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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 AMR MOHSEN et al.,)
17 Defendants.)
18

No. CR 03-0095 WBS

**UNITED STATES' TRIAL
MEMORANDUM**

Pretrial Date: January 24, 2006
Time: 10:30 a.m.

19 **I. INTRODUCTION**

20 Pursuant to Crim. L.R. 17.1-1 and this Court's January 5, 2006 oral order, the United
21 States submits the following memorandum.

22 This Court has previously ordered a bifurcated presentation of the evidence in this
23 case. The first portion of this case charges a conspiracy between defendant Amr Mohsen
24 ("Amr"), the founder, Chairman and CEO of Aptix Corporation ("Aptix") and his brother
25 Aly Mohsen ("Aly"), who is a shareholder in Aptix, to perpetrate a multi-million dollar
26 fraud on a competitor, QuickTurn Design Systems. The fraud was implemented by filing
27 a patent infringement lawsuit (*Aptix Corporation, et al. v. QuickTurn Design Systems,*
28

1 *Inc.* No. C 98-00762 WHA), which the Mohsen brothers supported by fabricated
2 documentary evidence and perjured testimony. In so doing, the Mohsen brothers
3 subverted the litigation truth finding forum and abused the federal civil discovery process.

4 The United States expects to prove that Amr Mohsen fabricated crucial documentary
5 evidence; presented perjured deposition testimony; recruited co-defendant Aly Mohsen to
6 perjure himself in support of Amr's fraudulent claims; surreptitiously hired shadow
7 experts to engage in secret forensic testing of critical documentary evidence (including
8 the so-called 1988 Notebook which Amr Mohsen produced in the patent litigation to
9 falsely support a July 31, 1988 date of conception); staged a "theft" of the notebooks
10 before the district court could rule on QuickTurn's motion to compel production of the
11 notebooks for forensic testing, and used the United States Mails and commercial
12 interstate carriers in furtherance of his fraud. Aly Mohsen was an integral member of the
13 conspiracy who repeatedly supported his brother's fraud by perjuring himself in
14 deposition testimony; proffering fraudulent "corroborating" evidence that was material to
15 the underlying civil dispute; and testifying falsely at an evidentiary hearing before Judge
16 Alsup in Federal District Court.

17 Amr Mohsen is also charged with Contempt of Court (Count 20) which will be
18 presented during the first part of the bifurcated trial. The contempt charge relates to
19 Amr's application for an Egyptian passport in violation of the terms and conditions
20 governing his pre-trial release.

21 The second part of the trial involves Amr Mohsen's solicitation of a series of violent
22 acts after his bail was revoked and he was incarcerated at Alameda County's Santa Rita
23 jail. Specifically, Amr Mohsen solicited the making of intimidating phone calls to five
24 government witnesses who were to testify at his upcoming criminal trial which was, at
25 that time, scheduled to begin on June 1, 2004. (The trial was subsequently continued to
26 August 30, 2004.) Mohsen also solicited the vandalism of a former Aptix employee's car
27 in order to make it appear that Mohsen did not actually stage the December 14, 1998
28 break-in to his own car (at which time the 1988 Notebook was supposedly "stolen"), but

1 rather to make it appear as if the earlier 1998 vandalism to Mohsen’s car was a case of
2 mistaken car identity and that the “thief” actually intended to break into Huang’s car to
3 collect on Huang’s gambling debts. Mohsen is also charged with solicitation of arson,
4 which relates to Mohsen’s efforts to have the car of government witness David Moore
5 burned in order to frighten Moore and to intimidate him from testifying at trial. Finally,
6 Mohsen is charged with solicitation of the murder of Judge Alsup (count 23).

7 **II. THE CHARGES**

8 **1. PART ONE**

9 *Count One—Conspiracy*

10 The superseding indictment charges Amr and Aly with conspiracy in violation of 18
11 U.S.C. § 371. In order to sustain its burden of proof, the government must prove beyond
12 a reasonable doubt all of the following elements:

13 First, that there was an agreement between Amr and Aly to commit at least one crime
14 charged in the conspiracy charge in the indictment;

15 Second, that each defendant became a member of the conspiracy knowing of at least
16 one of its objects and intending to accomplish it; and,

17 Third, that one of the members of the conspiracy performed at least one overt act for
18 the purpose of carrying out the conspiracy. (2003 ed. Ninth Cir. Model Jury Instr. 8.16)

19 *Counts Two through Nine—Perjury*

20 Amr is charged in counts two through four with perjury in violation of 18 U.S.C. §
21 1621(1). Aly is charged in counts five through nine with perjury in violation of the same
22 statute. The elements of perjury are as follows:

23 First, the defendant testified under oath orally or in writing that [*see specific testimony*
24 charged in each separate perjury count in the superseding indictment];

25 Second, the testimony was false;

26 Third, the false testimony was material to the matters before the district court;

27 Fourth, the defendant acted willfully, that is, deliberately and with knowledge that the
28 testimony was false. (2003 ed. Ninth Cir. Model Jury Instr. 8.110).

1 A statement is material if “it has a natural tendency to influence, or was capable of
2 influencing the decision of the decision making body to which it was addressed.” *United*
3 *States v. Leon-Reyes*, 177 F.3d 816, 820 (9th Cir. 1999). To be considered material, “a
4 false statement need only be ‘relevant to any subsidiary issue under consideration.’”
5 *United States v. McKenna*, 327 F.3d 830, 839 (9th Cir. 2003) (citations omitted). The
6 government need not prove that the perjured testimony actually influenced the relevant
7 decision-making body. *Id.* The Ninth Circuit has recently held that where, as here, the
8 perjured statements are given in civil depositions, “[the] relevant decision-making entity
9 in evaluating the materiality of statements given in civil depositions is the trier of fact in
10 the civil case.” *McKenna, supra* at 839.

11 ***Count Ten—Subornation of Perjury***

12 Amr Mohsen is charged in count ten with subornation of perjury in violation of 18
13 U.S.C. § 1622. In order for the defendant Amr Mohsen to be convicted of suborning Aly
14 Mohsen to commit perjury, the government must prove the following elements:

15 First, that Amr Mohsen persuaded Aly Mohsen to testify falsely before the district
16 court;

17 Second, that Aly Mohsen falsely testified under oath that he actually witnessed the
18 entries on the dates reflected in the 1988 Notebook;

19 Third, the false testimony was material to the evidentiary hearing before the district
20 court; and

21 Fourth, that Aly Mohsen knew the testimony was false. (2003 ed. Ninth Cir. Model
22 Jury Instr. 8.111).

23 ***Counts Eleven through Eighteen—Mail Fraud***

24 Defendant Amr Mohsen is charged in counts eleven through eighteen with mail fraud
25 in violation of 18 U.S.C. § 1341. The government must prove all of the following
26 elements beyond a reasonable doubt.

27 First, the defendant made up a scheme or plan for obtaining money or property by
28 making false statements, pretenses or representations;

1 Second, the defendant knew that the statements or representations were false;

2 Third, the statements were material;

3 Fourth, the defendant acted with the intent to defraud; and

4 Fifth, the defendant used, or caused to be used, the mails to carry out or attempt to
5 carry out an essential part of the scheme. (2003 ed. Ninth Cir. Model Jury Instr. 8.101).

6 ***Count Nineteen—Obstruction of Justice***

7 Both defendants are charged in count nineteen with obstruction of justice in violation
8 of 18 U.S.C. § 1503. The government must prove the following elements:

9 First, the defendants endeavored to influence, obstruct, or impede the due
10 administration of justice;

11 Second, the defendants acted corruptly, that is, with the purpose of obstructing justice.

12 ***Count Twenty—Contempt***

13 Amr Mohsen is charged in count twenty with contempt of court in violation of 18
14 U.S.C. § 401(3). The government must prove the following elements:

15 First, that there was an order, decree, rule or command of the Court;

16 Second, the defendant disobeyed or resisted the order, decree, rule or command of the
17 Court.

18 **2. PART TWO**

19 ***Count Twenty-One—Attempted Witness Tampering***

20 The defendant Amr Mohsen is charged in count twenty-one with attempted witness
21 tampering in violation of 18 U.S.C. § 1512(b)(1). Title 18, United States Code, Section
22 1512(b)(1) prohibits any person from knowingly intimidating, threatening or corruptly
23 persuading another person with the intent to influence, delay or prevent that person's
24 testimony in an official proceeding. To prove the defendant guilty of that crime, the
25 government must prove each of the following elements beyond a reasonable doubt:

26 First, the defendant knowingly attempted to use threats against, intimidation
27 against or otherwise corruptly persuade [trial witnesses] and

28 Second, the defendant did so with the intent to influence, delay or prevent the

1 testimony of [those witnesses] in an official proceeding.

2 “Corruptly persuades” means to be motivated by an improper or inappropriate
3 purpose to convince another to engage in a course of behavior and includes non-coercive
4 attempts to persuade a witness to lie to investigators.

5 It is not necessary to show that the defendant actually obstructed justice or
6 prevented a witness from testifying; the question is whether the defendant tried to do so.

7 An “official proceeding” includes this trial, any other trial or hearing conducted
8 before this Court, any trial or hearing before a federal magistrate judge, or any proceeding
9 before a federal grand jury. *United States v. Khatami*, 280 F.3d 907 (9th Cir. 2002);
10 *United States v. Murray*, 751 F.2d 1528, 1534 (9th Cir. 1985).

11 ***Count Twenty-Two—Solicitation To Commit Arson***

12 The defendant Amr Mohsen is charged with solicitation to commit arson to
13 commit a federal felony in violation of 18 U.S.C. § 844(h)(1). Mohsen is charged with
14 solicitation under 18 U.S.C. § 373. The government must prove the following elements:

15 First, the defendant solicited another person to engage in felonious conduct that
16 includes the use, attempted use, or threatened use of physical force against property or
17 against a person in violation of federal law;

18 Second, the defendant intended that the person engage in the conduct solicited and

19 Third, the solicitation occurred under circumstances strongly corroborative of that
20 intent.

21 “Such corroborating evidence [can] consist of discussions or planning between the
22 defendant and the person solicited regarding the crime to be committed, offers of
23 payment, or the providing of information regarding the description or location of the
24 proposed victim.” *United States v. Stewart*, 420 F.3d 1007 (9th Cir. 2005).

25 The Federal “felonious conduct” that the government alleges Mohsen solicited in
26 Count Twenty-two is a violation of 18 U.S.C. § 844(h)(1).

1 ***Count Twenty-Three—Solicitation of Murder***

2 Count twenty-three charges Amr Mohsen with solicitation to commit murder, in
3 violation of 18 U.S.C. § 373. This charge alleges that Mohsen solicited another person to
4 arrange the murder of Judge Alsup. This count requires the government to prove the
5 same elements summarized under the discussion of count twenty-two.

6 **III. THE EVIDENCE**

7 **Part I (Counts 1-20)**

8 The United States expects to prove at trial that Amr Mohsen, with the assistance of
9 his brother, Aly Mohsen, attempted to defraud QuickTurn Design Systems of millions of
10 dollars in connection with a civil patent infringement lawsuit. On February 26, 1998,
11 Aptix, and another corporation to which Aptix had licensed the 069 Patent, Meta
12 Systems, Inc. (“Meta”), sued QuickTurn in federal court in San Francisco, California for
13 infringement of the 069 Patent. This lawsuit was one portion of a worldwide contest over
14 intellectual property rights to hardware-emulation technology.

15 **A. Civil Discovery Relating to Date of Conception**

16 Rule 16-7(b)(3) of the 1998 Civil Local Rules for the Northern District of
17 California required Aptix and Meta to state a date of conception and to corroborate that
18 date of conception if it was earlier than the presumed date of invention. The presumed
19 date of invention is the date of the patent. The purpose of this rule was to establish the
20 claimed date of the invention early on in any patent litigation.

21 The application for the 069 Patent was a continuation of an application filed
22 September 20, 1989. September 20, 1989 was, therefore, the presumed date of invention,
23 unless Aptix could prove an earlier date of invention by establishing an earlier conception
24 date.

25 On March 29, 1998, Amr left on a trip to the Middle East and returned to the
26 United States on April 19, 1998. On March 29, 1998, Amr faxed to Aptix’s infringement
27 attorneys photocopies of seventeen pages of an engineering notebook (“1989 Notebook”)
28

1 which purported to relate to the research, design and development of the 069 invention.

2 On April 13, 1998, these seventeen pages were produced by Aptix to QuickTurn
3 pursuant to Local Rule 16-7(c). These seventeen pages did not list a date of conception,
4 but instead advised that the date of conception would be provided when the inventor, Amr
5 Mohsen, returned to the United States the “last week in April.”

6 On or about April 19, 1998, Amr Mohsen advised Aptix’s counsel that he had
7 found another engineering notebook, allegedly started by Amr in 1988 (“1988
8 Notebook”). The 1988 Notebook supposedly documented the first conception of the 069
9 invention.

10 On May 4, 1998, pursuant to Local Rule 16-7(c), Aptix belatedly served
11 QuickTurn with a supplemental initial disclosure which listed July 31, 1988 as the date of
12 conception of the 069 invention. As part of this supplemental disclosure, Aptix also
13 produced a photocopy of the 1988 Notebook. The 1988 Notebook was the only evidence
14 corroborating a conception date of July 31, 1988. The only person who witnessed the
15 1988 Notebook was defendant Aly Mohsen, who was a sports rehabilitation medical
16 doctor, not an engineer, and who had not been a witness to the 1989 Notebook.

17 **B. QuickTurn Discovers Discrepancies in the Notebooks**

18 On May 28, 1998, during the discovery process, QuickTurn received from Aptix a
19 photocopy of the 1989 Notebook as it existed in August 1989 from the Skjerven firm
20 which had years earlier been Amr Mohsen’s patent counsel (“Skjerven Copy”). The
21 Skjerven Copy was significantly different from and more abbreviated than the seventeen
22 pages that were allegedly excerpted from the 1989 Notebook which Aptix produced to
23 QuickTurn on April 13, 1998. The Skjerven firm had no copy of the 1988 Notebook even
24 though the Skjerven firm was Amr Mohsen’s counsel when Amr applied for the 069
25 Patent on September 20, 1989. The production of the Skjerven Copy raised QuickTurn’s
26 suspicions concerning the authenticity of the seventeen pages of the 1989 Notebook that

1 had been produced on April 13, 1998.¹

2 During the summer of 1998, the parties were embroiled in a dispute relating to
3 QuickTurn's demand that Amr make the original Notebooks available for forensic testing.
4 QuickTurn informed Aptix's counsel that it had retained a questioned-documents
5 examiner and that it wanted to have the original Notebooks produced for testing.
6 QuickTurn sent numerous letters to Aptix's attorneys describing the names of experts it
7 had retained and the type of testing QuickTurn intended to conduct on the Notebooks.
8 The parties were unable to informally agree on conditions for the production and testing.

9 **C. Amr's Secret Retention of His Own Forensic Examiner**

10 On August 25, 1998, Amr secretly contacted a forensic document examiner (David
11 Moore) by telephone and asked Moore what type of testing could be done and what type
12 of information could be determined from documents. On September 9, 1998, Amr
13 secretly contacted an ink chemist (Robert Kuranz) who lives in Janesville, Wisconsin.
14 Shortly thereafter, Amr traveled from San Jose, California to Janesville, Wisconsin and
15 brought Kuranz the original 1988 Notebook for ink testing. Kuranz took multiple plugs
16 (samples) from the 1988 Notebook and spent approximately 8 hours examining the
17 Notebook. On October 13, 1998, Amr sent Kuranz via Federal Express four pages torn
18 from a notebook and asked Kuranz to do chromatography (TLC) tests on specific areas
19 identified by Amr.

20 On September 19, 1998, Amr traveled from San Jose, California to Sacramento,
21 California and personally met with forensic document examiner David Moore. Amr
22 asked Moore to examine the original 1988 Notebook and asked Moore to authenticate the
23 Notebook and determine if there was evidence that the Notebook was written in 1988.
24 Amr left the original Notebook in Moore's custody for seven days. Moore made a copy

25

26 ¹In patent litigation, a provable date of prior conception is not necessarily the end of the
27 inquiry. An inventor must also show diligence in reducing the invention to practice, which
28 presumably accounts for the embellishments to the 1989 Notebook and the differences between
the 1989 Notebook and the Skjerven copy.

1 of the original 1988 Notebook, which will be introduced into evidence at trial. Moore's
2 examination of the Notebook reveals numerous suspicious indicators that raised questions
3 for Moore about the authenticity of the 1988 Notebook. On September 26, 1998, Moore
4 gave Amr a debriefing which described the results of Moore's testing on the 1988
5 Notebook. This debriefing included all of the suspicions that Moore had concerning the
6 authenticity of the Notebook. Included among the numerous indicators of fraud that
7 Moore found and reported to Amr were certain pencil erasures near Aly's signatures. The
8 erased pencil marks were written in Arabic and have been translated by an FBI linguist as
9 directions to Aly indicating where to sign and what date to sign.

10 Amr mailed Moore various items, including checks for Moore's forensic
11 examination and a prototype of the 1988 Notebook label which had been partially
12 obliterated on the original 1988 Notebook. Amr also received various items in the mails
13 from Moore, some of which are charged in counts eleven through eighteen of the
14 superseding indictment.

15 **D. The "Theft" of the Original Notebooks**

16 On November 24, 1998, QuickTurn moved to compel production of the "original"
17 1988 and 1989 Notebooks for forensic testing by a questioned-document expert
18 QuickTurn had retained. The hearing on QuickTurn's motion to compel was scheduled to
19 be ruled upon at a hearing in district court on December 29, 1998.

20 On December 14, 1998, before QuickTurn's motion to compel could be ruled upon,
21 Amr Mohsen reported that the "original" Notebooks had been stolen from his car at work.
22 For many months after the purported theft, Amr continued to secretly contact both Moore
23 and Kuranz and sought their forensic opinions on a variety of matters pertaining to the
24 civil litigation.

25 **E. Post-theft Fabricated Corroboration**

26 After the Notebooks disappeared and were no longer available to QuickTurn for
27 forensic testing, the Mohsen brothers began to produce documents corroborating their
28 story regarding the authenticity of the stolen notebooks. The so-called corroborative

1 evidence was proffered for two nefarious purposes. First, the brothers were still
2 attempting to prove that they had actually created and witnessed the missing Notebook in
3 1988. Second, the parties were now fighting over whether Aptix could introduce
4 photocopies of the 1988 Notebook at trial in lieu of the original. FRE 1004 permits a
5 photocopy to be introduced if the originals have been lost or destroyed “*unless the*
6 *proponent [Amr] lost or destroyed them in bad faith.*” In order to use photocopies of the
7 1988 Notebook as evidence, Amr needed to show that the document had not been lost or
8 destroyed in bad faith. The government expects to prove through expert testimony,
9 among other things, that the so-called corroborative evidence was also created ex post
10 facto in furtherance of the fraud.

11 **F. The Mysterious Return of Fragments From the Original Stolen Notebooks**

12 On January 5, 2000, fragments from the original 1988 Notebook (which had
13 supposedly been “stolen” from Amr’s car more than a year earlier) arrived at Amr’s home
14 in a large priority mail envelope. The postmark is dated January 3, 2000 in San Jose, CA.
15 The envelope was sealed by tape and was not licked by saliva or otherwise activated. The
16 fragments were accompanied by an anonymous handwritten note from “FL.” The note
17 stated: “These were discovered lately in our backyard. These look like important
18 documents for you.” The fragments from the engineering Notebook were also
19 accompanied by some invoices with Amr’s address, presumably providing the basis for
20 “FL” to address the envelope. However, the invoices, which were included in the
21 envelope with the 1988 Notebook fragments, had the **wrong** zip code and yet the
22 envelope was addressed to Amr at his **correct** home zip code. Because the envelope flap
23 was never activated (i.e. licked) and the stamps used were self adhesive, the “sender”
24 managed to avoid leaving any DNA on the envelope.

25 **G. The Forensic Evidence**

26 The government expects to offer scientific and forensic evidence which will
27 establish the following:

- 28 1. The ink that Aly Mohsen used to sign the 1988 Notebook was not commercially

1 available until March 31, 1993.

2 2. The Avery Dennison company whose label is affixed to the 1988 Notebook did
3 not come into existence until 1990 when Avery merged with the Dennison stationery
4 company.

5 3. The partially obliterated label on the cover of the 1988 Notebook contains items
6 and formatting that were not phased into production by Avery Dennison until February 3,
7 1995.

8 4. The black ball point ink that Amr used in his 1988 Daytimer appointment book
9 for entries on the following dates: 12/26/88; 12/27/88; 12/29/88; 12/31/88; 3/20/89;
10 3/26/89; 6/27/89; and 6/30/89 were all made in an ink that matched each other.

11 5. The ink that Aly Mohsen used to witness entries in the 1988 Notebook were all
12 made from the same ink even though the entries supposedly spanned a period of more
13 than one year from 1988 through early 1989. This ink, as discussed in paragraph 1 above,
14 was not commercially available until March 31, 1993.

15 **H. Amr Attempts To Flee Prior To Trial**

16 The government has charged Amr with contempt of court (count 20) and has
17 alleged that Amr applied for a passport in violation of the terms and conditions of his
18 release. This Count has been joined with Counts 1-19 and will be considered by the jury
19 in Part 1 of the bifurcated trial. The government expects its proof to include the
20 following:

21 On April 8, 2003, Magistrate Judge James Larson released Amr pending trial on a
22 \$1,000,000 bond, half of which was secured by his residence in Los Gatos, California.
23 The bond also required Amr to surrender all passports and visas to the court by April 9,
24 2003 and ordered Amr not to apply for any passports or other travel documents. On April
25 9, 2003, Amr surrendered a United States passport to the court and stated that he did not
26 have an Egyptian passport. On February 3, 2004, Amr's bond was amended by
27 Magistrate Judge James to reflect an additional condition of release which required Amr
28 to obtain advance approval of the United States Attorney's Office and Pretrial Services

1 prior to traveling anywhere outside the Northern District of California.

2 Amr's trial was scheduled to begin with jury selection on March 31, 2004. On
3 March 23, 2004, Judge Alsup denied Amr's motion to substitute his daughter's house in
4 place of his own to secure his bail. During the course of the hearing, Judge Alsup asked
5 Amr whether or not he had an Egyptian passport or had applied for any travel documents.
6 Amr said he did not. Judge Alsup also denied Amr's request to travel to Florida from
7 March 25 through March 30, 2004 and further stated: "You're on the verge of going to
8 trial. You ought to be getting ready to go to trial and not going to Boca Raton, Florida.
9 So that's denied....So there's not going to be any more travel like that."

10 On March 25, 2004, the FBI began 24-hour surveillance of Amr. At 9:00 p.m. that
11 evening, Amr was spotted entering and then leaving the Egyptian Consulate in San
12 Francisco. On March 27, 2004, Amr was overheard on a payphone making reservations
13 to fly to Ft. Lauderdale, Florida for the morning of March 28, 2004. (The FBI
14 subsequently independently confirmed Amr's reservation with America West Airlines.)
15 Amr was also overheard making arrangements to charter a flight from Ft. Lauderdale,
16 Florida to the Cayman Islands. Amr was overheard on several different telephone calls
17 referring to a "passport" and in one conversation Amr specifically advised the airline that
18 one passenger would be travelling on an Egyptian passport.

19 On March 27, 2004, Amr was arrested by the FBI. On March 29, 2004, Judge
20 Alsup revoked Amr's bail and ordered him detained pending trial.

21 **Part II (Counts 21-23)**

22 . After Judge Alsup granted the government's March 29, 2004 motion to revoke his
23 bail, Amr was incarcerated at Santa Rita jail. Amr Mohsen has been charged with
24 attempted witness intimidation; solicitation of arson; and solicitation of Judge Alsup's
25 murder, all of which occurred during the time Amr was housed at Santa Rita jail. The
26 proof on Counts 21-23 will be presented after the jury has deliberated on Counts 1-20.
27 The government expects to present the following evidence:

28 On May 19, 2004, the government met with an inmate who has a lengthy criminal

1 record and was being held on state charges. The inmate had struck up a friendship with
2 Amr, as they were both Muslims and were in the same "Pod" at the jail. The cooperating
3 inmate ("CI") advised that Amr had sought his assistance in locating someone who could
4 be paid to intimidate government witnesses through threatening phone calls, vehicle
5 vandalism and arson. At the May 19, 2004 meeting, the CI produced a note, handwritten
6 by Amr, in which Amr had specified the precise language Amr wanted used for a
7 threatening note that Amr wanted left after breaking the car window of Tom Huang (an
8 Aptix V.P. whose car was previously broken into shortly after the notebooks were
9 "stolen" from Amr's car). Amr also enlisted the CI's services to have someone make
10 threatening phone calls to five government witnesses (David Moore, Robert Kuranz and
11 three Avery Dennison employees) advising these witnesses that they should not show up
12 at the Mohsen trial, to get "amnesia" or they would come up missing. Eventually, Amr
13 (who felt that the threatening phone calls were not having the "results" he anticipated)
14 asked the CI to find someone to burn David Moore's car.

15 The CI agreed to cooperate with the government and on May 27, 2004, June 3,
16 2004 and June 13, 2004, he wore a wire and recorded his conversations with Amr.
17 During the May 27, 2004 wired conversation, Amr can be heard berating the CI for
18 failing to leave three individual messages (as opposed to the group message CI claimed to
19 have left) for the Avery Dennison employees. Amr identified the Avery Dennison
20 employees by name and acknowledged that they are the most damaging trial witnesses for
21 him. Amr also confirmed that he wanted Moore's car burned, and he is heard instructing
22 the CI to make sure the arsonist uses gasoline to torch the car. Amr and the CI haggled
23 over the price and agreed that the arson of Moore's car and the previously made phone
24 calls to the five witnesses would cost Amr \$5000. The CI told Amr that if Amr wanted
25 the Avery Dennison witnesses called again, it would cost Amr an additional \$2000. The
26 CI asked Amr when he wants Moore's car blown up and Amr stated: "As soon as
27 possible...tonite."

28 Thereafter the FBI staged a photograph in which Moore's actual house (which

1 Amr has visited on several occasions during the underlying civil litigation) was
2 superimposed against a blown up car. The staged photograph made it appear that a car
3 was actually blown up in front of Moore's house.

4 On June 3, 2004, the CI again wore a wire and recorded Amr. The CI showed
5 Amr the photograph of Moore's car being blown up (which, unbeknownst to Amr, was
6 staged) and Amr confirmed that it was what he wanted. Amr and the CI argued over the
7 phone calls to the Avery Dennison witnesses which Amr claimed the CI mishandled.
8 Amr inquired as to when the CI's outside source (who was, in actuality, FBI Special
9 Agent David Carr posing as a hit man named "Kimo Moi") planned to take care of "San
10 Jose" which refers to Amr's request to break the Huang's car window and leave a note
11 threatening the Huang's with further violence if Tom Huang did not pay his gambling
12 debts. The ostensible purpose of Amr's vandalism of the Huang's car was to buttress his
13 bogus defense to Counts 1-19 that the notebooks really had been stolen from his car in a
14 case of mistaken car identity, *i.e.*, the "vandals" actually intended to break Huang's car
15 window not Amr's.² The CI told Amr that he has to make a payment by 6:00 p.m. on
16 June 4, 2004 or no further "work" would be done. On June 11, 2004, a \$2000 payment
17 was made by "Ali" (a friend of Amr's) to "Kimo", the undercover agent whose phone
18 number was given to Amr for purposes of making payments for the witness intimidation.

19 On June 12, 2004, Amr solicited the CI to find someone to kill Judge Alsup.
20 Specifically, the CI reported that Amr wanted to make the Federal Judge in his criminal
21 case "disappear" so he will be "never found." When the CI asked, Mohsen confirmed
22 that he meant he wanted a "funeral" for the judge. Mohsen told the CI that once the
23 Judge was gone, "everything will go my way." The CI and Mohsen further discussed the
24 details involved in the murder of a Federal Judge, including that it would be more
25 expensive than the previous criminal activity that Mohsen had commissioned.

26
27 ²Count one of the indictment alleges the December 14, 1998 break-in was a staged
28 theft by Amr.

1 On June 13, 2004, the CI wore a wire and recorded a conversation with Amr.
2 This conversation was also videotaped. During this conversation, Mohsen confirmed that
3 the Federal Judge whom he wanted murdered was Judge William Alsup. Mohsen spelled
4 out Judge Alsup's last name for the CI, who was taking notes. Mohsen clarified that
5 Judge Alsup was a Federal Judge in San Francisco, and the two discussed the possible
6 methods by which the murder could be accomplished, to which Mohsen replied "Which is
7 the least traceable?" When the CI suggested that making the murder look like a gas leak
8 would be the least traceable option, Mohsen asked "Is that more difficult to get done?"
9 Mohsen expressed concern that this method may kill others in addition to the Judge. The
10 CI stated that the murder of a Federal Judge was a big deal, and would cost Mohsen
11 \$25,000. After hearing that price, Mohsen stated "That's very high... I heard it's more
12 like ten [\$10,000]." Mohsen requested time to further consider this option, but instructed
13 the CI to have someone "Find out where his house is" and "What are his patterns."

14 IV. ANTICIPATED EVIDENTIARY ISSUES

15 1. *Motions In Limine*

16 The United States has filed motions *in limine* addressing certain evidentiary issues.
17 Specifically, the government's motions in limine (filed herewith under separate caption
18 with accompanying authorities) request that this Court *preclude* the defense from: (1)
19 eliciting, on either cross- or direct examination, any out-of-court statements made by the
20 defendants, including all statements made by the defendants in their depositions and in-
21 court testimony and taped jail phone calls; (2) introducing evidence of any automobile
22 break-ins or thefts on or near the premises of Aptix Corporation, other than the alleged
23 theft of items from Amr Mohsen's vehicle on December 14, 1998; (3) making any
24 reference to alleged racial, ethnic, or religious bias or motivation on the part of the
25 government or the Court, or any reference to selective prosecution; (4) making any
26 reference to unrelated FBI and Secret Service cases or incidents; (5) making any
27 reference to possible punishment; (6) presenting an insanity or mental health defense for
28 which there has been improper/non-compliance with Rule 12.2; and (7) introducing

1 speculative legal conclusions in the form of expert testimony.

2 **2. *Stipulations***

3 The parties have stipulated to the foundation and authenticity for the videotapes
4 and transcripts of the deposition testimony that the government intends to introduce in its
5 case-in-chief. This stipulation has obviated the need to call the court reporter and
6 videographer as witnesses. The parties have also stipulated to the foundation for the May
7 10, 2000 transcript of testimony given at the evidentiary hearing on that same date; the zip
8 code of Amr Mohsen's residence in 2000; the fact that no DNA was found on the FL
9 envelope; and the foundation for certain phone records.

10 **3. *Witness And Exhibit List***

11 On or before the January 24, 2006 pre-trial conference, the United States will
12 submit under separate caption a preliminary witness list and exhibit list. The United
13 States reserves the right to supplement or amend both lists.

14 **4. *Jury Selection And Peremptory Challenges***

15 Pursuant to Crim. L.R. 24-2 and Fed. R. Crim. P. 24(b), the United States has six
16 peremptory challenges and the defendants jointly have ten challenges. If the Court in its
17 discretion grants any additional peremptory challenges (*See* Fed. R. Crim. P. 24(b)), the
18 government respectfully requests that it be granted the same number of additional
19 challenges as the defense. The United States respectfully requests that parties be given
20 the opportunity to conduct follow-up voir dire pursuant to Fed. R. Crim. P. 24(a)(2)(A).
21 The United States submits that it would be appropriate for the Court to impanel six
22 alternate jurors in view of the anticipated length and complexity of this trial.

23 **5. *Demonstrative Exhibits***

24 In part 1 of the trial, the government intends to play excerpts from the videotaped
25 depositions of both defendants and to display portions of the transcripts from depositions
26 and the May 10, 2000 evidentiary hearing. The government may also play certain
27 recordings of telephone calls Amr made from jail which relate to his efforts to fabricate a
28 bogus mental defense to Counts 1-19 and his efforts to tamper with Magda Metwally

1 (Amr's sister) to fabricate a defense to Count 20. In part 2 of the trial, the government
2 will play the audio and video recordings of Amr's meetings with the CI; recordings
3 between "Kimo" and Mohsen's friend Ali Moussa, whom Mohsen enlisted to act as a
4 conduit for paying the \$2000 Mohsen owed for the arson of Moore's car and the
5 intimidating phone calls; and various recordings of phone calls Mohsen made from jail
6 which pertain to Counts 21-23.

7 **6. *Suppressed Evidence***

8 This Court has previously suppressed Amr Mohsen's Egyptian passport and the
9 \$20,000 found on Amr Mohsen's person incident to his arrest. The government will not
10 refer to or introduce the passport or \$20,000 in its case-in-chief. The government will
11 endeavor to prove Count 20 through witness testimony concerning Amr Mohsen's
12 behavior, statements and activities during the 72 hours preceding Amr's arrest as well as
13 other testimony.

14 The government will necessarily need to refer to the fact that Amr was arrested
15 and incarcerated at the conclusion of the FBI's surveillance.

16 **7. *Judge Alsup***

17 The government has previously advised the Court and the defense that it intends to
18 call Judge William H. Alsup in its case-in-chief on Counts 1-20. The government will
19 elicit testimony from Judge Alsup (who referred this case to the U.S. Attorney's Office
20 and who found that the criminal indictment was related to the earlier civil patent litigation
21 pursuant to N.D. Crim. L.R. 8-1(e)), regarding Judge Alsup's role as the decision maker
22 at various stages in the civil patent litigation. The government will also establish that on
23 March 23, 2004, Judge Alsup ordered Amr not to travel anywhere before his March 31,
24 2004 trial and engaged in a discussion with Amr concerning whether he had applied for
25 an Egyptian passport. The government will further establish that on March 29, 2004,
26 Judge Alsup granted the government's oral motion to revoke Mohsen's bail and ordered

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1 Mohsen detained pending trial.

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Respectfully Submitted,

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DATED; January 17, 2006

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KEVIN V. RYAN
United States Attorney

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/S/

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ROBIN L. HARRIS
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