
19 allegation is that an individual who was associated with the
20 government of Saudi Arabia wrote a check to an individual named
21 Muhammad Al-Qahtani, to which we have two points in response.

22 First, there's no showing that it was the same
23 Muhammad Al-Qahtani who attended the party. It's actually both
24 Muhammad and Al-Qahtani are very common names in Saudi Arabia
25 and they're just -- they're maybe taking a little bit of a leap

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1 there.

2 Second, the fact, the check itself does not establish
3 that he was a MOIA official at all.

4 THE COURT: So what is your contention?

5 MR. RAPAWY: My contention is there no evidence that
6 he's a MOIA official.

7 THE COURT: But you don't have any alternative
8 explanation?

9 MR. RAPAWY: No. I don't know who the guy is. They
10 say they know he's a MOIA official. I'm saying their
11 evidence -- that's their contention and I am pointing you to
12 the lack of evidence in the record for that contention.

13 THE COURT: Okay.

14 MR. RAPAWY: With regard to Al Thumairy -- I think
15 I've kind of overstayed my welcome here, your Honor. I'll try
16 to wrap up.

17 In general, there's no evidence that Al Thumairy
18 assisted the hijackers himself. I believe I addressed before
19 the lack of any evidence that he instructed Mohamed Johar to
20 assist the hijackers. We talked about him meeting -- actually,
21 I think I've covered Thumairy satisfactorily already.

22 Then, to the argument that Al Thumairy supported
23 Jihad, there is no evidence of that either.

24 We've talked about the evidence that Saudi Arabia's
25 official theology through the Ministry of Islamic Affairs is

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1 quietest. I point you to the concessions from their experts
2 that quietism does not equate to support for violent Jihad.
3 The individuals who actually spoke Arabic and heard Thumairy
4 give sermons testified they never heard him express violent or
5 extremist opinions. And I think that the Nakhleh report, which
6 has been relied upon in this context, just engages in really
7 outrageous stereotyping. Even when you heard Mr. Simpson get
8 up here and say, well, I'm not talking about all Islam, I'm
9 just talking about all of Saudi Arabia's Islam -- I mean,
10 really, I don't think that's appropriate, and I think your
11 Honor should reject it for the reasons that we've given amply
12 in our papers.

13 I'm happy to address any more questions your Honor
14 has.

15 THE COURT: No. Let me give an opportunity to Dallah
16 Avco to be heard.

17 MR. SIMPSON: Your Honor, just to inquire, would
18 plaintiffs have an opportunity very briefly to address some of
19 the --

20 THE COURT: I'll try to do that. I'd like to end by
21 5 o'clock.

22 MR. SIMPSON: Yes. Would that be more appropriate to
23 do that now or --

24 THE COURT: Let's hear what Avco has to say. I don't
25 know if they have enough time to say everything they intended

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1 to say.

2 MR. KRY: Your Honor, Robert Kry from Molo Lamken for
3 the defendant, Dallah Avco.

4 Dallah Avco is a Saudi government contractor that
5 provided outsourced human resources services for a project at
6 the Saudi government's presidency of civil aviation. One of
7 the 1400 employees on that project was Omar Al Bayoumi who was
8 in the United States pursuing educational studies.

9 I want to make one thing clear at the outset. The
10 9/11 attacks caused unimaginable losses to thousands of
11 American families. Dallah Avco fully appreciates the severity
12 of those attacks and the need to hold guilty parties
13 responsible. That is not what this case is about. Under the
14 law, not every party that had some unwitting, indirect,
15 tangential connection to two of the hijackers can be held
16 liable for hundreds of billions of dollars of losses that
17 resulted. Plaintiffs nonetheless sued Dallah Avco among
18 hundreds upon hundreds of other defendants.

19 This Court dismissed, but the Second Circuit remanded
20 for discovery on one narrow topic, Dallah Avco's knowledge of
21 Al Bayoumi's activities. Plaintiffs have now spent 11 years
22 searching for evidence of that knowledge. They've come up
23 empty. There's no evidence, zero evidence that Dallah Avco
24 ever knowingly aided and abetted any illegal activities from
25 which the 9/11 attacks were reasonably foreseeable. As far as

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1 Dallah Avco knew, Al Bayoumi was in the United States pursuing
2 educational studies. If he was doing something illegal in his
3 spare time, we never knew about it. And while Dallah Avco
4 processed the PCA's payments to Al Bayoumi, those were salary
5 payments and other payroll. Dallah Avco was simply doing its
6 job as the outsourced human resources provider for the
7 government project to which Al Bayoumi was attached just like
8 it did for the 1400 other employees. There's no evidence that
9 Dallah Avco knowingly assisted illegal conduct, and Dallah Avco
10 did not proximately cause the 9/11 attacks.

11 I'll address the first point, and then my colleague,
12 Mr. Nitz, will briefly address the second.

13 First, there's a couple of topics I want to cover by
14 background of the facts of the case.

15 First, Dallah Avco's obligations under the ANSS
16 contracts; second, Al Bayoumi's educational studies and what
17 Dallah Avco knew about them; and third, al Salmi's payments to
18 Al Bayoumi.

19 First, the contractual obligations. The air
20 navigation systems support contract — or ANSS contract — was a
21 contract between the Saudi Presidency of Civil Aviation and
22 private contractors, like Dallah Avco, for manpower
23 procurement, human resources support, and other administrative
24 services.

25 The Presidency of Civil Aviation — or PCA — was a

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1 Saudi government agency. One component was the airways
2 engineering directorate run by a government official named
3 Mohammed al Salmi. You'll hear a lot about him today.

4 Within airways engineering, there were subcomponents,
5 one called contracts and finance control that was run by a
6 Turkish employee named Alp Karli. One called Logistics that
7 was run by an American named Sam Coombs for a couple of years.
8 You'll hear a lot about their names, too.

9 During that era, there were not and still are not
10 enough qualified Saudi civil servants to fill all the skilled
11 positions the government needed. So the government often
12 relied on private companies to recruit skilled labor from
13 abroad. That's what the airways engineering directorate did.

14 Once the agency hired a candidate, the contract would
15 process the employees' payroll, but in terms of substantive
16 work, the contractor would hand that employee over to the PCA.
17 Those ANSS employees worked in PCA office buildings, they
18 reported to PCA officials, they carried PCA badges and business
19 cards, and all of their substantive work was directed and
20 supervised by the PCA, not by Dallah Avco. That's explicit in
21 the contract. It says, contractor-furnished personnel shall
22 work for and in conjunction with the Presidency of Civil
23 Aviation as one integrated team.

24 Our client, Dallah Avco, won the tender for the second
25 iteration of that contract, ANSS2, in the late 1980s. Dallah

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1 Avco is a subsidiary of Al-Baraka, a global conglomerate
2 founded by a respected Saudi businessman, named Saleh Kamel.
3 Dallah Avco continued to hold that contract until 2005 when the
4 agency awarded it to someone else. Well, you'll see on the
5 screen here is the cover page of one of those contracts, and
6 that's crucial in this case because it explains the role that
7 Dallah Avco was playing.

8 One of Dallah Avco's core responsibilities was
9 recruiting.

10 The first step in this process was the Manning chart.
11 Each ANSS contract, every three years, had a detailed chart
12 that listed different positions and the precise number of
13 employees the agency wanted to hire along with detailed
14 position descriptions. So Dallah Avco would receive that.

15 At step 2, it would send out job solicitations to its
16 recruiters in various countries.

17 At step 3, the recruiters would send back résumés of
18 potential candidates.

19 At step 4, Dallah Avco would review those résumés and
20 send the most promising candidates to the PCA for
21 consideration.

22 At step 5, the PCA would decide which candidates it
23 wanted to hire. The PCA would then send Dallah Avco a form,
24 known as an authorization to hire form, that was the PCA's
25 official instruction to hire somebody onto the project. Under

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1 the explicit terms of the contract, Dallah Avco cannot hire
2 anyone to the project, they could not fire anyone from the
3 project, and they could not give anyone a promotion or a
4 demotion without the PCA's prior approval.

5 Finally, there's one critical paragraph in the
6 contract for purposes of this case, and that's because the
7 contract contains an exception. Notwithstanding this usual
8 process where Dallah Avco would go and recruit candidates for
9 the project for the PCA's consideration, Section 4212 states
10 that the government may, at its discretion, at any time, direct
11 the contractor to hire any individual, or individuals, whom the
12 government deems suitable for employment under the contract.
13 So if the PCA wants to put someone on the project, if al Salmi
14 finds somebody that, for whatever reason, thinks would be a
15 good person to hire onto the project, he just tells Dallah Avco
16 to do it and it gets done. So that's not the normal recruiting
17 process, but it is a process the contract expressly
18 contemplates, and this is important because that's exactly what
19 happened in the case of Omar Al Bayoumi.

20 The second broad category of Dallah Avco's
21 responsibility was payroll. Once the PCA directed Dallah Avco
22 to hire someone onto the project, Dallah Avco processed their
23 paychecks every month.

24 The first step of that process was based on the
25 authorization to hire form. That form, which we saw a minute

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1 ago, contains critical information about the positioning and
2 the salary level that Dallah Avco would rely on in deciding how
3 much to pay.

4 Step 2, Dallah Avco would pay that amount to these
5 employees in their monthly paychecks.

6 Step 3, each month, Dallah Avco would submit those
7 payroll expenses to the PCA. The ANSS contract set forth
8 specific man-month rates in the contract that specified exactly
9 what the PCA would reimburse Dallah Avco for those expenses.

10 At step 4, the PCA would pay that reimbursement.

11 This next slide we have a sample monthly pay record.
12 This one happens to be for Al Bayoumi, but there's nothing
13 special about it. You can see there's a basic salary. 7,740
14 Saudi riyals, or about 2,100 U.S. dollars a month. As
15 mentioned, that salary is determined from the contract and the
16 information on the PCA's forms form. There is also a housing
17 allowance, which is two months' worth of salary per year, and a
18 transportation allowance, which is 10 percent of salary.
19 That's the same for all 1400 employees. Finally, there's
20 another allowance, this one about \$1,465 a month. That's
21 discretionary that the PCA can set, and that's just a catchall
22 for any additional benefits or allowances that PCA wants to
23 provide to a particular employee. I'll talk more about those a
24 bit later.

25 The third function that Dallah Avco provided for this

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1 project was logistics. This was basically the PCA deciding it
2 needed spare parts or other goods or services for the project,
3 ordering those parts from vendors, and then having Dallah Avco
4 process the payments for those goods or services.

5 At step 1, the PCA logistics department would send a
6 purchase request to a vendor. In the early 1990s, for example,
7 the PCA's principal vendor in the United States was a company
8 called Avco Overseas based in Texas. At the end of 1994, the
9 PCA replaced Avco Overseas with Ircam, a company in Newport
10 Beach in California.

11 Step 2, the vendor — in this case Ircam — would
12 deliver the goods and send an invoice back to the PCA's
13 logistics department. You can see at the bottom, this has a
14 stamp saying "approved for payment," which is initialed by Sam
15 Coombs, the logistics department.

16 At step 3, the PC's logistics department would send
17 Dallah Avco a request for payment telling it to pay the vendor.

18 At step 4, Dallah Avco would do that and send the
19 payment to the vendor.

20 At step 5, every month, Dallah Avco sent a
21 reimbursement request to the PCA. Under the express terms of
22 the contract, Dallah Avco was entitled to dollar-for-dollar
23 reimbursements for all these logistics payments it processes.

24 So, at step 6, the PCA reimburses Dallah Avco.

25 The one thing I want to emphasize about this process

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1 is just how limited Dallah Avco's role was. As Sam Coombs,
2 plaintiffs' cooperating witness in this case, testified at his
3 deposition Dallah Avco had no responsibility for reviewing or
4 auditing the reasonableness of the prices that were reflected
5 on these invoice, they've had no responsibility for reviewing
6 or auditing whether Airways Engineering actually needed the
7 goods or services on the invoices, and it had no responsibility
8 for reviewing or auditing Airways Engineering's selection of a
9 vendor. Dallah Avco's job was essentially just to pay the
10 invoices according to the terms that Airways Engineering had
11 approved. Those are the words of plaintiffs' own witness.

12 With that background, I come to my second topic today
13 - Al Bayoumi's educational studies.

14 Before we get to Al Bayoumi specifically, though,
15 there's a couple background principles of Saudi law I need to
16 explain, in particular the Saudi public policy of Saudization.

17 When the Aramco company first struck oil in Saudi
18 Arabia in the mid 20th century, a massive influx of foreign
19 skill labor occurred. The discovery of oil promised great
20 wealth, but the Saudi workforce lacked the skills to benefit
21 from its skills positions that resulted from the opportunity.
22 As a result, management in technical positions tend to be
23 filled by foreign skilled labor while Saudis were left working
24 on menial unskilled positions. The Saudi government responded
25 with the policy of Saudization. The concept was to increase

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1 the education and training of Saudi citizens so they could take
2 over skilled positions held by foreigners. That concept is
3 absolutely central to Saudi public policy. Our expert,
4 Dr. Hammad, explained all that in his expert report, which
5 stands completely un rebutted and unchallenged by plaintiffs.
6 The ANSS contract itself contains a Saudization provision that
7 requires Dallah Avco to give preference to Saudi nationals.
8 And finally, Sam Coombs testified about this policy, too. He
9 said that the PCA paid for about 45 to 50 PCA employees to go
10 pursue educational studies. And he also testified that three
11 other private Saudi companies where he had worked previously
12 had similar Saudization provisions or policies.

13 That policy is crucial context because, for Dallah
14 Avco's purpose, the question is not why was Al Bayoumi in the
15 United States, the question is: what's Al Bayoumi's stated
16 reason for being in the United States? So, obviously,
17 pretextual that Dallah Avco must have realized it was a sham.

18 In answering that question, it's critical to view the
19 acts through Saudi eyes. We'll see in a minute that Al Bayoumi
20 spent a long time in the United States pursuing educational
21 studies from many different schools. I admit, those facts may
22 strike American eyes as extravagant and maybe even a little
23 strange, but it's important to view those facts against the
24 backdrop of a society where these policies were sending Saudi
25 employees and especially Saudi government employees off to get

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1 better education so they can take over the jobs currently held
2 by foreigners is an absolutely central component of Saudi
3 public policy.

4 THE COURT: The six years that he spent studying in
5 the United States, even Dallah Avco at some point recommended
6 that they no longer continue that relationship.

7 MR. KRY: At one point they did, and I will get to
8 that. Before we get there, I think it will be very helpful to
9 cover the earlier years about Al Bayoumi's study because that
10 provides important context, but I will address that document in
11 due course, your Honor.

12 At Airways Engineering, Al Bayoumi was a Saudi
13 citizen. He was civil servant at the PCA since 1977, 17 years
14 before the events in this case.

15 In 1993, he transferred to Airways Engineering, the
16 division run by al Salmi, and his immediate supervisor was Alp
17 Karli, a Turkish citizen. Alp Karli had a pretty senior job
18 and reported directly to al Salmi. Al Bayoumi wanted that job
19 and the PCA supported his aspirations because replacing foreign
20 Turkish managers with Saudi civil servants was exactly what
21 Saudization was all about, but Al Bayoumi lacked the skills to
22 do Alp Karli's job. Alp Karli was the manager of all of the
23 divisions, contracts, and finances. Al Bayoumi didn't have
24 those qualification and his English was not good. So, in 1994,
25 with the PCA's blessing, Al Bayoumi took his family to

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1 California and began this lengthy program of educational
2 studies.

3 The next few slides show a timeline of those studies.
4 The orange box in the middle is the time period covered by the
5 slide. So this slide, for example, covers Al Bayoumi's first
6 stop at San Diego State University from August 1994 to February
7 1995. In the top half, we've collected the documents revealed
8 in discovery. Many of these are documents that the plaintiffs
9 got from third-party discovery to the schools themselves. In
10 the bottom half, we have the documents known to Dallah Avco.
11 Those show what Dallah Avco actually knew about Al Bayoumi's
12 studies. So in the summer of '94, Al Bayoumi starts English
13 courses at San Diego State.

14 We have plaintiffs' obtained copies of Al Bayoumi's
15 transcripts from the university. They show he had attendance
16 rates from 89 to 92 percent, he got passing grades, and he got
17 favorable comments from his instructors. "Put forth a lot of
18 effort and made steady process in the class." "Very diligent
19 and an asset to the class." "An outstanding student in every
20 respect." "A positive and enthusiastic student." Dallah Avco
21 never saw those transcripts, but if it had, they simply would
22 have reinforced that Al Bayoumi was diligently applying himself
23 to his studies.

24 What Dallah Avco did see are the documents at the
25 bottom.

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1 First, the PCA funded Al Bayoumi's studies at
2 San Diego State through the logistics budget, through payments
3 to a vendor Avco overseas through a vendor. We'll talk more
4 about that later, but, for now, suffice it to show that Dallah
5 Avco did receive and process that paperwork showing that Avco
6 Overseas was paying Al Bayoumi's tuition at San Diego State.

7 Second is this really interesting letter from December
8 1994 from Linda Lawton at the university. She wrote to al
9 Salmi that when Mr. Al Bayoumi arrived in August, his placement
10 tests showed that he was not ready to audit or enroll in SDSU
11 courses, other than English courses, but that Al Bayoumi has
12 progressed steadily and is now participating in the intensive
13 English for managers specialty. Ms. Lawton reported that
14 Al Bayoumi was insisting on a specialized English course in
15 accounting finance contracts, and that specialty makes perfect
16 sense for someone who's planning to take over from the head of
17 contracts and finance control. Dallah Avco received a copy of
18 that letter.

19 The next slide, in the spring of '95, Al Bayoumi left
20 San Diego State and started taking English courses at ELS
21 language centers. Plaintiffs, through discovery, obtained the
22 transcript from the school. It showed that Al Bayoumi's grades
23 were mixed. In a third of his classes, he received failure or
24 poor grades. But, on the other hand, in half the classes, he
25 received good, very good, or excellent grades. So certainly

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1 not dean's list material by any means, but hardly the sort of
2 grades that would alert someone that these studies were a sham
3 to conceal support for terrorists. In any case, Dallah Avco
4 never received the transcript. We searched and couldn't find
5 any documents relating to Al Bayoumi's studies at ELS.

6 Next, in the fall of '95, Al Bayoumi enrolled in a
7 master's of international business administration program at
8 West Coast University. At the end of '96, West Coast ran into
9 financial difficulties and Al Bayoumi completed his studies at
10 U.S. International University. Then, in December 1997, he got
11 his diploma. Plaintiffs obtained the transcripts from both
12 West Coast and U.S. International, and the Kingdom produced his
13 diploma. Plaintiffs object that Al Bayoumi should have taken
14 more courses and that one course was an independent study on
15 marketing in the Arabian Gulf, but at the end of the day,
16 Al Bayoumi got his degree. He got a master's of international
17 business administration degree from the university. And so,
18 clearly, the university was apparently satisfied with his work.

19 In any event, Dallah Avco never received those
20 transcripts or diploma. The only documents Dallah Avco
21 received from this era are the two letters at the bottom that
22 two PCA officials exchanged in March 1997, but for which Dallah
23 Avco received a copy.

24 First, Jeff Danaya, the PCA's personnel director who
25 oversaw civil servants like Al Bayoumi, wrote to al Salmi to

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1 ask what Al Bayoumi was doing. He said: What are the reasons
2 for Al Bayoumi's stay in the U.S.? What is the type of study,
3 the specialization, and the qualifications to be obtained?
4 Al Salmi wrote back to Jeff Danaya, explaining that Al Bayoumi
5 was pursuing preparatory study for obtaining a master's degree
6 in business administration and studies in financial management,
7 that Airways Engineering wanted Al Bayoumi to continue his
8 study so it could take advantage of him after completing a
9 study as he will effectively take a place as a government
10 employee, and that the studies were part of the broader effort
11 to develop the national competencies to replace the non-Saudi
12 workforce. That explanation was 100 percent consistent with
13 Dallah Avco's own understanding.

14 And the issue, your Honor, is not is al Salmi's
15 explanation for why Al Bayoumi there is correct. The issue
16 here is what would Dallah Avco have understood upon receiving
17 that correspondence or receiving a copy of that correspondence
18 from al Salmi. Receiving a copy of that correspondence, which
19 gave a detailed explanation and response to Jeff Danaya's
20 inquiry, only would have confirmed that Al Bayoumi was in the
21 United States to pursue education as part of a Saudization
22 program that was a completely legitimate venture from
23 everything that Dallah Avco could have seen.

24 1998, Al Bayoumi enrolled in DeVry's Keller Graduate
25 School of Management. Plaintiffs got a copy of this transcript

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1 from the school, too. And this is when Al Bayoumi's academic
2 record starts to get a bit spotty. Al Bayoumi didn't earn any
3 credits at Keller. Either he didn't sit for his exams there or
4 he didn't complete the courses. But, regardless, Dallah Avco
5 never got a copy of this transcript. Dallah Avco saw no
6 documents about Al Bayoumi's time at Keller at all.

7 1999, Al Bayoumi starts taking courses through George
8 Washington University. This was not a full-time degree
9 program. Instead, they were continuing education courses
10 offered by a company called ESI International that had a rather
11 surprising contract with George Washington. That contract
12 permitted ESI to offer these continuing education courses and
13 then issue certificates that bore George Washington's official
14 seal and was signed by its dean of the School of Business.
15 Al Bayoumi completed that program and earned his master's
16 certificate in project management in 2000. Plaintiffs complain
17 that this was not a full-time degree program, and indeed, it
18 was not, but the fact that George Washington would lend its
19 name and prestige to a program like this surely suggests that
20 it was not a complete sham. But, regardless, Dallah Avco never
21 received these documents either. We looked through its files
22 and couldn't find any records about what Al Bayoumi was doing
23 in terms of studies at George Washington University.

24 Finally, in the year 2000, Al Bayoumi reached the
25 5-year limit and returned to the Kingdom for a couple months.

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1 He still wanted to pursue more studies, so he asked the PCA for
2 an educational leave. Al Bayoumi had to submit an acceptance
3 letter from a university to get that leave, but — he had a
4 problem — he didn't have one. Presumably, he learned at some
5 point that his master's certificate in project management was
6 not the sort of academic credential that would qualify him for
7 George Washington's Ph.D. program. So, instead, Al Bayoumi
8 took matters into his own hands and came up with his own
9 acceptance letter. He then sent it to the PCA and got two
10 years of educational leave. Clearly, your Honor, we admit this
11 episode and Al Bayoumi's use of a fake acceptance letter does
12 not set any high watermark for academic integrity. But,
13 respectfully, this George-Santos-style résumé fraud is simply
14 not the sort of misconduct from which the 9/11 terrorist
15 attacks were a reasonably foreseeable consequence.

16 In any case, Dallah Avco never received a copy of
17 Al Bayoumi's fake acceptance letter. The only document it
18 received from this era was the PCA's decree approving the
19 educational leave. That document simply would have reinforced
20 that these were more bona fide studies by a genuinely committed
21 student.

22 Ultimately, Al Bayoumi enrolled in Aston University in
23 England. He earned a master of science in management research
24 in May 2002. That is yet another real degree from a real
25 school, your Honor.

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1 That brings us to the third topic I wanted to cover.
2 The payments that Mohammed al Salmi, the PCA's director general
3 of Airways Engineering, made to support Al Bayoumi's studies in
4 the United States.

5 THE COURT: At what point and how was it discovered
6 that his credentials were not legitimate?

7 MR. KRY: Discovery in this case, your Honor. The
8 plaintiffs make -- throughout this case, I made a bunch of
9 arguments based on speculation and strange inferences, but on
10 this one point, plaintiffs really nailed down the record. They
11 took the deposition of the George Washington or got a
12 declaration from someone at George Washington saying that they
13 wouldn't issue a letter like that. They got a declaration from
14 someone at ESI International saying that this was our phone
15 number the letter was faxed from. So I think a jury,
16 confronted with the evidence that the plaintiffs gathered in
17 discovery on this point, would probably be pretty easily led to
18 conclude that that letter was not genuine, but that's certainly
19 not something that -- Dallah Avco never knew -- knew nothing
20 about this letter at all.

21 THE COURT: And that was discovery when?

22 MR. KRY: By Dallah Avco in this case, in this
23 litigation. The Kingdom -- the purpose --

24 THE COURT: What year?

25 MR. KRY: The purpose of the letter was for Al Bayoumi

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1 to get his educational leave, so he sent it to the PCA back in
2 the year 2000. When did we get that letter in discovery? I
3 mean, it would have been when the claims against the Kingdom
4 were reinstated. So sometime in the 2016 to 2020 timeframe.

5 The third topic I wanted to cover were the payments
6 that Mohammed al Salmi made to support Al Bayoumi's studies.
7 Al Bayoumi was living in southern California with a wife and
8 three kids to support, he was pursuing postsecondary education
9 in the United States. So, needless to say, that was not cheap.
10 Al Salmi came up with multiple strategies to fund Al Bayoumi's
11 expenses.

12 Some of those funding mechanisms look a little
13 circuitous. So, there's one important point I need to make by
14 context. Al Bayoumi had been a civil servant at the PCA for
15 17 years when he first came to the United States. The civil
16 service regulations provide a mechanism for releasing an
17 employee temporarily to pursue educational studies. It's
18 called educational leave, and it's in Article 2819. As you can
19 see on the screen here, a key requirement of educational leave
20 is that it is without pay. So, when the PCA puts someone on
21 educational leave, it has to suspend his civil service salary.
22 Al Salmi doesn't have any control over that. It's handled by
23 Jeff Danaya and other folks in the PCA's personnel department.
24 Al Bayoumi liked being a student in California, but he probably
25 didn't like being a student for free. So, al Salmi figured out

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1 ways to pay Al Bayoumi when he was in the United States, even
2 though the PCA had cut off his civil service salary.
3 Essentially, what al Salmi did is use other budgets that were
4 within his control, that were within the Airways Engineering
5 department, and he used those other budgets to do indirectly
6 what he could not do directly, namely grant Al Bayoumi a paid,
7 rather than unpaid, educational leave.

8 At first, al Salmi's first strategy was to use the
9 logistics budget. This was not something al Salmi did just for
10 Al Bayoumi. According to plaintiffs' witness Sam Coombs, al
11 Salmi used this logistics budget to pay for educational
12 expenses for 45 to 50 other PCA employees who went off to
13 pursue educational studies. When Al Bayoumi arrived in the
14 United States in 1994, al Salmi paid his tuition and living
15 expenses through the Texas-based vendor Avco Overseas.

16 So this process looks just like we showed before.

17 Step 1, al Salmi sent a financial directive to Avco
18 Overseas, directing it to pay Al Bayoumi's tuition and living
19 expenses.

20 Step 2, Avco Overseas sent the payment to San Diego
21 State.

22 Step 3, Avco Overseas sent its invoice back to the
23 PCA's ANSS logistics department for reimbursement.

24 All three of those documents are in the record here.

25 Step 4, the logistics department forwards Avco

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1 Overseas' invoice to Dallah Avco for payment.

2 Step 5, Dallah Avco pays Avco Overseas, as it's
3 required to under the logistics provisions of the contract.

4 Step 6, Dallah Avco sends its own request to the PCA
5 for reimbursement.

6 Step 7, the PCA reimburses Dallah Avco.

7 So a couple observations about this process.

8 First, this is not some unique process for educational
9 expenses. It was the same process al Salmi used for purchasing
10 disc drives, electronics equipment, or whatever else the
11 division needed by way of goods and services, but instead of
12 paying a vendor for that electronics equipment, al Salmi was
13 effectively paying vendors for educational funding.

14 Second, from the perspective of al Salmi, the
15 university, the vendor, and Dallah Avco, this process was
16 completely transparent, your Honor. Omar Al Bayoumi's name
17 shows up on all those documents, and it's clear to anyone
18 reading them that the PCA was funding Al Bayoumi's studies in
19 the United States and directing Dallah Avco to process those
20 payments. So if this was meant to be some sort of clandestine
21 effort to conceal Al Bayoumi's role, this was a very
22 ineffective way to do that.

23 What this process did allow al Salmi to do was to keep
24 paying Al Bayoumi and the 45 to 50 other PCA students while
25 they were pursuing educational studies. Unlike with the civil

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1 service salaries, al Salmi controls the purse strings on these
2 logistics payments. So if al Salmi decides to use that budget
3 to pay PCA employees while they're all pursuing studies, that's
4 something he has the ultimate say over. And so, what al Salmi
5 did is he used that other budget within the Airways Engineering
6 division to do indirectly what he couldn't do directly; namely,
7 pay these students while they were on educational leave.

8 At the end of '94, al Salmi changed up Airways
9 Engineering's U.S. vendor to a company called Ircam.

10 THE COURT: At the end of '94?

11 MR. KRY: Correct.

12 So now, instead of running Al Bayoumi's expenses
13 through Avco Overseas, al Salmi runs them through Ircam. For
14 the most part, this process worked the same, but there's one
15 important difference. When Avco Overseas paid these expenses,
16 it was transparent. It labeled the invoices "educational
17 expenses for Omar Al Bayoumi." Ircam handled things
18 differently. It marked up the goods on its other invoices to
19 account for the funding that it was providing.

20 So at step 1, al Salmi would send a financial
21 directive to Ircam telling it to pay Al Bayoumi's expenses -
22 Dallah Avco never received those.

23 Step 2, Ircam paid the expenses to the university or
24 to Al Bayoumi.

25 Step 3, Ircam sent back to the PCA a marked-up

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1 invoice. So, instead of an invoice for Al Bayoumi's
2 educational studies, this would be an invoice for disc drive
3 components that marked at say \$900 instead of \$500.

4 Step 4, logistics would send that invoice to Dallah
5 Avco.

6 Step 5, Dallah Avco would pay the vendor as per the
7 contract.

8 In step 6 and step 7, Dallah Avco would be reimbursed
9 by the PCA.

10 The critical point here is that Dallah Avco never saw
11 any connection to Al Bayoumi in those documents. All Dallah
12 Avco saw were those marked-up invoices for disc drives or other
13 goods.

14 We found hundreds of pages in Dallah Avco's logistics
15 records showing payments to Ircam, but not a single one
16 mentioned Al Bayoumi. Samuel Coombs confirmed at his
17 deposition that he never told Dallah Avco that Ircam had marked
18 up the goods on its other invoices to account for the financial
19 support it was providing to Al Bayoumi. Dallah Avco, as I
20 mentioned, had no responsibility for auditing or reviewing the
21 PCA's logistics expenses, it was simply supposed to process the
22 payments as directed by the PCA. Though, in short, while
23 Airways Engineering may indeed paid a good chunk of
24 Al Bayoumi's financial support through Ircam, there's no
25 evidence that Dallah Avco ever saw those invoices or knew that

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1 that money was going to Al Bayoumi.

2 June 1995, al Salmi began funding Al Bayoumi through a
3 second budget. This is the ANSS employee payroll. Recall that
4 I said at the outset that under the ANSS contracts, Airways
5 Engineering reserved the right to direct Dallah Avco to put any
6 employee on the project that the PCA deemed suitable. So
7 that's exactly what al Salmi did. In June of 1995, he issued a
8 directive to Dallah Avco to put Al Bayoumi on the ANSS project
9 as a senior data processing technician, a level G position.
10 Dallah Avco then started paying Al Bayoumi a level G salary and
11 benefits, and the PCA reimbursed those expenses, all pursuant
12 to the payroll provisions of the ANSS contract. This was just
13 one more mechanism for doing indirectly what al Salmi could not
14 do directly; namely, paying civil servants while they were
15 pursuing educational studies. The ANSS payroll was another
16 budget for which al Salmi controlled the purse strings.

17 In September '98, the ANSS 4 contract ended and Dallah
18 Avco won the tender for the ANSS 5 contract. So al Salmi dug
19 around for another open slot on the Manning chart and put
20 Al Bayoumi in a new position, PCA/AE budget coordinator. Your
21 Honor, the name of the position didn't really matter.
22 Al Bayoumi was not doing the work associated with those
23 positions typically. He was pursuing educational studies and
24 putting him on the project was just a way for al Salmi to keep
25 paying him while he was taking those studies.

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1 In March 2000, Al Bayoumi's 5-year limit was running
2 out, so he went back to the PCA in the Kingdom. He asked for
3 an educational leave to pursue more studies, and al Salmi
4 agreed to keep paying him through the ANSS payroll.

5 Al Bayoumi, however, thought he'd been shortchanged. He now
6 had both a master's degree and a master's certificate. He had
7 very large expenses -- supporting a family of five in southern
8 California and pursuing postsecondary education. So Al Bayoumi
9 wanted a raise and al Salmi obliged. He directed Dallah Avco
10 to put Al Bayoumi in a level-C position -- senior DSS
11 programmer. That's a higher position with a higher salary.
12 It's also a so-called "married" status position, which meant
13 that Al Bayoumi got benefits for his wife and children, too.

14 In September 2001, Dallah Avco won the tender for the
15 ANSS 6 contract. Al Salmi looked at the Manning chart again
16 for an empty slot and put him in the level B senior contract
17 specialist position.

18 Finally, November 2001, al Salmi cut Al Bayoumi's
19 salary per explicit letter sent by Alp Karli.

20 Here's a sample pay record for Al Bayoumi. You looked
21 at this before. It has his salary, his housing allowance, his
22 transportation allowance, and a modest other allowance. Dallah
23 Avco processed all those payments just like it did for the 1400
24 other employees on the project, regardless of whether they were
25 Dallah-Avco-recruited employees or direct hires that the PCA

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1 instructed Dallah Avco to put on the project as it was entitled
2 to do under the contract.

3 Here's another pay record from July 2000 after
4 al Salmi promoted Al Bayoumi to his married status position.
5 Note the substantially higher "other allowance" here. 14,271
6 Saudi riyals, which is about 3800 U.S. dollars a month. Those
7 other allowances were another mechanism al Salmi used to pay
8 Al Bayoumi. Al Salmi determined the amount of those other
9 allowances. Dallah Avco's director of manpower services, Riev
10 Khan, testified without contradiction that all other allowances
11 paid to any ANSS employee were set and determined by the PCA,
12 not by Dallah Avco. Al Bayoumi testified that the PCA
13 increased his other allowances because he had complained about
14 his compensation when he went back to the Kingdom, as I
15 mentioned a moment ago.

16 You don't need to take Al Bayoumi's word for that,
17 though, because the timing checks out. We know from
18 Al Bayoumi's passport stamp that he flew back to the Kingdom on
19 March 11th, 2000 to return to his old job at the PCA. The
20 payroll records show that Al Bayoumi started receiving these
21 increased other allowances just a few weeks after that return
22 to the Kingdom. So that confirms that Al Bayoumi started
23 receiving larger other allowances because he complained to the
24 PCA and the PCA gave him a raise in response, and Dallah Avco
25 processed those benefits just like it processed salary and

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1 benefits for every other one of the 1400 employees attached to
2 this project.

3 Those are the facts, your Honor. Now let me briefly
4 address the law. This part of my remarks will be brief
5 because, legally, this is not a complicated case.

6 Plaintiffs are seeking to hold Dallah Avco liable for
7 aid and abetting the 9/11 attacks by providing cover employment
8 and financial support to Al Bayoumi. The Second Circuit
9 articulated the standard for aiding and abetting in *Honickman*.
10 The defendant must have been generally aware of its role in an
11 overall illegal or tortious activity; the defendant must
12 knowingly and substantially assist the principal violation; the
13 defendant need not be aware of specifically, a specific act
14 that cause the plaintiff's injury, but it must be aware of its
15 roll in an overall illegal activity from which the act that
16 caused the plaintiff's injury was foreseeable. In short,
17 aiding and abetting requires knowledge.

18 Plaintiffs urge that Dallah Avco knew or should have
19 known that it was providing sham employment because Dallah
20 Avco -- because Al Bayoumi, rather, failed to meaningfully
21 pursue educational coursework and received substantial ongoing
22 payments through Dallah Avco.

23 That argument is wrong on both the facts and the law.
24 It's wrong on the law because aiding and abetting is not a
25 negligence offense, it is a knowledge offense. "Should have

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1 known" is not enough. As the Supreme Court held in the recent
2 Twitter case, the defendant must have consciously and culpably
3 participated in the wrongful act. So plaintiffs' theory is
4 that Dallah Avco should have asked more questions or should
5 have been more suspicious are completely beside the point under
6 the governing standard.

7 Plaintiffs claim that Al Bayoumi did not meaningfully
8 pursue educational coursework is ridiculous on this record,
9 your Honor. We went through all this. Al Bayoumi diligently
10 pursued English studies at San Diego State and ELS, he got good
11 comments, had good attendance, obtained good grades on balance,
12 Al Bayoumi entered a master's degree from West Coast and U.S.
13 International University, and he earned a master's certificate
14 from George Washington, and he earned another master's degree
15 from Aston. Those are not made-up universities, they are real
16 schools, and they would not have granted Al Bayoumi multiple
17 graduate degrees if he was not meaningfully pursuing
18 educational studies. Any sketchy patches, like Al Bayoumi's
19 time at Keller starting in late 1998, are irrelevant because
20 Dallah Avco did not know of them.

21 Finally, plaintiffs' claim that Al Bayoumi received
22 substantial ongoing payments through Dallah Avco distorts the
23 facts. Dallah Avco didn't even know about the payments through
24 Ircam, and although Dallah Avco did know about the payment
25 through Avco Overseas in 1994 and the ANSS salary and benefits

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1 that started in 1995, Dallah Avco processed all those salaries
2 and benefits because that was its job under the ANSS contract
3 as an outsourced human resources provider. Al Salmi determined
4 all of the amounts paid and the PCA reimbursed all the
5 payments. Dallah Avco was effectively a paymaster or a payroll
6 processor that just carried out those contractual payment
7 obligations.

8 The fact that al Salmi may have showed favoritism by
9 paying Al Bayoumi more than other PCA students is irrelevant.
10 The fact that al Salmi may have been skirting civil service
11 regulations by paying PCA students who were effectively on
12 educational leave is irrelevant. There's no evidence that
13 Dallah Avco knew either fact, but even if it did, it wouldn't
14 matter. Plaintiffs must show that Dallah Avco was aware of its
15 role in illegal activity from which the 9/11 attacks were
16 reasonably foreseeable, unwitting, or even knowing complicity
17 in al Salmi's favoritism or civil service regulatory compliance
18 simply is not enough.

19 Now the plaintiffs had pointed to six specific
20 exhibits or sets of exhibits that they claim shows Dallah
21 Avco's complicity in the 9/11 attacks, and I just want to
22 briefly turn through each of those, your Honor. I'll ask my
23 technician to put them up on the screen.

24 The first one are two documents from the FBI in
25 October 2001, so just a couple weeks after the 9/11 attacks,

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1 that include this claim that someone told Osama bin Laden
2 himself to contact Dallah Avco in June 1998. The document on
3 the screen is EO1440-2563, this is the public version of a
4 sub-exhibit in Plaintiffs' Exhibit 2B. Page 3 states, Avco
5 company/Dallah, as of 1998, Dallah Avco TransArabia Ltd. was
6 reportedly a subsidiary of the Al Baraka investment and
7 development company iNJETTA. It has reportedly held the
8 contracts for the cleaning and maintenance of the three major
9 airports in Saudi Arabia for a long period of time. Avco
10 Dallah TransArab, a/k/a Avco Dallah Co., a/k/a Dallah Avco Co.
11 was linked to Osama bin Laden. Osama bin Laden was instructed
12 to contract the company in June of 1998. There's a similar
13 document, an internal communication from the FBI three days
14 later, but that's it.

15 There are so many problems with this document, your
16 Honor, that it's hard to know where to start.

17 First, there is absolutely no evidence that the FBI
18 ever determined that this allegation was credible information.
19 The very next paragraph of this document states: It is
20 requested that blank provide specific information pertaining to
21 the above reference to Dallah Avco TransArabia, which would
22 include types of reporting, location to location, identities of
23 the parties involved, dates, transcripts, if it is a
24 conversation, and any additional pertinent information. On its
25 face, the document shows that the FBI had no idea whatsoever

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1 where this information was coming from. But the FBI's
2 subsequent handling of this allegation speaks volumes. If
3 Dallah Avco really was personally chatting it up with Osama
4 bin Laden, the man himself in the years leading up to 9/11,
5 this would not be some obscure fact buried in the FBI's recent
6 productions. That would be blockbuster, but after these two
7 references in ongoing communications in early October 2001,
8 this theory basically disappears from the FBI's investigation.
9 Clearly, the FBI concluded that this information was not
10 reliable or credible.

11 And that lack of trustworthiness matters, your Honor,
12 because this document is hearsay, it's triple hearsay. It's an
13 inadmissible FBI report that recounts what some anonymous
14 intelligence agent reported about what some other anonymous
15 source said in something that might have been a conversation,
16 might have been someone else, we don't know when, we don't know
17 who. Plaintiffs invoke the public records exception to the
18 hearsay rule, but under the Second Circuit's *Pullman* decision,
19 that exception requires that the report embody the findings of
20 an agency, not merely the tentative results of an incomplete
21 staff investigation. Mere interim reports subject to revision
22 and review do not qualify. This document doesn't meet that
23 standard. It's not an official report setting forth the FBI's
24 considered findings, it's internal chatter in an ongoing
25 investigation.

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1 The next document --

2 THE COURT: I want to start to wind up, so I don't
3 want to go through each one of these documents. Why don't you
4 summarize it.

5 MR. KRY: No problem.

6 The next three documents from the FBI I think are all
7 adequately covered in our briefs, your Honor. I'll refer you
8 to our reply brief on those.

9 I will touch just briefly on what is called No. 6.
10 This is the document your Honor alluded to, Dallah Avco
11 exhibit 31. In April 1999, Dallah Avco told al Salmi that it
12 did not want to renew Al Bayoumi's limit. We all know what
13 happened next. Al Salmi promptly wrote back saying, actually,
14 we would like you to renew Al Bayoumi, and Dallah Avco said,
15 okay, I guess we're renewing this. Pretty clear who was
16 calling the shots. Plaintiffs assert, nonetheless, that this
17 letter shows that Dallah Avco knew that Al Bayoumi was up to no
18 good and got, quote, cold feet. This letter shows no such
19 thing. The letter says that Dallah Avco did not want to renew
20 this, but it doesn't say anything about why. Plaintiffs
21 speculate that Dallah Avco must have learned that Al Bayoumi
22 was engaging in illegal conduct, but plaintiffs have no
23 evidence. They are simply speculating.

24 THE COURT: What was the reason for this?

25 MR. KRY: I would suggest two, your Honor. The first

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1 possibility is that Dallah Avco -- by this point, Al Bayoumi
2 had spent five years pursuing educational studies so he could
3 take over the job of his supervisor. Throughout, he had been
4 drawing an ANSS salary and filling a slot on the project that
5 could have otherwise been filled by someone doing actual
6 airport work in the Kingdom. And so, notwithstanding the Saudi
7 public policy of Saudization, notwithstanding the fact that
8 sending government employees off to pursue educational studies
9 is normal and encouraged in the Kingdom, because of that public
10 policy, a contractor in Dallah Avco's position by this point
11 could have considered that this had gone on so long that it was
12 starting to become a waste of project resources, and Dallah
13 Avco suggested that maybe the PCA should reconsider that.

14 THE COURT: Is that your theory or is there any
15 evidence to support that conclusion?

16 MR. KRY: That, all the evidence does support that
17 conclusion, your Honor, because what --

18 THE COURT: What evidence supports that is the reason
19 that they suggested it?

20 MR. KRY: Okay. So the evidence that supports that
21 being the reason they suggested is that Dallah Avco knew that
22 he had been in the United States pursuing educational studies
23 for five years. So that's -- it's supported by all the
24 evidence we just went through on the timeline chart -- the
25 tuition for San Diego State back in '94, the exchange with Jeff

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1 Danaya from 1997. So there's plenty of evidence that Dallah
2 Avco knew that the PCA was spending project funds to support
3 Al Bayoumi pursuing educational studies --

4 THE COURT: But you started out your argument saying
5 that they had had no role in this. This wasn't their issue.

6 MR. KRY: Absolutely.

7 THE COURT: They had a ministerial is role more so
8 than anything else. Why is it appropriate for them to tell
9 them who should get paid and who shouldn't get paid?

10 MR. KRY: That's a great question, your Honor. And as
11 we see, it was not appropriate for them to do that because as
12 soon as they sent that communication, the very, you know,
13 either the same day or a couple days later, al Salmi wrote back
14 and said, actually, I do want this guy on the project, you
15 know, send the paperwork to get that done. And, immediately,
16 Dallah Avco is like, oh, okay, I guess we're putting him back
17 on the project. And they sent the letter and that's what
18 happened.

19 And so, yeah, probably, it was not really Dallah
20 Avco's business, but the reality is sometimes, companies, when
21 they see something that looks a little extravagant and it looks
22 like the government agency is wasting public funds, may feel it
23 appropriate to voice their opinion about it, even though,
24 contractually, it is not appropriate for them to do that. And
25 so, this letter was probably something that was beyond Dallah

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1 Avco's role to send, it was not their business, but they saw
2 that this guy had been wasting project resources that otherwise
3 could have been used to pay someone doing actual airport work
4 for five years and counting and that this was getting a little
5 out of hand. So notwithstanding that it was probably at least
6 arguably inappropriate to send it, they sent it. And then the
7 PCA said, well, that's not your decision. And so, Dallah Avco
8 did what it was required to do under the contract, which was
9 al Salmi, the buck stopped with him, you know, he had the last
10 word. If he says Al Bayoumi is going to remain on the project
11 pursuing educational studies, it's not Dallah Avco's business
12 to question that. And that, you know, the tone of Al Bayoumi's
13 letter is pretty sharp and it's not surprising in the least
14 because, you know, it was his decision, it was not Dallah
15 Avco's decision.

16 But that's my first -- you know, compare that. So
17 that explanation is supported by the evidence because we have
18 ample records that Dallah Avco knew that Al Bayoumi had been
19 doing educational studies and filling a slot on the project for
20 five years. Plaintiffs' theory, the cold feet theory that
21 Dallah Avco knew that Al Bayoumi was in the United States to
22 support terrorists, that theory is completely unsupported by
23 the evidence because there's no evidence anywhere that anyone
24 told Dallah Avco that Al Bayoumi was in the United States for
25 any reason other than pursuing educational studies. So of the

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1 two theories, ours is supported by evidence, the plaintiffs' is
2 supported by speculation.

3 THE COURT: The thing I don't understand, though, is
4 this letter is written by the chairman of the board.

5 MR. KRY: Of Dallah Avco, yes.

6 THE COURT: He should have a reason why he sent this
7 letter.

8 MR. KRY: The reason, so it was sent by the chairman
9 of the board, it was probably prepared by someone underneath
10 him --

11 THE COURT: All right. Well, even someone underneath
12 him should have had some explanation for why they sent the
13 letter.

14 MR. KRY: Right. We don't have any direct
15 explanation --

16 THE COURT: But why. That's what I don't understand,
17 why.

18 MR. KRY: There's no testimony on why it was sent.

19 THE COURT: I know, but --

20 MR. KRY: The two possibilities, one of which I
21 mentioned --

22 THE COURT: I only look at possibilities when I can't
23 find the facts.

24 MR. KRY: Yeah, and there is no direct evidence.

25 THE COURT: So the facts should be that whoever wrote

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1 the letter, drafted a letter, should have some good excuse or
2 bad excuse for why they wrote the letter. We don't have any
3 testimony from the person who drafted this letter as to why
4 they drafted this letter?

5 MR. KRY: Your Honor, this is a letter from 25 years
6 ago.

7 THE COURT: Well, I agree --

8 MR. KRY: No one at Dallah Avco knew who was on this
9 project at the time is still there. We had to put up a
10 30(b)(6) witness who had no personal knowledge because there's
11 not a single employee that's still there. So we do not know
12 why Dallah Avco sent the letter.

13 And so, the question is: Are you going to go with
14 speculation and go with plaintiffs' theory that Dallah Avco
15 sent the letter because it knew that Al Bayoumi must have been
16 in the United States because he was supporting terrorists or
17 are you going to go the evidentially supported explanation,
18 which is the one that we've offered, and that's that Dallah
19 Avco did know that this guy was pursuing educational studies,
20 going on five years now, so he could take over another position
21 on the project, all that time drawing the project's salary,
22 filling a slot on the project that otherwise could have been
23 filled by someone doing actual airport work. That is the
24 theory supported by evidence. Yes, it's an inference because
25 we don't have direct testimony of the reason for this letter,

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1 but that is the inference supported by evidence, plaintiffs'
2 inferences is the one supported by explanation.

3 But that's only the first explanation because I have a
4 second one, too, your Honor. That's my backup explanation.

5 THE COURT: I don't like the rule on theories, lawyer
6 theories.

7 MR. KRY: Unfortunately, when the evidence is 25 years
8 old, your Honor, you can't always get direct testimony for why
9 someone did something.

10 THE COURT: It's not particularly helpful when I've
11 had this all day to say it might have been this or it might
12 have been that.

13 MR. KRY: That's the nature of the case, your Honor,
14 it's the nature of the case, unfortunately. This is 25 years
15 on now from when the letter was sent. The people are not there
16 anymore.

17 THE COURT: Let's finish up so I can give them a brief
18 opportunity to be heard.

19 MR. KRY: My last point on that is even if there was
20 something to plaintiffs' theory, if even plaintiffs are right
21 that Dallah Avco began to suspect that something was up and
22 maybe this guy was in the United States for some ulterior
23 reason other than pursuing educational studies, that would not
24 be enough because aiding and abetting requires knowledge, not
25 suspicions, unanswered questions, or failures to investigate,

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1 but knowledge. And it requires knowledge of not just any
2 illegal activity, but activity from which the 9/11 attacks were
3 reasonably foreseeable. So mere suspicions that Al Bayoumi
4 might be up to no good is not enough. Even actual knowledge
5 that Al Bayoumi was up to no good is not enough — there must be
6 knowledge of wrongdoing from which the 9/11 attacks were
7 reasonably foreseeable. And there's nothing, nothing in this
8 one cryptic letter that shows that Dallah Avco had anything
9 remotely approaching that degree of knowledge about
10 Al Bayoumi's activities in the United States.

11 I have just one final thing I wanted to close on, your
12 Honor, and this relates to the plaintiffs' witness, Sam Coombs.

13 (Continued on next page)

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1 MR. KRY: Sam Coombs was the head of the ANSS
2 logistics department, so he worked directly for al Salmi and
3 ran that department from '95 to '97. He was an ANSS employee,
4 so Dallah Avco handled his payroll, but he reported to al Salmi
5 at the PCA. He approved logistics requests the PCA sent to
6 vendors like to Ercan. He saw al Salmi's financial directives
7 to pay for al Bayoumi's studies, and he even kept a spreadsheet
8 where he tracked the funding that al Salmi sent to each
9 student.

10 If there was anyone who was in a position to suspect
11 that al Bayoumi had been sent to the United States as a pretext
12 for illegal conduct, Sam Coombs was right there. His testimony
13 is uniquely relevant. And I just want to highlight a few
14 relevant passages.

15 He was asked:

16 "Q How many students were a part of this arrangement where
17 the logistics department budget would be used to pay for their
18 studies?

19 "A It fluctuated between 45 and 50, and some of them are like
20 interns. They would come on board temporarily in Saudi, and
21 then they'd apply for it.

22 "Q This was a common practice not only at PCA but at other
23 Saudi businesses, correct?

24 "A That's correct."

25 And then with respect to what Omar al Bayoumi was

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1 doing in the United States:

2 "Q When you say 'everybody said he was in school,' who are
3 you referring to as 'everybody'?

4 "A The people talking around the -- inside the -- you know,
5 like when they said, yeah, he's in the States. You know, I'd
6 ask a question, and they'd say, yeah, he's in the States going
7 to school.

8 "Q Approximately how many people made comments like that to
9 you?

10 "A Four or five. You know, Alp Karli and Hamad Rashid.
11 There's several of them that would say things like that to me.
12 So I just quit asking."

13 "Q Mr. Coombs, throughout your time at Airways Engineering,
14 did you understand that Omar al Bayoumi was pursuing
15 educational studies in the United States?

16 "A Yes.

17 "Q Did you ever tell Dallah Avco that al Bayoumi was doing
18 something other than pursuing educational studies in the United
19 States?

20 "A No."

21 And finally, on the funding for al Bayoumi:

22 "Q So is it fair to say that the reason you considered the
23 expenses unusual was just that they were -- gave al Bayoumi a
24 higher standard of living than the other Saudi students that
25 were being funded through logistics?

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1 "A Yes.

2 "Q At any time did you ever learn that al Bayoumi was using
3 his educational funding to plan terrorist attacks or engage in
4 other criminal activity in the United States?

5 "A No. No.

6 "Q At any time did you even suspect that al Bayoumi was using
7 his educational funding to plan terrorist attacks or engage in
8 other criminal activity in the United States?

9 "A No."

10 Your Honor, this is not a Dallah Avco witness. This
11 is plaintiffs' own witness. Plaintiffs interviewed Sam Coombs.
12 They had him sign a declaration. In fact, this is plaintiffs'
13 only witness who said anything about Dallah Avco at all.

14 If you are going to make sensational allegations
15 against a company about knowingly aiding and abetting the 9/11
16 attacks, surely at least your own witnesses should back up your
17 theory, but Sam Coombs did not. Sam Coombs never even
18 suspected that al Bayoumi was in the United States to engage in
19 criminal activities.

20 Sam Coombs reported to al Salmi, interacted with him,
21 and signed many of the same documents. And if Sam Coombs did
22 not know what was going on, how could Dallah Avco possibly
23 know? Dallah Avco, a mere outsourced human resources service
24 provider that was much further removed from all of these
25 arrangements, plaintiffs simply have no answer to that critical

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1 question.

2 Your Honor, I know there's limited time remaining, but
3 if you would allow my colleague, Eric Nitz, to briefly address
4 proximate causation.

5 THE COURT: I'll give you five minutes to do so
6 because I don't think that I need a lot of assistance in that
7 area.

8 MR. NITZ: Thank you, Judge. Just a couple of quick
9 points.

10 This isn't a case where Dallah Avco paid money to
11 terrorists. It's not a case where Dallah Avco provided
12 services to terrorists. It's not even a case where Dallah Avco
13 paid money to someone who then gave that money to terrorists.

14 This is a case where Dallah Avco performed in the
15 ordinary course, responsibilities under its contract with the
16 PCA, providing payroll, HR, and administrative services for
17 over 1,400 ANSS employees, one of whom happened to be Omar al
18 Bayoumi. Not one of the other ANSS employees, including the
19 dozens of Saudis whose educational expenses were paid using the
20 ANSS budget, had any connections to the 9/11 attacks, al Qaeda,
21 or terrorism in general.

22 Plaintiffs don't argue that the salary and expenses
23 Dallah Avco paid to Bayoumi were used to support the hijackers
24 or to advance the terrorist attacks. They argue only that
25 those payments made it possible for Bayoumi to enter the United

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1 States and to remain clothed, fed, and housed while he was
2 here.

3 If that flimsy connection is enough to hold Dallah
4 Avco liable for the 9/11 terrorist attacks, then proximate
5 cause will be emptied of all meaning. Employers could be held
6 liable every time an employee commits a tort using his salary.
7 An organization that awards a scholarship could be held liable
8 whenever the recipient commits a tort on campus. And an
9 airline could be held liable for any torts committed by a
10 passenger after he lands at his destination.

11 Plaintiffs attempt to close the causal gap between
12 Dallah Avco and the 9/11 attacks with generalized allegations.
13 But when you look at the evidence, when you set aside
14 plaintiffs' characterizations and really focus on the evidence,
15 there's nothing that shows Dallah Avco proximately caused the
16 9/11 attacks, not even close.

17 If we could flip to the next slide, please.

18 So I was intending to offer a little bit more color on
19 this slide, but given time --

20 THE COURT: I don't think color is what we need at
21 this point.

22 MR. NITZ: But given time constraints, your Honor,
23 what I do want to point out is that Dallah Avco's relationship
24 to al Bayoumi was extremely attenuated. It was driven by the
25 PCA. The decisions about the money that would be paid to al

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1 Bayoumi, the decisions about his course of studies, approval
2 for his course of studies, those were all decisions that were
3 made by the PCA and the ANSS project, namely Alp Karli and al
4 Salmi. Dallah Avco simply implemented those decisions. It
5 processed the paperwork, it did what it was required to do
6 under the contract.

7 When you look at all of that together, Judge, and you
8 look at Dallah Avco's extremely attenuated relationship to al
9 Bayoumi, him being just one of 1,400 people who ultimately
10 served on this project, you have a situation where Dallah Avco
11 wasn't in control of the payments that it sent to Bayoumi or
12 his status as an ANSS employee. It was simply acting in the
13 ordinary course of responsibilities under the ANSS contract and
14 treating al Bayoumi like other ANSS employees.

15 We'll skip this next slide and go to the last one.

16 If there's anything that underscores the limited
17 connection between Dallah Avco on the one hand and Bayoumi and
18 the 9/11 attacks on the other, it's this. There's years of
19 phone numbers in this case for multiple phone numbers. And
20 plaintiffs identify only one phone call, one - that's it -
21 between al Bayoumi and Dallah Avco during the entire eight-year
22 period that al Bayoumi was abroad.

23 THE COURT: And Dallah Avco was in Saudi Arabia?

24 MR. NITZ: Yes, your Honor.

25 It's a single, very short phone call from Bayoumi to

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1 Dallah Avco on January 10, 1999, a seemingly random date almost
2 three years before the 9/11 attacks and a full year before
3 Hazmi and Mihdhar even arrived in the United States.

4 Now, the phone records are central to plaintiffs'
5 theory. There's been a lot of talk about the phone records
6 today, over and over again they've been referenced. You see
7 them in dozens, if not hundreds of the allegations in
8 plaintiffs' averment. And they put together demonstrative
9 after demonstrative reconstructing or purporting to reconstruct
10 the phone records.

11 For plaintiffs, the phone calls are everything. And
12 it says all the Court needs to know about Dallah Avco's role in
13 this case, or really lack of any role, that there is only one
14 single phone call between al Bayoumi and Dallah Avco over the
15 course of those many years.

16 I'll touch very briefly on the legal standard. I
17 would ask the Court to take a look at the cases, *Rothstein* and
18 *Terrorist Attack Six*. Those are the cases that control here.
19 Under any reasonable reading of those cases, plaintiffs haven't
20 shown proximate cause.

21 Unless the Court has any further questions, we'd ask
22 the Court to grant the motion.

23 THE COURT: Thank you very much.

24 MR. NITZ: Thank you very much.

25 THE COURT: Who wants to respond? Yes, sir.

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1 MR. CARTER: Your Honor, Sean Carter from Cozen
2 O'Connor on behalf of the plaintiffs.

3 I'm cognizant that my colleagues have run out the
4 clock on me a little bit, so I will be very brief.

5 We agree on a lot with Dallah Avco. We agree that
6 Omar al Bayoumi was at all times an agent of the Saudi
7 government. We agree that the Saudi government went to
8 extraordinary lengths to direct payments to Bayoumi in the
9 United States. We agree that the Saudi government went to
10 extraordinary lengths to maintain his cover as a student in the
11 United States, despite the fact that, as the record reflects,
12 he did not engage in any continuous and systemic course of
13 study.

14 THE COURT: So what is the evidence that indicates
15 that they had knowledge that he was engaged in criminal
16 activity that might lead to a terrorist attack?

17 MR. CARTER: Correct, your Honor. So the secondment
18 that Dallah Avco accommodated was extraordinary on its face.
19 Mr. Kry explained at some length this arrangement for this ANSS
20 contract. At the core of this, though, what was happening here
21 was the PCA was seconding someone who was nominally employed by
22 them to Dallah Avco so that they could work for the PCA. It
23 makes no sense on its face to have done that.

24 THE COURT: To have done which part? Because
25 obviously the employment relationship was no different than

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1 another two, three, four dozen employees that they were paying
2 their salaries at the direction of the employer.

3 MR. CARTER: No, your Honor. The unique arrangement
4 here is the secondment that instead of maintaining Bayoumi as
5 an employee of the PCA and simply paying his expenses through
6 the logistics budget, doing those other things, they instead
7 seconded him to Dallah Avco, assigned him job titles that he
8 did not do --

9 THE COURT: Yes. But that's conduct by Saudi Arabia.
10 That's not conduct by Dallah Avco.

11 MR. CARTER: Correct, your Honor. From --

12 THE COURT: What does that reflect with regard to the
13 improper activities of Dallah Avco?

14 MR. CARTER: Understood, your Honor.

15 From Dallah Avco's perspective, receiving this request
16 to second this individual, it was apparent to them there was no
17 logical reason to do it since he was already a PCA employee.

18 THE COURT: So they should have done what?

19 MR. CARTER: Well, it was also out of bounds of the
20 contract. There was no one in the United States --

21 THE COURT: Right. So they should have --

22 MR. CARTER: They should have said no, this is totally
23 out of bounds of the contract. This doesn't make any sense.

24 THE COURT: And they should have said no because they
25 should have assumed that that was related to a terrorist

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1 attack?

2 MR. CARTER: I think, your Honor, what the face of all
3 of this shows is that they were aware that this was way out of
4 bounds and highly irregular.

5 THE COURT: What directs their attention to the
6 possibility that this person is engaged in a terrorist attack,
7 as opposed to just trying to rip off the company and make more
8 money?

9 MR. CARTER: Yes, your Honor.

10 I think when we get to that point, we do end up in a
11 circumstance where we have to ask if what we know about this
12 arrangement that Dallah is supporting and facilitating has to
13 be viewed in the context that there's also evidence of record
14 that the founder of Dallah was an ally of Bin Laden, who
15 provided support to Bin Laden and al Qaeda through the
16 companies he controlled.

17 THE COURT: And again, I'm not sure you say what they
18 should have done instead.

19 MR. CARTER: Well, your Honor, I think the law in the
20 Second Circuit points us to the framework for assessing whether
21 or not there's general awareness. And the law talks about a
22 course of dealing with one another over a period of many years,
23 doing things that are seemingly routine in an unusual way --

24 THE COURT: So articulate for me what it is they
25 should have been generally aware of.

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1 MR. CARTER: Your Honor, I think the core question for
2 the Court to decide is whether or not, given the long history
3 of this, the incredible, unusual aspects of it, the
4 extraordinary nature of it, is the proper inference to believe
5 that Dallah Avco simply thought something illegal was going on?
6 Or given the alliance between the founder of the company, that
7 they were actually witting participants and providing cover
8 because they knew what Bayoumi was really up to.

9 THE COURT: Well, what is it that they knew that he
10 was up to?

11 MR. CARTER: Well, your Honor, what they knew he was
12 up to is not doing the job that he was supposed to be doing.

13 THE COURT: I know. But that doesn't make them liable
14 under the statute. What --

15 MR. CARTER: Your Honor, I understand. The statute
16 requires -- and I do think that the relevant inquiry here is
17 under the ATA, whether or not the arrangement was reasonably
18 foreseeably connected to some act of terrorism, that is
19 correct.

20 THE COURT: So what makes it reasonably foreseeable
21 that what he was doing was related to terrorism?

22 MR. CARTER: What we have, your Honor, is that the
23 course of dealing over many years was so extraordinary, and the
24 fact that the chairman of the company at issue, founder of the
25 company, rather, at issue had a history of providing support to

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1 Bin Laden through companies he controlled.

2 THE COURT: And who at the company -- you're saying
3 there was general knowledge of that. You're not saying there
4 was any specific knowledge by anyone at Dallah Avco.

5 MR. CARTER: Your Honor, I'm saying that the chairman
6 of the company, as identified by the CIA in a report you
7 previously deemed admissible, in the context of the Dubai
8 Islamic Bank --

9 THE COURT: That was a public report?

10 MR. CARTER: It is.

11 THE COURT: It was public at the time?

12 MR. CARTER: No, not at the time.

13 THE COURT: So how were they supposed to be aware of
14 that?

15 MR. CARTER: Your Honor, the awareness would have to
16 come from the chairman himself based on his relationship with
17 Bin Laden.

18 THE COURT: The chairman of Dallah Avco?

19 MR. CARTER: The founder. I'm sorry.

20 THE COURT: Okay. So you say that the founder had a
21 relationship with Bin Laden?

22 MR. CARTER: Correct, your Honor.

23 THE COURT: And was that person involved in the
24 company at any of this relevant time?

25 MR. CARTER: His name does not appear in any of these

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1 documents, your Honor.

2 THE COURT: When did he found the company?

3 MR. CARTER: I don't have a specific date. It was his
4 nephew who was running the company at the time.

5 THE COURT: But it was sometime before the relevant --

6 MR. CARTER: There's many iterations of this company,
7 so yes.

8 THE COURT: Okay. And you agree with them that you're
9 not relying on that they should have known? That's --

10 MR. CARTER: No, your Honor.

11 THE COURT: You're relying on that they actually had
12 information that in fact put them on notice that he was
13 involved in criminal activity, which might lead to a terrorist
14 attack?

15 MR. CARTER: Correct, your Honor. The question --

16 THE COURT: And the reason you give for that is that,
17 other than the fact that the founder of the company who's no
18 longer in the company had some relationship with Bin Laden, is
19 there any other reason that you say that indicates that they
20 knew?

21 MR. CARTER: The additional information, your Honor,
22 is the sequence of FBI reports that Mr. Kry mentioned, the
23 first being on October 10, 2001, that I understand to be the
24 product of a trace request by the FBI for information about
25 Dallah Avco that returned information from the CIA that said

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1 there was a connection between Dallah Avco and Osama bin Laden.
2 The 10/13 report is a followup on that, which says that the
3 connection has been confirmed.

4 THE COURT: I know. But I'm trying to understand why
5 somebody at Dallah Avco should have been aware of those
6 conclusions.

7 MR. CARTER: Your Honor, I don't think they should be
8 aware of the conclusions in the FBI reports. I'm suggesting
9 that the connection between Bin Laden and Dallah Avco that's
10 reflected in those documents would indicate that there were
11 allies within the company who would reasonably be understood to
12 be involved in this kind of arrangement to support al Qaeda's
13 operations.

14 THE COURT: And that means that it was their
15 responsibility to make sure that any irregularity -- to assume
16 that any irregularity in the payments could lead to a terrorist
17 attack?

18 MR. CARTER: I don't think that's the assumption, your
19 Honor. I think your Honor would have to reach an inference
20 that there was some reason for someone at Dallah Avco to
21 understand that the reason Bayoumi was being employed, provided
22 cover, provided funding, and being accommodated in these
23 extraordinary ways is because he was in the United States
24 actually engaging in extremist activity in support of
25 jihadists.

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1 THE COURT: And the thing that you say leads to that
2 conclusion would be the relationship of the founder to Bin
3 Laden at some earlier time?

4 MR. CARTER: And the FBI reports reflecting a
5 connection to Dallah Avco, that's correct, your Honor.

6 THE COURT: You keep saying the "FBI reports." You
7 don't mean that they were aware of any information in the FBI
8 report?

9 MR. CARTER: No. I'm saying the substance of the FBI
10 reports indicating that there was some relationship between Bin
11 Laden and the company.

12 THE COURT: Okay. But that's not any different than
13 the information that you say they should have -- that you
14 say -- you would have to say information that they had --

15 MR. CARTER: Correct, your Honor.

16 THE COURT: -- at the time that there was a Bin Laden
17 connection. And therefore, they should believe that any
18 irregularity in the payments are related to a possible
19 terrorist attack. I mean, I don't want to mischaracterize what
20 your argument is.

21 MR. CARTER: No, your Honor. What I'm saying is that
22 the evidence supports the conclusion that there was some ally
23 of al Qaeda in Dallah Avco.

24 THE COURT: That's what I was going to ask. Who?

25 MR. CARTER: We don't know.

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1 THE COURT: Is there any reason -- I mean, even at
2 this point is there any -- do you have any facts or any basis
3 to accuse any particular individual, knowing what you know now,
4 at Dallah Avco as being the complicit co-conspirator?

5 MR. CARTER: We don't have a specific name other than
6 the knowledge of the CIA reporting on the founder.

7 THE COURT: Who are you trying to impute that
8 knowledge to?

9 MR. CARTER: The company, your Honor. We're trying
10 to --

11 THE COURT: Well, the company is a fiction.

12 MR. CARTER: I understand.

13 THE COURT: Companies don't know stuff. People know
14 stuff. So you've got to have some -- you don't have to, but
15 I'm trying to understand if there's somebody who generally you
16 can point to who was in a position that the evidence indicates
17 that that person had the requisite knowledge that can be
18 imputed through the entire company.

19 MR. CARTER: We don't have that. It looks like it was
20 signals intelligence. The FBI asked if it could be
21 declassified. It does not appear it was.

22 THE COURT: You talked about the FBI report, but my
23 recollection is -- and I may not have it right -- that the FBI
24 did not conclude that Dallah Avco was involved -- was aware of
25 any related terrorist activity.

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1 MR. CARTER: The statement in the FBI report and the
2 10/13 report is now that the relationship between Dallah Avco
3 and Bin Laden has been confirmed. We're looking to find these
4 additional facts.

5 THE COURT: Leading to what conclusion? They don't
6 make the conclusion that you are asking me to make that -- so
7 therefore, they knew and were complicit.

8 MR. CARTER: They do not go that far in the report,
9 your Honor. That's correct.

10 THE COURT: And do they make any statement one way or
11 the other with regard to Dallah Avco's responsibility?

12 MR. CARTER: They don't, not in that report, your
13 Honor.

14 I think Mr. Simpson has a few closing remarks.

15 THE COURT: All right. Yes, sir.

16 MR. SIMPSON: Your Honor, Gavin Simpson for
17 plaintiffs.

18 To conclude, with regard to Saudi Arabia's
19 submissions, my colleague, Mr. Rapawy, spent much of his
20 presentation arguing genuine issues of material fact. That
21 alone demonstrates, your Honor, that plaintiffs have met their
22 burden of production and put before this Court genuine issues
23 of material fact based on admissible evidence.

24 It is highly significant that much of what Mr. Rapawy
25 represented is, in fact, sharply disputed characterizations of

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1 that evidence and, indeed, mischaracterizations. It has been
2 Saudi Arabia's strategy to argue the evidence in isolation, to
3 take individual events, tiny minutiae, and argue them until
4 they seem to disappear, whereas the governing Second Circuit
5 authority requires the Court to look at the evidence in its
6 totality.

7 Your Honor is of course permitted in doing so to draw
8 inferences from the totality of the evidence and, indeed, to
9 apply common sense in precisely the way that this evidence
10 demands.

11 There are certain submissions that Mr. Rapawy has
12 advanced that are, quite frankly, nonsensical. Omar al Bayoumi
13 did not prepare a math equation for a high schooler, your
14 Honor. What differentiates it was that he drew an airplane on
15 that sketch, and inputted numbers into his calculation that
16 were materially relevant to the 9/11 attacks.

17 Your Honor, no member of the hijackers' welcome party
18 brought his wife that evening. There was no second venue.
19 Saudi Arabia ignores the statements of Bayoumi's own acolytes,
20 Khalid Yafai and Fathi Aidarus to the 9/11 Commission and to
21 the FBI respectively, that they were invited to that party and
22 given the address of the hijackers' apartment.

23 The video evidence demonstrates that the door was kept
24 locked and when new late arrivals came, who also knew which
25 apartment to come to, they were identified through the glass

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1 door by existing members of the party by name in order to gain
2 admission. That is the evidence that is shown on the
3 videotape.

4 The fiction that Omar al Bayoumi created as his cover
5 story for hosting that welcome party and, indeed, for the
6 support that emanated from it has been discredited by
7 plaintiffs' production of the videotape, including the careful
8 analysis of the actual speech between and among the guests at
9 the party.

10 As to the question of isolation, again, on the casing
11 video, which you have seen and plaintiffs have presented before
12 the Court, I point the Court and your Honor to Plaintiffs'
13 Exhibit 704, which summarizes in screenshots and verbatim
14 excerpts of the narration exactly what Bayoumi was doing when
15 he cased the Capitol. Saudi Arabia has resolutely refused to
16 engage with Bayoumi's speech on that videotape. And of course,
17 when one looks at the images in isolation, one might arrive at
18 the wrong conclusion.

19 Bayoumi had no innocent reasons for helping the
20 hijackers. Bayoumi did not help strangers. He testified that
21 this was not a habit that he was in. He asked the rhetorical
22 question, why would I help someone to find accommodation when I
23 don't know them?

24 The real reason Bayoumi helped the hijackers is
25 because the support was prepared in coordination with the

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1 network to which Bayoumi belonged. It was his job, your Honor,
2 to provide that support to the hijackers. He was acting in the
3 scope of his agency for Saudi Arabia and in furtherance of the
4 extremist militant network that Saudi Arabia had created on the
5 territory of the United States.

6 Your Honor, in response to Mr. Rapawy's suggestion, I
7 did not impugn the religion of the Kingdom of Saudi Arabia.
8 Rather, I impugned the actions of a complex criminal cabal of
9 actors who sought to support terrorists in this country and
10 whose actions helped Nawaf Hazmi, Khalid Mihdhar, Hani Hanjour,
11 and others to perpetrate the devastating 9/11 attacks.

12 Much of that enterprise, much of that support network
13 was carried out in secret. There were clandestine actions at
14 play. There were back room meetings of extremists, quite
15 contrary to what they preached when they stood before a diverse
16 congregation. Fahad al Thumairy may never have revealed his
17 true colors at the King Fahd Mosque, but he certainly revealed
18 it when he met in private with the hijackers on multiple
19 occasions – on January 15, the day they arrived in the country,
20 and, yes, on June 9 and 10, when Khalid Mihdhar was about to
21 leave the United States.

22 Two percipient witnesses testified that Fahad Thumairy
23 met Mihdhar and Hazmi again on that visit back to Los Angeles.
24 Mohdar Abdullah, one of them, in fact, testified that he was in
25 a state of shock when he realized that the hijackers already

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1 knew Sheikh Fahad. It was the same terminology, Sheikh Fahad,
2 that was used in an admission by Mohamed Johar that he knew
3 that the hijackers came "through Sheikh Fahad."

4 And in the 2016 ENCORE report, the FBI's factual
5 findings confirmed that Mohamed Johar was tasked by Fahad al
6 Thumairy to assist the hijackers. It was not innocuous or
7 fleeting support, your Honor. He picked them up from the
8 airport. He provided his apartment to them for accommodation.
9 And he showed them to the very restaurant where they would meet
10 Omar al Bayoumi on February 1.

11 To that point, January 31 and February 1 must be
12 assessed in conjunction. There were two trips to Los Angeles
13 by Omar al Bayoumi. The evidence in the record which Saudi
14 Arabia has mischaracterized includes Saudi Arabia's own
15 records. As to January 31, what they described as Plaintiffs'
16 Exhibit 211 is, in fact, KSA's production of what's called a
17 special report from the Los Angeles Consulate on Omar al
18 Bayoumi's passport applications.

19 He did not submit those passport applications alone,
20 your Honor. He submitted them together with his wife and three
21 children. The children, who had previously been on their
22 mother's passport as young infants, were for the first time
23 obtaining their own individual passports and, thus, were
24 required to appear and did appear at the Los Angeles consulate,
25 as the video evidence shows and as their passport issuance

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1 confirms.

2 There's also KSA's answers to interrogatories, which
3 again were based upon their consultations with their own
4 embassy and consulate officials and agents. That set of
5 documents confirms that there was a second visit. It wasn't
6 Bayoumi with his family meeting Awad. It was, rather, Bayoumi
7 with Morgan visiting the consulate on February 1. And the
8 person they met, whom we have now established by Morgan's
9 testimony and identification, as well as other records, was the
10 Islamic affairs official, Ismail Mana.

11 Your Honor, these are the facts in the record, and
12 Saudi Arabia's efforts to try and deny them are increasingly
13 straining credibility. We stated earlier we cannot credit at
14 face value anything that is said in respect of al Bayoumi. And
15 indeed, one cannot credit at face value anything Bayoumi
16 testified to.

17 Your Honor, he lied at deposition about his alibis for
18 February/March 2000 and June 2000 because he wanted to distance
19 himself from the support provided to the hijackers. He also
20 lied about the circumstances of the welcome party he hosted for
21 the hijackers on February 17. He also lied about the aviation
22 drawing, which he said he could not remember. But even he did
23 not go to the lengths of Saudi Arabia's unsupported attorney
24 argument about a math equation for a high schooler.

25 And importantly, your Honor, Bayoumi's lies, again,

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1 are not in isolation. Multiple Saudi government witnesses
2 lied. Think of Adel al Sadhan, the man pictured on the casing
3 video with Omar al Bayoumi meeting him in Washington, and who
4 had been to San Diego and Los Angeles six months prior to meet
5 with Thumairy and Bayoumi. At deposition, he denied knowing
6 who Bayoumi even was.

7 I mentioned earlier that the lies in respect of
8 relationships to Sowailem, the lies in respect of the existence
9 of Administrative Islamic Affairs Office in Saudi Arabia's
10 embassy. I put it to your Honor that this coordinated deceit
11 on the part of Saudi Arabia's witnesses has as its purpose
12 defeating the very core of this Court's inquiry, which is the
13 agency of Saudi Arabia for the acts of material support
14 provided by the support network.

15 These witnesses want to distance themselves from the
16 acts of support by Bayoumi, by Thumairy, through Sadhan and
17 Sudairy, through and to Sowailem and, indeed, through the very
18 highest echelons of the Ministry of Islamic Affairs as
19 represented by the plaintiffs' evidence. The reason is because
20 these are not innocuous acts. They are not attenuated acts.
21 And they are certainly not the cascade of coincidences that
22 Saudi Arabia would have us believe.

23 They are the precise forms of support that the
24 hijackers needed to further their preparations for the
25 terrorist attacks. And don't take my word for it, your Honor.

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1 This was, in fact, al Qaeda's *modus operandi*, as CIA production
2 in our case proves. Whenever al Qaeda deployed operatives to a
3 foreign setting, it ensured that there was a support network in
4 place to help the hijackers or help the operatives to achieve
5 their goals without detection and without disruption.

6 Khalid Sheikh Mohammed, who has been put forward by
7 Saudi Arabia as providing authoritative details, your Honor, he
8 is one of the plotters of the 9/11 terrorist attacks, a
9 terrorist who sits in U.S. detention, who was for years
10 interrogated by the CIA and whose statements were found to lack
11 credibility by the CIA, by the 9/11 Commission itself. And of
12 course, he denied in particular knowing about the support
13 network in the United States. And the 9/11 Commission found
14 that it was the protection of that network that formed the very
15 crux of Khalid Sheikh Mohammed's lies.

16 I'll conclude where I started, your Honor. The
17 evidence that we have presented in this case, admissible
18 evidence which meets the standard that plaintiffs are required
19 to fulfill, includes as its Rosetta Stone Bayoumi's handwritten
20 address book. That, your Honor, has been credited by Saudi
21 Arabia as being, indeed, Bayoumi's book, but they suggested it
22 wasn't created in the scope of his agency.

23 Your Honor, at page 14 of that book, Bayoumi had
24 telephone and fax numbers for the private office of the
25 Minister of Islamic Affairs. Throughout that book, he recorded

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1 on a continuous basis the contact details and whereabouts of
2 his fellow Saudi government officials, including those who
3 performed the actions for the Ministry of Islamic Affairs that
4 led to the support for the hijackers.

5 Sheikh Fahad al Thumairy, Sheik Majed Mersal, and yes,
6 Sheikh Muhammad al Qahtani, who sat in the room with the
7 hijackers at their welcome party and announced himself as being
8 from Saudi Arabia. A Sheikh from Saudi Arabia is a Ministry of
9 Islamic Affairs government religious official, and his presence
10 at the party tells you everything you need to know. If Saudi
11 Arabia and al Qaeda were at odds, they would never -- the al
12 Qaeda operatives themselves would never have sat in the same
13 room with a Saudi government Sheikh.

14 The evidence, your Honor, and the inferences to be
15 drawn from it tell us, in fact, Saudi Arabia and al Qaeda were
16 at that point operating in league and that Saudi Arabia was
17 providing the very support that the hijackers needed to carry
18 out the 9/11 attacks. I encourage you, your Honor, to deny the
19 defendant's motion.

20 MR. KRY: Your Honor, may I please just have 60
21 seconds to respond to the allegation?

22 THE COURT: Go ahead. You just used 10 seconds of
23 your 60 seconds.

24 MR. KRY: I only need 50, your Honor.

25 The accusation was made that the founder of Dallah

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1 Al-Baraka, Dallah Avco's ultimate parent company, had been
2 implicated by CIA reports in dealings with Bin Laden.

3 First of all, the CIA reports do not mention Dallah
4 Avco even once. They don't mention the party in this case.
5 They mention Dallah Al-Baraka, which is an ultimate parent
6 company, and its founder, Sheikh Saleh Kamel.

7 Second, plaintiffs sued those two entities in this
8 case, and your predecessor, Judge Casey, dismissed them both on
9 multiple grounds over these very same allegations. These
10 allegations related to banking transactions and foreign banking
11 subsidiaries in places like the Sudan and Somalia.

12 And what Judge Casey said is there's no plausible
13 allegation that, first of all, those transactions were long
14 before Osama Bin Laden declared war on the United States. And
15 second of all, there was no plausible allegation how Dallah
16 Al-Baraka or Sheikh Saleh Kamel would have known about
17 transactions in foreign subsidiaries in different countries.

18 So they were dismissed out of this case. The Second
19 Circuit affirmed. And for plaintiffs to regurgitate
20 allegations that they've already tried to litigate in this
21 court against entities that we don't represent but are our
22 ultimate parent company and its founder, is frankly
23 irresponsible, your Honor. That is long water under the
24 bridge, and so it should not play any role in this case.

25 Thank you.

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1 THE COURT: Thank you. We're going to have to
2 conclude. Thank you again.

3 (Adjourned)

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