

Volume XIV

Pages 1493 - 1697

United States District Court

Northern District Of California

Before The Honorable William B. Shubb, Judge

United States of America,)
)
 Plaintiff,)
)
 vs.)
)
 Amr Mohsen,)
)
 Defendant.)

NO. CR 03-0095 WBS

Jury Trial

San Francisco, California
Tuesday, March 7, 2006

Reporter's Transcript of Proceedings

Appearances:

For Plaintiff: Kevin V. Ryan
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 By: **Robin Harris, Esquire**
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For Defendant: Law Offices of John Paul Balazs
 916 2nd Street, 2nd Floor
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 By: **Bruce Locke, Esquire**

(Appearances continued on next page.)

Reported By: Sahar McVickar, RPR, CSR 12963
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1 Appearances, (continued)

2 Also present: Special Agent Christopher C. Forvour
3 Federal Bureau of Investigation
4 Special Agent Gregory R. Nestor
5 Federal Bureau of Investigation

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1 Your Honor, at this time United States would call
2 Ms. Madga Metwally.

3 **MAGDA METWALLY,**

4 called as a witness for the plaintiff, having been duly sworn,
5 was examined and testified as follows:

6 **THE CLERK:** Please speak clearly and directly into
7 the microphone.

8 Would you state your full name and spell your last
9 name, please?

10 **THE WITNESS:** Okay. My name is Magda, and my last
11 name is Metwally, M-e-t-w-a-l-l-y.

12 **DIRECT EXAMINATION**

13 **BY MR. WALDINGER:**

14 **Q.** Good afternoon, Ms. Metwally.

15 **A.** Good afternoon.

16 **Q.** Is it true that you are the defendant, Amr Mohsen's,
17 sister?

18 **A.** Yes.

19 **Q.** Are you his older or younger sister?

20 **A.** Older.

21 **Q.** Do you also -- do you and Mr. Mohsen have a brother named
22 Aly?

23 **A.** Yes.

24 **Q.** Do you have any other siblings?

25 **A.** Yes, I have a sister in Egypt.

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1 Q. Were you and all your siblings born in Egypt?

2 A. Yes.

3 Q. And did you -- do you now live in the United States?

4 A. Yes.

5 Q. Did you immigrate to the United States as an adult?

6 A. Yes.

7 Q. What do you do for a living?

8 A. Well, I'm a part-time professor in electric engineering
9 department at Santa Clara University.

10 Q. Do you also have a Ph.D. from Santa Clara University?

11 A. Yes.

12 Q. How long have you been teaching at Santa Clara University?

13 A. About 16 years now.

14 Q. Ms. Metwally, are you represented by an attorney today with
15 regard to your testimony?

16 A. Yes.

17 Q. What is your attorney's name?

18 A. Mr. Doren Weinberg.

19 Q. And is Mr. Weinberg associated with another attorney who is
20 representing you?

21 A. Yes.

22 Q. And is that Nina Wilder?

23 A. Nina, yes.

24 Q. Is Ms. Wilder in the courtroom today?

25 A. Yes.

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1 Q. Are you paying for your own attorney's fees?

2 A. Yes.

3 Q. Is it true that you're testifying today pursuant to what's
4 called a grant of immunity?

5 A. Yes.

6 Q. What do you understand that to mean? In other words, what
7 do you understand it to mean that you are testifying under a
8 grant of immunity?

9 A. Which means my -- I'm not going to be hurt with anything I
10 say today.

11 Q. Did you ask to be given that grant of immunity?

12 A. Yes.

13 Q. Would you testify today without a grant of immunity?

14 A. No.

15 Q. In other words, you would have invoked your Fifth Amendment
16 right not to self-incriminate yourself without that grant of
17 immunity, correct?

18 A. Yes.

19 Q. Is that because you thought you might have been helping
20 your brother?

21 **MR. BALAZS:** Objection.

22 **THE COURT:** I don't know what the question is yet.
23 What's your objection?

24 **MR. BALAZS:** Why she would invoke the Fifth
25 Amendment right.

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1 **THE COURT:** Overruled.

2 **BY MR. WALDINGER:**

3 **Q.** Did you invoke your Fifth Amendment right not to
4 incriminate yourself because you thought you might have been
5 helping your brother commit a crime with respect to your
6 testimony in this case?

7 **A.** No.

8 **Q.** Then why are you asserting your Fifth Amendment rights
9 today?

10 **A.** I think it's my right. And I wanted to practice my rights.
11 That's all.

12 **Q.** But you don't think that you did anything wrong today is
13 what you are saying?

14 **A.** No, I don't think so.

15 **Q.** So you don't really think that you need a grant of
16 immunity?

17 **A.** If this is my right, why not practicing.

18 **Q.** But I'm asking you, do you -- do you think that you did
19 anything wrong that would --

20 **MR. BALAZS:** Objection.

21 Repeating it again.

22 **THE COURT:** Well, I'll allow it.

23 One more attempt, go ahead.

24 **BY MR. WALDINGER:**

25 **Q.** Do you think that you did anything wrong that would get you

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1 in trouble?

2 **A.** Coming here? I don't understand the question exactly.

3 **Q.** Let me ask it in a different way.

4 **A.** Okay.

5 **Q.** You just testified that you are asserting your Fifth
6 Amendment right just because you can; is that what you said?

7 **A.** Yes.

8 **Q.** Do you think that you have any criminal liability in this
9 matter?

10 **A.** No.

11 **Q.** Do you -- is it your understanding that by the Government
12 giving you a grant of immunity, your brother will get a
13 favorable jury instruction --

14 **MR. BALAZS:** Objection.

15 **BY MR. WALDINGER:**

16 **Q.** -- from the Court?

17 **THE COURT:** I think that goes beyond her ability to
18 answer, so I'm going to sustain the objection.

19 **MR. WALDINGER:** Your Honor, may I inquire as to
20 whether Ms. Metwally has talked with her attorney about the
21 effect of the grant of immunity?

22 **THE COURT:** You are probably going to get into
23 attorney-client privilege if you do that.

24 **MR. WALDINGER:** All right. I'll move on.

25 **BY MR. WALDINGER:**

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1 Q. Ms. Metwally, you have been excluded from the courtroom
2 until today, correct?

3 A. Yes.

4 Q. And you have been included because you knew that you were a
5 witness in the case; is that right?

6 A. Yes.

7 Q. Do you understand that the purpose of being excluded from
8 to courtroom is so --

9 **MR. BALAZS:** Objection.

10 **THE COURT:** Well, there is an order excluding
11 witnesses from the courtroom. You can ask her why she thinks
12 that is, but she doesn't have to know the answer.

13 **BY MR. WALDINGER:**

14 Q. Do you know why you have been excluded from the courtroom?

15 A. No.

16 Q. I saw you before court today speaking with your
17 sister-in-law; is that correct?

18 A. Yes.

19 Q. Have you been talking with your sister-in-law about what's
20 been going on in court?

21 A. Yes.

22 Q. I'd like to go back to March of 2004. You -- are you aware
23 that your brother was arrested by FBI agents on or about
24 March 27th of 2004?

25 A. Yes.

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1 Q. Do you know where your brother, Amr, was at the time he was
2 arrested?

3 A. Yes.

4 Q. Where was he?

5 A. Visiting his mother.

6 Q. Was he arrested just outside of your apartment?

7 A. Yes, at the parking lot.

8 Q. Your mother was living with you at the time?

9 A. Yeah, she has her own apartment in the building.

10 Q. In the same building?

11 A. Yes.

12 Q. And she has since passed away; is that correct?

13 A. Yes.

14 Q. Where was that apartment located?

15 A. At 131 Rose Court in Campbell, California.

16 Q. Is it true that before your brother was arrested, he had
17 talked to you about possibly leaving the country before his
18 criminal trial?

19 **MR. BALAZS:** Your Honor, I would object.

20 That was the first phase of the trial, and I don't
21 see the relevance in this part.

22 **THE COURT:** What's the relevance to Phase II?

23 **MR. WALDINGER:** I'd rather tell you on a side bar,
24 Your Honor, but --

25 **THE COURT:** I think I know enough about the case I

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1 don't need to hear it at side bar.

2 **MR. WALDINGER:** I think that although counsel did
3 not raise the issue in his opening statement, it's my
4 understanding that the defense will argue at closing that
5 Mr. Mohsen was entrapped in the second phase of the trial.

6 **MR. BALAZS:** Don't think -- I still think it's
7 irrelevant.

8 **MR. WALDINGER:** And this question, Your Honor,
9 relates to later tampering evidence that the United States
10 intends to introduce in which the defendant attempted to tamper
11 with Ms. Metwally with respect to his conversations with her.

12 **THE COURT:** Yeah. I'm -- I understand what you are
13 saying, but I'm not following how it's related to entrapment.

14 **MR. WALDINGER:** Well, if the defendant is entitled
15 to an entrapment instruction, Your Honor, then the Government
16 can -- can show that he was not entrapped, that the defendant
17 had a predisposition --

18 **THE COURT:** I understand.

19 But it's not clear -- tell me what time frame you
20 are talking about here now.

21 **MR. WALDINGER:** This is the end of March of 2004,
22 Your Honor.

23 **THE COURT:** All right. Just so I'm sure, I'm going
24 to let the jury step out for ten minutes and we can talk about
25 this and I can make a determination.

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1 Remember the admonition, ladies and gentlemen.

2 (Jury out at 2:02 p.m.)

3 **MS. HARRIS:** I would ask that Ms. Metwally be
4 excluded from this discussion.

5 **THE COURT:** All right.

6 Would you step out in the hall, Ms. Metwally, and
7 we'll call you when we are ready.

8 (Witnesses exits courtroom.)

9 **THE COURT:** Yes?

10 **MS. HARRIS:** The first phone call that the defendant
11 made the minute that he got to Santa Rita Jail was to his
12 sister, Madga Metwally.

13 **THE COURT:** All right. But what I want you to
14 address now is why it is relevant to show that Mr. Mohsen was
15 ready and willing to commit murder, that you think you need to
16 show or can show that he was ready and willing or even was
17 committing some other crime of obstruction of justice.

18 **MS. HARRIS:** Because we have him charged with three
19 new crimes for which the defense is going to suggest
20 entrapment. He is charged with attempted witness tampering.
21 He is charged with the arson solicitation and, then finally,
22 the solicitation to kill Judge Alsup.

23 **THE COURT:** Let's find out.

24 Is the entrapment defense to all three of those or
25 just to the murder?

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1 **MR. BALAZS:** Yes, it's all three.

2 **MS. HARRIS:** And so we are going to be able to show
3 that from the minute he hits Santa Rita Jail, he started
4 witness tampering before he even met Mr. Primas, that that
5 first call he made from the jail was to his sister and that he
6 was tampering with her testimony.

7 **THE COURT:** With her testimony?

8 **MS. HARRIS:** Yes.

9 **THE COURT:** What's the question that he asked that
10 there was an objection to?

11 **MR. WALDINGER:** The question was whether the
12 defendant had talked with her before he was arrested about
13 possibly leaving the country.

14 **THE COURT:** Okay. That's not witness tampering.

15 **MS. HARRIS:** Not yet.

16 **MR. WALDINGER:** But it set it up because later on in
17 the conversation that the United States is going to introduce,
18 he is telling his sister as to how she should understand the
19 conversation that he has had with her previously and that he
20 really wasn't going to leave the country and that if she talks
21 to his attorneys, tell him he was only thinking about it.

22 **MS. HARRIS:** And that she convinced him not to
23 leave, Your Honor. It's really just getting her answer on this
24 that lays the foundation for the first tampering call that he
25 makes right out of the box when he hits Santa Rita Jail. And

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1 since we have -- we will have the burden if you give an
2 entrapment instruction of showing that he was predisposed --

3 **THE COURT:** All right.

4 Now, here is the issue here, Mr. Balazs. There is
5 no prejudice whatsoever from the presentation of evidence
6 having to do with Mr. Mohsen making plans to flee the country
7 because he's already been convicted of that.

8 **MR. BALAZS:** Right.

9 **THE COURT:** It is being offered to lay the framework
10 for another line of questioning about how Mr. Mohsen sought to
11 influence her testimony; in other words, witness intimidation,
12 which is one of the charges here.

13 Now, they haven't, in their opening statement, said
14 that Ms. Metwally is one of the witnesses that he intended to
15 intimidate.

16 **MR. BALAZS:** She's not.

17 **THE COURT:** But if you read the indictment, it's
18 consistent with that. The indictment doesn't say which
19 witnesses he intended to intimidate, just said --

20 **MR. BALAZS:** Right, but they said in their
21 opening -- I mean, the whole theory has been these five
22 witnesses.

23 The thing is, it's not in any sense the same type of
24 witness intimidation. It's to try to convince her to be a
25 witness in a certain way, allegedly.

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1 **THE COURT:** Well, it's to change her testimony.

2 **MR. BALAZS:** Change her testimony.

3 But the crime charged in Count 21 is harassing,
4 threatening witnesses not to show up.

5 **THE COURT:** It's not just that. Again, if you read
6 the language, it's intimidating, threatening or corruptly
7 persuading.

8 **MR. BALAZS:** Right, but the way the evidence has
9 come out, it's not corruptly persuading. The evidence is that
10 in trying to make phone calls, telling people to get amnesia,
11 don't show up.

12 **THE COURT:** But the Government is not bound by its
13 opening statement. If it wants to go beyond the theory
14 expressed in the opening statement, there is nothing to prevent
15 the Government from doing that.

16 This testimony is perfectly consistent with Count
17 21.

18 **MR. BALAZS:** Well, I think the other things I would
19 have to look at the dates on Count 21, but Count 21 is between
20 May of 2004 and June 13th, 2004. This is the end of
21 March 2004, so it's clear they're not -- they're not charging
22 any kind of witness tampering with Ms. Metwally. It's charging
23 these other five people.

24 **MS. HARRIS:** But, Your Honor, the point is that if
25 you are going to give the entrapment instruction, which we did

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1 not know because the defense didn't submit it until after
2 opening statements, we are entitled and, in fact, bound to
3 prove predisposition. And we can prove that based on this
4 phone call. He was predisposed to tamper with witnesses. It
5 doesn't matter whether he was corruptly persuading them --

6 **MR. BALAZS:** That's a different question.

7 **THE COURT:** You see, again, it's the same -- as I've
8 been thinking about with the Huang incident. They are not
9 charging or they are not arguing that breaking into Huang's car
10 is one of the acts that constitutes a violation of § 1512
11 (b)(1) in Count 21. But it may go to show predisposition to
12 intimidate witnesses or influence the testimony of witnesses,
13 so there is a complete lack of prejudice because the jury's
14 already found him guilty of the very things that they are
15 talking about here. And there is some probative value -- not
16 the greatest, but some probative value in showing a
17 predisposition to commit the types of crimes involved here to
18 overcome the defense of entrapment.

19 Given the lack of prejudice and some probative
20 value, then it seems to me that it is admissible.

21 **MR. BALAZS:** Yeah. Just so I'm clear, I mean, I
22 objected to the first question, but the things that I thought
23 I'm planning on objecting to in the further line of questioning
24 in terms of the allegation that he was trying to persuade her
25 to testify differently. And I think it's an entirely different

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1 nature than the crimes charged in Counts 21 and 22 and has very
2 little probative value in his -- and is prejudicial in that it
3 shows that another crime --

4 **THE COURT:** No, it's not prejudicial because he has
5 already been convicted of the crime that you are worried about
6 the jury learning of at this time. The jury has already found
7 him guilty.

8 But you have to have total similarity between the
9 acts that he already performed and the acts that he is
10 allegedly being entrapped into performing.

11 There are two prongs to witness intimidation. The
12 first is that you're intimidating people, and the second is
13 that by doing it, you are trying to influence their testimony.
14 What this goes to is the second prong, that Mr. Mohsen was
15 predisposed to corruptly influencing the testimony of
16 witnesses. And so I'm going to allow it.

17 **MR. BALAZS:** Thank you, Your Honor.

18 **MS. HARRIS:** Thank you, Your Honor.

19 **THE COURT:** If the jury is still there, we can bring
20 them back in.

21 **MR. WALDINGER:** As well as the witness.

22 **THE COURT:** I see the witness is there.

23 (Jury in at 2:12 p.m.)

24 **THE COURT:** Everyone is present again.

25 The objection is overruled.

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1 Do you want to ask the question again?

2 **MR. WALDINGER:** I will ask the question again,
3 Your Honor.

4 **BY MR. WALDINGER:**

5 **Q.** Ms. Metwally, is it true that before your brother was
6 arrested, he had talked to you about possibly leaving the
7 country?

8 **A.** He did not say he is going to be leave the country, but he
9 said that the situation that he is in, some people, when they
10 hear the situation or the whole thing, just say some people
11 leave the country.

12 **Q.** Is it your understanding that after your brother was
13 arrested, he was remanded into custody pending trial?

14 **A.** Can you say that again?

15 **MR. BALAZS:** Maybe explain remanded.

16 **THE COURT:** Yeah, means was he taken into custody,
17 he was put in jail.

18 **THE WITNESS:** Yeah. Yeah. In simple English would
19 be.

20 **BY MR. WALDINGER:**

21 **Q.** I'm sorry, I talk like a lawyer too much.

22 **A.** Simple English.

23 **Q.** Where was he put in jail?

24 **A.** I think it was Santa Rita.

25 **Q.** Before your brother was arrested, did he ever tell you what

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1 he thought about his criminal case?

2 A. Well, he felt it's -- again, the situation is unfair,
3 because the judge who ruled in the civil case is going to be
4 also in the criminal case, and he felt that's kind of unfair.

5 Q. Was he angry or upset about that?

6 A. No, he was just mentioning that it's going to be kind of
7 unfair.

8 Q. Do you remember that judge's name?

9 A. Yeah. Judge Alsup.

10 Q. Did he say whether he thought Judge Alsup himself was fair?

11 A. No, he didn't mention that. It's just the situation itself
12 about the judge being in the same cases is just unfair.

13 Q. Did your brother ever explain about the lawyers in his
14 case?

15 A. Yeah. Sometimes, yeah, he did.

16 Q. What did he tell you about his lawyers who were in his case
17 at that time?

18 A. At that time? You see, just normal complain that
19 sometimes, you know, he ask them to do things and maybe they
20 don't do it the way he wants it. Just general complaints.

21 Q. Did he ever complain to you that those lawyers weren't
22 getting results for him?

23 A. No, just general complaints.

24 Q. Did -- did your brother call you from Santa Rita Jail
25 shortly after he was arrested?

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1 A. He used to call, yeah, to ask for how is my mother doing
2 because she was very sick.

3 Q. So after he was arrested, he would call occasionally?

4 A. Occasionally, yes, ask about my mom.

5 Q. I want to go back to right after he was arrested, okay?

6 A. Okay.

7 Q. Did he call you from the jail right after he was arrested?

8 A. You see, it has been two years. I cannot remember exactly
9 was it right after or after a week or after -- this, you know,
10 and as I said, my mother was really, really sick and so many
11 events happening. I really don't remember exactly the time.

12 Q. Do you remember whether your brother ever called you from
13 Santa Rita to tell you what you should say to his attorney if
14 his attorney ever talked to you about whether Amr was going to
15 leave the country?

16 A. As I remember, he -- that talk he said about -- I didn't
17 know that my brother has a passport or there is a passport or
18 anything like that. But he said to talk to the -- to his
19 lawyer.

20 And at that time, I know my brother was not really,
21 you know, doing well because he's taking medication, and
22 probably this medication was not provided to him in jail. And
23 so I talked to his lawyer, and I told him I don't know anything
24 about my brother talking, and it was just dropped. The subject
25 was dropped.

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1 Q. So you said after your brother would continue to call you
2 occasionally from jail; is that correct?

3 A. Yes.

4 Q. Did he also communicate with you through his wife or other
5 family members?

6 A. Yeah. When he was unable to call me, yes.

7 Q. What is his wife's name?

8 A. Mervat.

9 Q. Did the defendant or did your brother ever contact you
10 through his son or daughter?

11 A. No. Not the son, not the daughter. Just sometimes he was
12 not able to call me. He was just tell Mervat that if he want
13 me to go and visit him or something like that. That's all.

14 Q. What is -- at this time, Mr. Mohsen, your brother, had two
15 children living at home; is that correct?

16 A. Yes.

17 Q. What were their names?

18 A. Shereen and Waleed -- no, Waleed was in campus at
19 university, and Ehab.

20 Q. At some point, Ms. Metwally, did your brother ask you to
21 give some money to a woman in Oakland?

22 A. Yes.

23 Q. Do you remember that woman's name?

24 A. I think it was Mary, as I remember. You see, as I said, it
25 has been two years, but according to my memory is, you know,

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1 saving me, I think it's Mary.

2 Q. What was your understanding as to who that woman was?

3 A. She is a relative of an inmate with him who is helping him,
4 giving -- maybe giving lawbooks or legal advice.

5 Q. How did your brother get this information to you that you
6 had to give money to Mary?

7 A. I think it was through the phone, as I remember. Through
8 the phone, yes.

9 Q. Did he tell you how much money to give to Mary?

10 A. Yes.

11 Q. How much?

12 A. \$6,000.

13 Q. Did he transfer that money to you or did he ask you to use
14 your own money?

15 A. No. I used my own money.

16 Q. And your brother told you that he wanted to give Mary money
17 because her brother or relative had done legal research for him
18 in jail?

19 A. Yeah, helping him, yeah, to understand the law or give him
20 books about law.

21 Q. Did your brother give you the number where you could call
22 Mary?

23 A. Yes.

24 Q. Did you call Mary?

25 A. Yes.

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1 Q. And did you set up a meeting with her?

2 A. Yes.

3 Q. Do you recall where you met with Mary?

4 A. As I remember, it was somewhere close to her house because
5 she said she doesn't have a car and she does not drive. And
6 yeah, it was a meeting, something close to her house in -- I
7 think was in auto or something, auto parts, auto supply store.

8 Q. Do you remember what -- let me go back.

9 Did you bring someone with you when you delivered
10 the money to Mary?

11 A. Yeah. Because I cannot drive far away from my vicinity.
12 So I had to ask someone to give me a ride to that place.

13 Q. You get lost when you go too far away from home?

14 A. Yes.

15 Q. Were you scared, too, when you went there?

16 A. Not really, you know. I was a little bit because it's a
17 woman. No. I was not uncomfortable or anything like that.

18 Q. Did your brother later ask you to give some money to a
19 person that he referred to as Kemo?

20 A. Yes.

21 Q. When did your brother ask you to do that?

22 A. It was on one of the visits when I was visited him in
23 prison.

24 Q. At Santa Rita?

25 A. Yes.

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1 account?

2 A. Yes.

3 MR. WALDINGER: I have no further questions,

4 Your Honor.

5 MR. BALAZS: No questions, Your Honor.

6 THE COURT: All right.

7 Thank you, Ms. Metwally. You are excused.

8 THE WITNESS: Thank you.

9 THE COURT: You may call your next witness.

10 MS. HARRIS: Thank you, Your Honor. The United

11 States calls David Carr.

12 DAVID CARR,

13 called as a witness for the plaintiff, having been duly sworn,

14 was examined and testified as follows:

15 THE CLERK: Please speak clearly and directly into

16 the microphone.

17 And could you state your full name and spell your

18 last name?

19 THE WITNESS: Yes, My name is David Carr, C-a-r-r.

20 DIRECT EXAMINATION

21 BY MS. HARRIS:

22 Q. Good afternoon, Mr. Carr.

23 Can you tell the jury where you currently work?

24 A. I work for the FBI here in San Francisco.

25 Q. How long have you worked at the FBI?