
EXHIBIT “H”

DEFENDANT AREF OPENING - SPROTBERY

1 transactions if that was needed.

2 Now, about this case in particular, we're
3 talking about a sequence of meetings that happened after he
4 arrives in the United States and begins presiding over the
5 local mosque. This is a particular part of an
6 investigation, and the Court instructed you about it, and
7 Mr. Pericak talked about it; one way that law enforcement
8 can proceed in a type of investigation is when they have
9 somebody come to them and say, here's what I'm engaged in, I
10 want to cooperate; and maybe they're already involved in
11 some type of activity; and in that case the Government takes
12 the witnesses, they find them.

13 There are other cases, sting cases, like
14 we're talking about here, where the Government, before they
15 begin, selects their person; they choose a person that
16 they're going to try to put into a situation; they choose,
17 as Mr. Pericak told you, carefully. Agent Coll decided what
18 facts to introduce and in what fashion. So keep in mind the
19 agents not only control the facts, but the choice of the
20 actual person that they put into the investigation. And
21 that's very important, because you're going to learn a lot
22 more about their choice.

23 Now, you recall my discussion about
24 December 10th, I talked to you about that. My client's a
25 witness to the transaction. Mr. Pericak talked about words

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1 door.

2 MR. PERICAK: I think that's too narrow.

3 ~~What opens the door is introducing the content.~~

4 THE COURT: I don't think so. I think he has
5 to do something affirmatively that would stick that notion
6 in there. I am not so sure the door is open.

7 MR. PERICAK: You used the word "slop" at the
8 conference and I think it's the same concept here.

9 THE COURT: Do you want to look at the
10 transcripts and see what they say?

11 MR. PERICAK: Yeah.

12 MR. LUIBRAND: Judge, that was the classified
13 transcript.

14 THE COURT: I am sorry?

15 MR. LUIBRAND: It was the classified
16 transcript, just so you know.

17 THE COURT: I have got both of them, I think.
18 Okay.

19 (Pause in proceedings.)

20 (Court reconvened in chambers at 5:18 PM.)

21 (Discussion held off the record.)

22 (Court adjourned at 5:30 PM.)

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MR. SPROTBERY: Was my last question, your Honor.

THE COURT: All right.

BY MR. SPROTBERY:

Q. And he was allowed to preach at the mosque because he was the Imam, correct?

A. Yes.

Q. And was Mr. Aref under 24 hour surveillance at that point?

MR. PERICAK: Objection, your Honor.

THE COURT: Basis?

MR. PERICAK: Side bar, please.

THE COURT: Pardon?

MR. PERICAK: Side bar, please.

(At side bar:)

MR. PERICAK: Once again, your Honor, I'm concerned because I don't know what the witness will say. Perhaps you should examine him in camera. I'm concerned that truthful answer would impact classified information and reveal classified information.

MR. SPROTBERY: I think it's yes or no. Under 24 hour surveillance. I didn't ask who, what.

THE COURT: "What do you mean," asked President Clinton, by the word "surveillance." What do you mean?

1 MR. SPROTBERY: Was somebody watching him
2 24 hours a day.

3 THE COURT: Personally, physically watching
4 him?

5 MR. SPROTBERY: Yeah.

6 THE COURT: If you ask that, there won't be
7 an objection.

8 MR. SPROTBERY: Okay. I will use your terms.

9 THE COURT: Thank you.

10 MR. SPROTBERY: Very artful.

11 THE COURT: Right.

12 (In open court:)

13 MR. SPROTBERY: May I proceed, your Honor?

14 THE COURT: Sure.

15 BY MR. SPROTBERY:

16 Q. After, after this meeting on December 10, 2003,
17 was my client under physical observation, somebody
18 personally watching him 24 hours a day?

19 A. No.

20 Q. And there came a time period when there was
21 another meeting, correct?

22 A. Yes.

23 Q. And the next meeting which my client was in
24 attendance at was January 2, 2004, correct?

25 A. Yes.

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1 Your Honor, can I approach on an unrelated
2 matter?

3 THE COURT: Sure.

4 (Bench discussion off the record.)

5 (Jury present.)

6 THE COURT: Okay, Mr. Sprotbery.

7 MR. SPROTBERY: Thank you, your Honor.

8 **RECROSS-EXAMINATION**

9 **BY MR. SPROTBERY:**

10 Q. Now, Agent Coll, we talked yesterday about the
11 code word chaudry, do you recall that?

12 A. Yes.

13 Q. And you'll recall that I had asked you if anyone
14 had ever told my client that the term "chaudry" was used to
15 define a missile; I asked you about that yesterday, correct?

16 A. Yes, you did.

17 Q. More specifically, I asked you, did Malik ever
18 tell my client that the word "chaudry" was going to be the
19 code word for missile?

20 A. Right, you asked me that, that's correct.

21 Q. And, indeed, Malik never told my client the code
22 word for missile was chaudry, correct?

23 A. No, I believe he told him on February 12th.

24 Q. Okay. Now, February 12th, as we all recall,
25 that's the date of the missing tape, correct?

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1 not communicated by Malik himself?

2 A. No, Malik told me he told Hossain that; did you
3 ask Aref if he understood that chaudry was going to be the
4 code for the missile, and he responded, yes, in substance.

5 Q. So Malik never actually spoke to my client and
6 told him that chaudry was a code word, correct?

7 A. It was part of the whole general discussion.

8 Q. Malik never told my client specifically that
9 chaudry was the code word for missile, correct?

10 A. Malik's not directly -- he told Hossain, right.

11 Q. So he did not communicate that directly to my
12 client, correct?

13 A. My understanding of it was they were all three of
14 them together.

15 Q. Agent --

16 A. But he was directing it towards Hossain.

17 Q. Agent --

18 A. I'm just being clear.

19 Q. I've asked you a simple question.

20 A. It's not a yes or no question. It's not that
21 simple.

22 Q. I'll make it a yes or no question. I'm going to
23 make it a yes or no question.

24 A. Okay. Absolutely.

25 Q. Did Malik on February 12th, 2004, say directly

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1 to my client chaudry is the code word for missile?

2 MR. PERICAK: Objection, your Honor. Agent

3 Coll is monitoring on a KELL; you know, he's not in a

4 position to see whether he is -- who's looking at who, who's

5 standing where. I think he's gone way beyond --

6 THE COURT: He can tell us what he knows from

7 listening to the KELL.

8 A. From listening to the KELL, the only words I heard
9 I can testify to was New York City, chaudry and zero four
10 four.

11 Q. So in spite of what your 302 says, you're telling
12 this jury you don't know what was said to my client?

13 MR. PERICAK: I object to that
14 characterization.

15 THE COURT: Sustained.

16 BY MR. SPROTBERY:

17 Q. So, Agent, you're telling the jury you heard the
18 word "chaudry", is that correct?

19 A. Correct.

20 Q. Missile, correct?

21 A. Correct.

22 Q. And New York City, correct?

23 A. Absolutely.

24 Q. You're not telling this jury who said those words,
25 correct?

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1 A. I -- right. Based on my listening to the KELL,
2 that's the only words I heard.

3 Q. So then, really, you can't tell them what was said
4 between the parties that day, correct? You're relying on
5 Malik?

6 A. I was not there, right, exactly.

7 Q. You are relying on Malik?

8 A. I'm relying on Malik and follow-up conversations
9 after that, that's correct.

10 Q. With Malik?

11 A. Recorded conversations, yes, that's correct, with
12 Malik.

13 Q. And your debriefing of Malik of what Malik said
14 happened that day on February 12th?

15 A. That's part of it, absolutely.

16 Q. Okay. So for February 12th, unlike many of the
17 other meetings -- in fact, any of the other meetings, you
18 really have to rely on Malik and what he said happened that
19 day, correct?

20 A. I think you have -- I relied on him in part for
21 all the meetings, but also for that particular meeting, yes,
22 that's correct.

23 Q. Now, right before Mr. Pericak completed his
24 redirect, there was discussion about the June 10th
25 discussion you had with my client; do you recall that?

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1 Q. Okay. Well, we'll let Mr. Pericak question you
2 further if you need to talk about that. But as we look at
3 this June 10th, if you don't know what chaudry is, that's
4 a pretty benign conversation; correct?

5 A. Well, you're talking about that section, you are
6 not going back to the whole conversation.

7 Q. I'm --

8 A. You are talking about that specific little
9 section. If you remove out chaudry, like any conversation
10 taken out of context, you wouldn't know it, that's correct.

11 Q. Agent, I'm just taking the part that you talked
12 with Mr. Pericak about just a few moments ago, about this
13 particular section, that's why I had this little section,
14 this was your little section.

15 A. I understand.

16 Q. And if you don't know what chaudry means, that
17 conversation doesn't stand for much, does it? Correct?

18 A. Correct.

19 Q. Now, there was another part when you were speaking
20 earlier today that you were talking about that -- about
21 these loan documents and keeping them, I think you used the
22 term in a secret place; correct?

23 A. Yes.

24 Q. And, actually, that comes from the discussion all
25 the way back in December 10th, correct?

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1 request the Court give the instruction the parties agreed
2 the Court should do.

3 THE COURT: That deals with the reasons the
4 FBI had for looking into Mr. Aref?

5 MR. PERICAK: That's correct, your Honor.

6 THE COURT: This instruction in no way
7 applies to Mr. Hossain and is not intended to apply to him
8 in no way at all and you shouldn't consider it with respect
9 to Mr. Hossain. But there may have been some talk or
10 speculation with regard to why the FBI decided to look into
11 Mr. Aref. And I want to instruct you, ladies and gentlemen,
12 that that is not an issue for your consideration. It's
13 something you may have your own thoughts about, but it can't
14 play a part in your deliberations or the matters that are
15 gonna be submitted to you about which you do have to decide;
16 that is, whether the Government has proven beyond a
17 reasonable doubt the charges against Mr. Aref or any of them
18 in the indictment. The FBI had certain suspicions, good and
19 valid suspicions for looking into Mr. Aref, but why they did
20 it is not to be of concern of yours.

21 Anything further?

22 MR. PERICAK: That's fine, your Honor.

23 THE COURT: What else do we have?

24 MR. SPOTBERRY: Nothin', your Honor.

25 MR. PERICAK: Your Honor, I have two more

1 that, I think that might --

2 THE COURT: I will consider it.

3 ~~MS. COOMBE: Your Honor, I saw what~~

4 Mr. Pericak had outlined after we had our last side bar and
5 I believe it ends with but you had said he could make some
6 argument about the fact that the Government hasn't been
7 allowed to present proof on these issues and that's because
8 this isn't any part of the jury's concern or deliberations.
9 I don't have his words exactly right, I'm sure, but the
10 spirit will be there.

11 THE COURT: If he says that, that's fine, and
12 if we still need an instruction following that, I will
13 consider it.

14 MR. SPOTBERY: That's all I wanted. Thank
15 you.

16 THE COURT: All right.

17 (Short recess taken at 4:32 PM.)

18 (Court reconvened at 4:41 PM.)

19 (Jury present.)

20 THE COURT: Okay, Mr. Pericak, are you ready
21 to address the jury with your brief rebuttal summation?

22 MR. PERICAK: Yes, your Honor, I am. Thank
23 you.

24 THE COURT: Go ahead.

25 MR. PERICAK: Ladies and gentlemen, Judge

1 McAvoy told you the FBI had good and valid reasons for
2 conducting this investigation, and the Government would not
3 be permitted to put on proof of its reasons because that's
4 not an issue you are called upon to decide.

5 MR. LUIBRAND: Judge, I object.

6 THE COURT: Overruled.

7 MR. PERICAK: I trust in light of that
8 instruction that you will reject Mr. Kindlon's statement
9 about this investigation being a mistake.

10 Now I want to get into a number of areas, but
11 I want to start with this: You were all here from the
12 beginning, you saw who put in all the proof, we put in the
13 transcripts, we put in the diary, we put in the speeches, we
14 put in complete text, we played for you complete --
15 everything we put in we played, all right. This idea that
16 we somehow, in the presentation, we cherry picked is
17 ridiculous. We put all the evidence in and we played it all
18 for you.

19 In my closing argument at the beginning, I
20 did highlight points for you, but we put all the evidence
21 in, and I urge you to look at all the evidence in making
22 your decision. I think context is critical here, and I
23 think that what you saw here going on today in closing was
24 taking things deliberately out of context.

25 There have been attacks on Malik, and I just

1 pronounce, Mr. Luibrand, the name of the group he belonged
2 to. He was correcting him left and right.

3 ~~By the way, the battle of the HSK, I put my~~
4 money on Mr. Kohlmann, that he is correct about the HSK, not
5 Mr. Aref there.

6 Speaking of Mr. Aref, there was a statement
7 "he is incapable of speaking an untruth"? Get back to the
8 1999 application, where it says "how are you employed," we
9 know he's employ in the IMK, that didn't appear on there.
10 Somethin' else not on there. He is incapable of speaking an
11 untruth? That's a clear example. No mention of the IMK.
12 Jeez, the IMK. Travel agency, right? Well, you'll have the
13 pamphlet -- there it is (indicating) -- you'll have the
14 pamphlet in evidence, you can look at it in the translation.
15 I think when you'll look at it, you will conclude they
16 are not a travel agency; that the IMK, as described by
17 Mr. Kohlmann, is a paramilitary organization, it's an armed
18 movement, it advocates an Islamic Government in Kurdistan
19 and it has military capability. And you can read this and
20 decide for yourself if it's more like a Triple A or more
21 like something else.

22 There is no dispute and I want to -- I took
23 great exception, because we are not trying to prove, we are
24 not proving that Mr. Aref is a terrorist. Mr. Kindlon was
25 wrong to say that's what the Government is tryin' to prove.

1 limit on that. There really isn't a question in this case
2 as to the reason Mr. Aref was targeted by the FBI for these
3 ~~questions that he was asked. Those reasons were good and~~
4 valid reasons based on suspicions that the FBI had. Beyond
5 that, you can't consider any reason regarding that. So, I'm
6 sure you'll recall that instruction.

7 Now that you've heard the evidence and the
8 arguments of counsel, it's my duty to instruct you on the
9 law applicable to this case. It's your duty as jurors to
10 follow these instructions and to apply to the rules of law I
11 give you to the facts as you find them based on the evidence
12 in the case. You are not to single out any one instruction
13 alone as stating the law, but you must consider my
14 instructions as a whole. Also, you're not to be influenced
15 by the wisdom of any rule of law. Regardless of any opinion
16 you may have as to what the law ought to be, it would be a
17 violation of your sworn duty to base a verdict upon any
18 other view of the law than that given in these instructions.
19 Similarly, it would be a violation of your sworn duty as
20 judges of the facts to base a verdict on anything but the
21 evidence in the case.

22 You have been chosen and sworn as jurors to
23 try the issues of fact presented by the allegations in the
24 indictment and the denial made by the not guilty plea of the
25 defendants. You are to perform this duty without bias or

1 Considering the factors set forth in
2 Section 3553(a), the Court finds that an appropriate
3 sentence is reached without applying Section 5G1.2(d). The
4 underlying terrorism crime around which the sting was
5 purportedly based is a serious offense, and those who
6 support these types of crimes deserve substantial punishment
7 to deter them and others like them from committing similar
8 crimes in the future. But having said that, and having
9 considered that Congress determined that the statutory
10 maximum sentences for the Section 2339A and Section 2339B
11 offenses to be 180 months, the Court finds that a sentence
12 of 180 months is reasonable and sufficient to accomplish the
13 goals set forth in Section 3553(a).

14 While the underlying crime is serious, the
15 evidence does not support the proposition that Mr. Aref
16 actively sought out some way to aid a terrorist crime;
17 rather, the crimes were presented to him. In addition,
18 27 of the 30 counts arose out of a sting operation and
19 Mr. Aref was convicted of only 9 of those 27. By the jury's
20 determination, it can be fairly said Mr. Aref, while
21 possibly aware of the criminal transaction for some time,
22 did not knowingly, intentionally and criminally associate
23 himself with it until July 1, 2004, over six months after he
24 became involved in the transactions between the confidential
25 witness and the defendant Hossain. While his delay in