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2003 OCT 20 PM 3:07

CLERK U.S. DISTRICT COURT
TAMPA, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA CASE NO.: 8:03-CR-77-T-30TBM

vs.

SAMEEH HAMMOUDEH
_____/

AMENDED
MEMORANDUM IN SUPPORT
OF APPEAL OF MAGISTRATE ORDER

On April 10, 2003 Magistrate Mark Pizzo entered an Order denying the Defendant's bail. While the Magistrate correctly stated the law regarding the factors to be considered when deciding if conditions of release can be set reasonably assuring a defendant's presence and the safety of any other person and the community, it is respectfully submitted that additional facts refocus the application of the factors and evidence presented at the hearing on March 20, 2003.

The relevant factors are: 1) The nature and circumstances of the crime charged and particularly whether the offense is a crime of violence; 2) The weight of the evidence against the person; 3) The history and characteristics of the person; 4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

A review of taped conversations subsequently provided by the Government as forming the basis of their proffer at the Detention Hearing, (said tapes are in Arabic and have been translated by the Defendant who is fluent in the Arabic language), shows that the Defendant is neither a flight risk nor a threat to society if granted pre-trial release.

FACTOR NUMBER 1

While the Defendant concedes that conspiracy to commit terrorism, one of the alleged

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crimes, is a crime of violence, there is no direct evidence to show any participation in such conspiracy and the Defendant in fact denies association with any terrorist group. All of the statements recorded of the Defendant and writings attributed to the Defendant are just the opposite, urging a continuation of the peace process negotiations in the Middle East. (See for example the Defendant's Masters Thesis.)

FACTOR NUMBER 2

It is asserted that the evidence presented thus far against the Defendant is insufficient to support detention. The Government presented no actual evidence and relied solely upon a proffer based upon tape recorded conversations and still had to acknowledge that the Defendant was not recorded in many of the relevant telephone calls during the years of this investigation. Prior to July 6, 1998, there is no mention of any phone conversations by the Defendant. In all of the intercepted conversations, there was no evidence that the Defendant ever made statements (written or oral) that promoted acts of violence in furtherance of the Palestinian cause. In fact, evidence was presented by the Defendant that he advocated peace and cooperation between world nations, including the Palestinians and Jews.

A. The Indictment

A review of the tapes reveal that the Indictment contains assumptions regarding the Defendant which are inaccurate. These inaccuracies include:

(1) Overt Act (14) states that the Defendant and others, on or about April 27, 1992, modified the computer file at WISE/ICP which contained the wills of Nizar Mahmoud, Abdel Damel Daher and Khaled Muhammad Hassan. This would have been impossible for the Defendant to do considering he did not arrive in the United States until December 23, 1992 and

had no computer skills until 1995.

(2) On page 4 (paragraph 10), the Indictment states that the Defendant entered the United States by means of a British passport. In reality the Defendant is not a British citizen and has never been in Britain. In fact, he came to this country via an Israeli travel document specifically issued for Palestinians, living in the Occupied Territories, because they do not have a state.

(3) The Government mistakenly thought that Overt Act 209 and Overt Act 211 relate to the same person, whereas they are actually about two different people. It is suggested that such mistakes reflected an insufficient knowledge of Palestinian culture and failed to distinguish between the proper name Saleh and the nickname Abu-Saleh, which means the father of Saleh. It is a Palestinian tradition to call fathers by the name of their first born son.

(4) The Government incorrectly assumed that the word "family" whenever used in the taped conversations was a code for PIJ. When the Defendant's mother and sister used this word in two conversations with him (Overt Act 210 and Overt Act 211), the Government mistakenly assumed they meant PIJ. Clearly the use of a word by certain people as a code, does not logically lead inevitably to a conclusion that the public usage of that word should be modified to always mean the same thing. On the contrary, words credibly are used in their plain meaning regardless of how the Government suspects that certain people may utilize them in a criminal context.

The Indictment is replete with general allegations that lack foundation. All money transactions involving the Defendant that are the subject of overt acts allegedly furthering the Palestinian Islamic Jihad (PIJ) or terrorism were firmly rebutted by testimonial and documentary

evidence. Witnesses testified, affidavits were presented, and receipts were introduced into evidence showing that the money transactions were for charitable causes. Monies transacted were generally funds collected from many people (i.e. at the mosque for religious contributions). Furthermore, the Government admitted during the bail hearing that it did not assume that all money transferred was for PIJ and failed to demonstrate how they identified that any money was sent for PIJ.

Evidence that the Defendant merely knew and associated with certain co-defendants such as SAMI AMIN AL-ARIAN is insufficient to establish a crime. The same is true with evidence merely showing that the Defendant was employed by WISE. The evidence as it pertained to the Defendant merely demonstrated that he studied and taught at U.S.F. and IAF.

It has been argued by the Government that the Defendant and Mr. Al-Arian are close confidants. The fact is that the Defendant and Mr. Al-Arian differed on many occasions regarding a variety of topics. They disagreed, at times, regarding the running of the IAF community affairs, mosque activities, etc. Every action or position taken by Mr. Al-Arian should not automatically be attributed to the Defendant. Although Mr. Al-Arian and the Defendant were co-workers sharing the same religious and ethnic background, the Defendant has his own mind and interests. The Defendant offers the Affidavits from Baha Alak and Abdel Biuk, as evidence contrary to the Government's position of the Defendant's allegiance to Mr. Al-Arian.

Various overt acts (i.e. 138, 145, 146, 147, and 149) in the Indictment alleged that the Defendant and others sent or received faxes at WISE allegedly pertaining to PIJ business. The *truth is the* Defendant **NEVER** SENT OR RECEIVED FAXES AT WISE PERTAINING *TO PIJ*

BUSINESS. During his short stint at WISE, he was a student at U.S.F. His sole involvement at WISE was related to the circulation of the journal (Political Readings) and other publications. The Government cannot produce **ANY** fax related to PIJ which identifies the Defendant as a sender or receiver. It should be noted that many persons, other than the Defendant, worked for and received checks from WISE but were never accused of being the senders or receivers of the unsigned faxes transmitted over the fax machine at WISE.

The evidence of deposits into the Defendant's bank account related to WISE consisted of his salary checks and reimbursements for postage and other expenses. The only different transaction was a one time $19,984.50 transfer on or about April 22, 1994 (Overt Act 93). The director of WISE (Ramadan Abdullah) requested and received the Defendant's permission to obtain a donation for WISE (consisting of $16,000 for WISE and $4,000 for Mr. Abdullah) through the Defendant's account. This money belonged to WISE and Mr. Abdullah and was transferred accordingly by the Defendant to the WISE account and (in the form of two checks immediately drawn on that account) to Mr. Abdullah's account.

It is important to note that the Defendant, while working at WISE, received a tuition waiver for his studies at U.S.F. as well as his salary. This was pursuant to a written agreement between WISE and U.S.F. which was negotiated by Dr. Khalil Shikaki, a respected political scientist and pollster (PhD from Columbia University and known moderate Palestinian intellectual who has many political studies writings to his credit). Dr. Shikaki is the director of the Palestinian Center for Policy and Survey Research. He has a good reputation with American officials, who often consult him on matters related to the Palestinian-Israeli conflict (see the Arabic newspaper Al-Quds Al-Arabi, Vol. 15, No. 4401, July 15, 2003 p. 7). During the last

year, Dr. Shikaki had discussed with U.S. officials in Washington his proposal to make changes in the structure of the Palestinian Authority. This proposal was largely adopted and implemented. He is a political moderate and not an extremist.

Dr. Shikaki met with the Defendant in 1988 while he was a political science professor at Najah University in Nablus. They discussed the Defendant's research and academic work. Dr. Shikaki came to the U.S. in 1989 to teach at Wisconsin State University in Milwaukee. Then in 1991 he became the first director at WISE before moving to the West Bank where the Defendant met him again. At that time, the Defendant was working at the Arab Studies Society in Jerusalem where he published several academic works relating to the history of Palestine. Accordingly, with Dr. Shikaki's encouragement, the Defendant came to the United States and U.S.F. as a young historian for academic reasons, **not** because of ties to a terrorist organization.

Section (s) on page 94 of the Indictment (under Means and Methods of the Conspiracy portion) contains several inaccuracies as statements of fact against the Defendant. These are as follows:

1. The Defendant and others engaged in Palestinian Islamic Jihad fund-raising and support activities in a clandestine manner. (It is obvious that the Defendant and his transactions are without disguise and are minutely documented.

2. The Defendant's graduate education was sponsored by Dr. Al-Arian and was a cover for PIJ business. In reality, there is no evidence that the Defendant was Dr. Al-Arian's proxy. In fact, the Defendant published in 1985, his first work in Jerusalem and Amman, Jordan. This work dealt with the history of Palestine during the British Mandate period. The work was published by the "Arab Studies Society." In 1986, the Defendant edited a book about Palestinian

cultural heritage. The Defendant himself wrote two of these studies. One study dealt with a Muslim religious scholar who lived in Jerusalem in the eighteenth century. The other study reviewed a book about Islamic monuments in Jerusalem. The book was also published in Jerusalem by the "Arab Studies Society."

In 1989, the Defendant published another study in a book published in Jerusalem by the "Arab Studies Society" titled Arab Studies and Heritage Studies. The study surveyed Islamic religious sites under the Israeli rulership and listed those that had been destroyed or used for secular purposes.

All of the Defendant's works had been well received by historians and scholars interested in Palestinian history, culture and cause. These works were cited in many other academic works, including studies published in the United States. None of these works called for violence or preached terrorism. The Defendant's academic background shows that his interest in academic research and studies is genuine and that his coming to the United States to study at U.S.F. is not a cover for any terrorist or criminal activities as the Government alleges.

3. The Defendant began to take on public appearances and fund-raising responsibilities for Palestinian Islamic Jihad on Dr. Al-Arian's behalf. The evidence contradicts this allegation and actually shows that the Defendant helped raise money for IAF and for legitimate charitable institutions.

4. Dr. Al-Arian gave specific instructions to the Defendant on what meetings to attend and where to travel and provided him money for Palestinian Islamic Jihad purposes. The Government did not present any evidence to support such a claim and relies solely upon guilt by association when in fact the Defendant led his own life, was productive in academia and never

was shown to have any connection with the Palestinian Islamic Jihad.

B. The Tapes

The tapes provided by the Government verify that the Defendant, although politically aware of the Palestinian cause, primarily focused upon his family and academic pursuits. With respect to politics, despite his criticism of Israel's harsh treatment of the Palestinians, he continuously preached cooperation between the Palestinians and Israelis as the ultimate solution. There are no tapes, or any other evidence for that matter, showing the Defendant agreeing with or promoting violence or terrorism. The opposite is true. The Defendant, after the eruption of violence between the Palestinians and the Israelis, spoke on one of Tampa's television stations in October 2000 supporting non-violence, cooperation, and calling for negotiations instead of killing. He gave sermons at the mosque encouraging Muslims to seek peaceful means in dealing with others and to establish good ties with non-Muslims based on respect and understanding. He also published several articles expressing these values.

The tapes in which the Defendant is a participant corroborate the Defendant's claims at the bail hearing. It should be noted, however, that language used in a Palestinian dialect is different than classic Arabic. There are no dictionaries for such a dialect. For optimum accuracy, a translator needs to be a Palestinian who has lived in Palestine and knows the daily language and culture to be able to correctly translate. Moreover, there are many differences between the various regions of Palestine in the pronunciation, usage and meaning of words. This fact raises questions regarding the accuracy of the Government's translations.

The following are a series of overt acts which name the Defendant and whose corresponding tapes have been reviewed:

(Overt Act 31)

Financial issues dealing with WISE are discussed and while "Sameeh" is mentioned, there is no last name included. The name Sameeh is common in the Muslim communities of the world. It is important to note that Tampa is not mentioned on this tape. While the amount of $1,000.00 for Sameeh was mentioned, the Defendant was earning $1,500.00 a month at WISE at that time, so it is unfair to assume that this necessarily refers to him.

(Overt Act 78)

This conversation is between Dr. Al-Arian and Mr. Al-Najjar and they are conferring about financial assistance to incoming students and the future of WISE and ICP. Dr. Al-Arian mentions that he was not consulted about the Defendant coming to the United States and is unfamiliar with his financial status. This actually shows that Dr. Al-Arian did not sponsor the Defendant coming to Tampa, Florida.

(Overt Act 103)

The Indictment says that Sami Amin Al-Arian and Bashir Musa Nafi had a telephone conversation about obtaining money for Unindicted Co-Conspirator Twelve and the Defendant. This is simply not what the actual taped conversation reflects. They were actually talking about getting money for Al-Shaer and Najjar (not the Defendant).

In this conversation, Dr. Al Arian and Nafi discussed the financial situation of the Defendant. Nafi said that the Defendant is in the middle of his Masters Studies and considered whether it is possible to tell him good-bye, meaning withdrawing his scholarship. Dr. Al-Arian expressed disbelief in how the Defendant was thinking of sending his family back home for a visit while he thought he had no money. Mr. Nafi had told the Defendant that the financial

situation of the Defendant was good and that his family could help him. Mr. Nafi believed that the Defendant could manage his needs for one year without a problem from sources unknown to him. He concluded that the problem is obtaining money for Mazen Al-Najjar and "Al-Shaer."

This conversation deals strictly with scholarship money and academics, not PIJ funding. Mr. Nafi and Dr. Al-Arian conclude that the Defendant has the means and should fend for himself financially.

(Overt Act 181) - no time or date on tape

In this conversation, the Defendant's name is not mentioned. The name of Abu Anas (father of Anas) is mentioned. Mr. Al-Arian has more than one friend/acquaintance known as Abu Anas who is a member of the local Muslim community. The Defendant did not attend nor is aware of any subsequent meeting by any one (conspirator or otherwise) to discuss or plan anything with respect to Mr. Shiqaqi's death as the Government claims. Most notably, despite the allegation that Dr. Al-Arian indicated he wanted to meet with Unindicted Co-Conspirator Twelve and the Defendant, this conversation does not reflect any mention of the Defendant so this conclusion is unfounded and there is no evidence of any such meeting, contrary to such allegation.

(Overt Act 202)

The Government claims that the Defendant, on July 6, 1998, requested money from Dr. Al-Arian for traveling to Chicago on his behalf. The conversation does not in any way indicate that the Defendant was traveling to Chicago on behalf of Dr. Al-Arian. The Defendant was asking about his July 5th payment from the school before he went on a family vacation to Chicago but there is no evidence that it was on behalf of Mr. Al-Arian.

The Defendant was assistant principal at IAF and the employees at IAF historically get paid every 5th and every 20th of the month. The Defendant was not paid on July 5, 1998, so he called Dr. Al-Arian to ask for his payment and because he was going to travel the next day, timing was important. There is nothing on the tape that indicated that this vacation to Chicago was on behalf of Sami Al-Arian.

(Translation of Overt Act 202)

The following reflects an exact translation of the conversation between Sameeh Hammoudeh (SH) and Sami Al-Arian (SA) in Overt Act 202:

SH: Peace be with you.
SA: Peace be with you.
SH: How are you?
SA: May God greet you.
SH: Are you coming to the school?
SA: I was there and have just come back. I have someone fixing something at home.
SH: Ok
SA: Where are you?
SH: At the school. I need some money.
SA: Ok, when are you traveling, today or tomorrow?
SH: Tomorrow.
SA: Well, we have time then. I need about an hour and I will come to the school God willing. Or half an hour until I am done.
SH: Ok, I will see you after an hour.
SA: Alright. Well someone is coming to see me at 2:00 p.m.
SH: Yes.
SA: Try to be there at 2:00 p.m. and I will see you there.
SH: Ok, fine.
SA: Good bye.
SH:: May God protect you."

(Overt Act 208)

Ismail Saleh (Abu Saleh) calls from Chicago asking for the Defendant who was not home. Abu Saleh talked to Nadia, the Defendant's wife, and told her that he has been trying to

reach Hatem for the past two days without success. The Government presumes that that person named is Hatem Fariz" despite the fact that there many of Arabs in Chicago who carry the name of Hatem.

The following is a translation of Overt Act 208:

Weeam is Sameeh's daughter (W.) Nadia is Sameeh's wife (N). Ismail Saleh (Abu Saleh): (I).

W: Hello
I: Peace be on you.
W: And on you.
I: I want brother Sameeh.
W: He is not here.
I: Where?
W: Daddy?
I: Yes.
W: At the school.
I: Let me talk to your mother.
N: Hello.
I: Good evening, peace be on you.
N: Welcome, welcome.
I: How are you: I am Abu Saleh.
N: Welcome, welcome you.
I: God willing, are you fine?
N: Thanks be to God. We are fine.
I: Where is brother Sameeh?
N: He is at the university working, typing.
I: What?
N: He has an office there where he works and types.
I: That means he is coming back late?
N: He may stay there for another couple of hours.
I: Well, I am calling from Chicago. I was trying for two days to call Hatem. We are confused a little bit and I could not call him. I call him on the phone number that I have and it seems like the store's number.
N: I see.
I: Or a cellular phone.
N: What phone?
I: Cellular phone.
N: Ok, I see.
I: *I do* not know if he can call him and if he (Hatem) is going to be in the store tomorrow, *I*

can then go to see him there.

N: Ok, give me your number so that he may call you when he comes back.

I: (Talking to a person with him at the hotel) give me. (Then coming back to address Nadia) we will stay at the hotel for another half an hour.

N: Ok.

I: Take the number anyway. If he calls after one o'clock it is ok, we are leaving and then coming back.

N: Ok, I will take the number so that he may call you.

I: That is good, May God grant you a long life.

N: Give me the number.

I: (708) 447-7910.

N: (708) 447-7910

I:. Extension 144.

N: Ok, I will try to get him within half an hour. If I do, I will tell him to call you, if God wills.

I: We are here still, we may see when and where we can meet him (i.e. Hatem).

N: Fine by the will of God.

I: Thank you. Please convey our greetings to brother Sameeh.

N: Welcome.

I: Greetings, good night.

N: Goodbye.

(Overt Act 209)

This is a two-minute conversation between the Defendant and his father. The Defendant asked whether a friend of the family (Mr. Ismail Saleh), who was visiting his sons in Chicago and had met the Defendant there, had arrived in the city of Ramallah - Al Bireh or not. The Defendant told his father to convey his greetings to that person. Furthermore, the Government alleges that Ismail Saleh is the same person as the one mentioned in Overt Act 218 who actually was a separate individual.

(Translation of Overt Act 209)

Sameeh: (S) His father, Taha: (T)

T: Yes.

S: Peace be with you.

T: Welcome, welcome Sameeh.

S: How are you dad?
T: Welcome son, welcome.
S: How is your health?
T: Thanks be to God.
S: Were you sleeping?
T: A little bit.
S: Are you sick?
T: I was sleeping.
S: You slept early, 9:30 p.m.!
T: How are you and your family?
S: Thanks be to God.
T: It is now a little passed ten o'clock.
S: Ten-thirty, did they not change standard time there?
T: It is Nine-thirty five.
S: Okay.
T: Did you receive anything?
S: No, recently I have not received.
T: I went to the "(Society) for Family Revival" and looked through the index of the whole set of their journal, and copied for you from eight journals about the (Palestinian Traditional) crafts. [Note: this pertained to the Defendant's Ph.d Research]
S: That's good. May God bless you.
T: I have sent them to you.
S: Excellent, excellent.
T: And there is another book from "MASS" (a Palestinian research center) about current industries and their difficulties and problems.
S: Okay, that works, that works.
T: There are other things. I also included papers. I have copies to Lifta (the original village of the Hammoudeh family. It was lost in the 1948 war to the Israelis).
S: Okay.
T: In these papers there are photos we intend to put in a year-calendar for the "society."
S: Do you want me to mail them back?
T: No, not necessary.
S: Do you have a copy? Did Abu-Salen arrive back?
T: Abu-Salen is in Amman, I think he is coming.
S: So he did not arrive yet?
T: No. Did he call you?
S: I met him when I went to Chicago, I met him there.
T: Oh yeah? Okay, fine.
S: He also called me. When he arrives back convey my greetings to him.
T: May God greet you.
S: How are you, hopefully everything is okay.
T: It's fine, okay.
S: Your health, God willing, is fine.

T: My health is good. Your daughters are fine and doing okay?
S: They are in excellent condition, thanks be to God.
T: Do you want to speak to your mother?
S: Is she sleeping?
T: Almost sleeping.
S: I will call her in the morning.
T: No, let her speak to you.
S: No, if she is sleeping let her rest.
T: Ok.
S: I will call in the morning. It is not necessary now. Peace be on you.
T: Peace be on you.
S: Goodbye.

(Overt Act 210)

The Defendant had a telephone conversation, on or about October 30, 1999, with his mother in which she said they were meeting every Thursday in a different house to collect for the "family" fund and for the "society."

The Government implies that the word "family" is a code for PIJ. This is totally inappropriate since:

(a) There is no proof that the Defendant's mother is involved with PIJ nor that she was using the word "family" as a code to PIJ.

(b) The Government should not assume that because a word may be used by certain persons as a code for "PIJ", that it should always be understood that way. The word "family" will most often mean family when used in every day conversations. There should be at least some showing of a pattern between two individuals to even suggest a different meaning of any common word. The Government did not show any patterns in the conversation between the Defendant and his mother to indicate that the word "family" was a code for "PIJ".

(c) While the Government did not explain what the Defendant's mother meant by the

pronoun "they", the phone conversation here shows plainly that the mother was talking about the Hammoudeh family in the West Bank and their fund which depends on their monthly dues.

(d) In the previous conversation with his father, they had discussed the Society for Family revival (see Overt Act 209 tape).

This conversation between the Defendant and his family lasted for thirteen minutes. The Defendant talked with his sister Nadera, his mother, his nephew Nadeem, and his sister Lamees. The conversation was completely social, not a single political issue was raised. The "society" mentioned in the conversation was in reference to an institution established by "Lifta" villagers whom were expelled out of their village in 1948 by the Zionist forces during the war between Jews and Arabs. Thousands of them live in and around Rammalah Al-Bireh, city, the West Bank, where they established this society to keep their social ties and common activities, more than twelve years ago. The Lifta Villagers have a similar institution in Chicago, Illinois; Austin, Texas; and Amman, Jordan.

The Defendant first spoke with his sister Nadera for about one minute. They greeted each other and discussed whether Nadera was intending to come to the United States to visit the Defendant's family.

The Defendant then spoke with his mother. They talked about health matters, a family which the Defendant was displeased with, news about his sister Taghreed who lives in California, a house under construction in Palestine for the family, Taghreed's husband and his new job, and news about the family of Sameeh's wife, Nadia. Then the Defendant's mother started talking again about his sister in California and what she had to do before visiting him in Tampa. Taghreed was going to visit the Defendant and the family in December 1999. Taghreed

had some problems with her brother-in-law, who is a relative and also lives in California. The mother informed her son (the Defendant) that she told her daughter (Taghreed) to call her brother-in-law before she travels to Tampa, as a good gesture.

Here is a partial translation of the recorded conversation referred to in Overt Act 210 where the words of "family" and "fund" are used:

Sameeh's Mother: (M) Sameeh: (S)

M: Listen, I told her (Taghreed) before she visits you to call her brother-in-law.
S: Yes.
M: To tell them goodbye, I'm going to visit my brother. Death and life are realities in this world, is that not right?
S: I think she is going to call them before Ramadan (month of fasting in the Islamic calendar).
M: Yes son, this is the right thing to do, whatever one does.
S: People have to forgive each other.
M: That's it. (She may tell them) if I made a mistake forgive me. This is the right thing to do. In life one does not know what might happen to him. May God be pleased with you.
S: People will finally relax. Is there news about them (relatives) over there?
M: Everyone cares for his own business. They agreed to meet every last Thursday of each month in a house to collect for the family fund and the society.
S: Ok.
M: Previously one has to beg them to pay. But by this (arrangement), they are gathered at one place and they have to pay their dues.
S: They meet to have dinner together?
M: They did not meet yet. This coming Thursday they are going to meet and pay their dues.
S: That's fine.
M: May God be pleased with you and take care of you kindly.

(Overt Act 211)

The Defendant had a telephone conversation with his sister about the birth of a baby to a relative in California. The Government misinterpreted that the Defendant told his sister he had <u>seen</u> the individual from Chicago made reference to in Overt Act 208. In fact, the Defendant in this conversation did not mention any person from Chicago, and the word Chicago was not even

used once during this conversation. Furthermore, the Defendant did not say he had seen anyone but rather said that he had "called". The Government is mistaken when they claim that the individual mentioned in the October 24, 1999 conversation, is the same person the Defendant is talking about with his sister in this Overt Act. The name of the individual in this conversation between the Defendant and his sister is "Saleh Deeb Hammoudeh", whereas the name of the individual mentioned in Overt Acts 208 and 209 is "Ismail Saleh", whose nickname is Abu-Saleh, meaning the father of Saleh. It is a Palestinian tradition to call a person as the father of his oldest son. For example, the Palestinian Prime Minister, Mahmoud Abbas is also knows as Abu-Mazan. See William Safire: *Do Fence Me in,* **The New York Times OP-Ed,** Thursday, July 31, 2003, p. A25. In fact, these are two different people and there is no real connection between the two Overt Acts (209 and 211). The Government alleges that the Defendant and his sister discussed whether the individual would give the Defendant money or whether he would decline because he had already given donations to the "family." This is not an accurate translation nor a correct interpretation. The money the sister was talking about is the price of an encyclopedia which Mr. Saleh Deeb Hammoudeh had purchased from the Defendant and did not pay for up to the date of the conversation.

(Translation of Overt Act 211)

T: Hello.
S: Yes.
T: The three minutes are over (on a calling card)?
S: Yes, this one still have seven minutes.
T: Oh, end the call.
S: No.
T: How are your daughters?
S: They are fine. Did they send him back with money (this was about a cousin Muhammad who had cancer and was in California and then returned to Palestine)

T: I do not know.
S: Because Omar will not give him money (Omar is the brother of Muhammad)
T: My brother, I swear to God I do no know.
S: Ok.
T: Maybe his money.
S: Omar's son received a scholarship from the Deir Dibwain Association.
T: His son, yes.
S: Yes, his name ...
T: Is in the newsletter.
S: Yes.
T: Did you receive the newsletter.
S: I saw it. A person from Deir Dibwan showed it to me. He told me that he asked them (Deir Dibwan Association) and (found out) that Mahfuz did not show them any papers (about IAF to get a donation for the school).
T: I see.
S: It seems that Mahufz is lying to me.
T: I see. He asked whom?
S: He asked one of the administrators.
T: I see.
S: He (the administrator) told him that they neither saw papers nor discussed the issue. Nobody said anything about it.
T: I see.
A I do not know. I told him to follow up with them.
T: Ok, is this person in Florida, or specifically near you (in Tampa)?
S: No. The one who asked them is from here in Florida, but he asked one from their place.
T: From their place, I see.
S: I think his friend is the branches director (of the Association).
T: I do not know who he is.
S: He named him to me. What is important is that he told that he (Mahfuz) lied.
T: Ok then, let him follow up with him about the subject.
S: It seems that he is not enthusiastic (about this issue).
T: It seems that he could not do anything.
S: No, no. If he wanted to do it, he could do it.
T: If he had been so generous he would have given you donations.
S: He did not donate.
T: He did not?
S: No.(Short talk about the family matters) then
S: Any news about the family of Deeb? .
T: I don't know, they did not call.
S: Did Khalil (Taghreed's husband and the brother of Deeb) congratulate them?.
T: No.
S: Why?
T: He congratulated neither them nor his brother's daughter (Butheina who delivered the

baby).

S: Why not?

T: There is no specific reason, he just doesn't like to call.

S: No, that is shameful tell him (to call).

T: Shameful or not, what would I tell him.

S: Tell him to phone them.

T: I told him, I told him; here she delivered if you want to call her. He told me I am not calling now. When he is in a good mood. He is always like this when it comes to duties and the like, May god help. Even calling my aunt (his mother). For long time he did not (call). Did you call Saleh or did not?

S: No, I did not talk to Saleh.

T: Didn't you tell Salah? [Note: Salah is the brother of Saleh]

S: I told him to convey greetings to every body without exception.

T: I see.

S: Oh God.

T: So, do you think he is going to send them to you?

S: What are they?

T: The money.

S: I did not ask him to pay, I'll ask him later. He is not going to run away from me.

T: Maybe he thinks that what he paid as a donation is instead of the payment for the price of those (books), or something like this?

S: He did not pay a donation.

T: To the family.

S: (What he paid) to the family is a membership dues.

T: I see.

S: They (the family) did not take extra from him, they paid from the membership dues.

T: Ya?

S: Ya?

(Overt Act 212)

The Defendant had a telephone conversation on December 29, 1999, with his father. They discussed the distribution of $2,000 collected as religious charities and specified where said funds should be applied. The Defendant's father clearly specified that the money was going to three charitable organizations in the city of Al-Bireh which take care of the blind, orphans, widows, and the poor. The Defendant's father had a career in social distribution of charitable donations in the West Bank from 1949 until his retirement in 1986 (see affidavit from Kingdom

of Jordan) and was therefore knowledgeable and taught his son the value of such community commitment. Once again, PIJ was never mentioned in this conversation.

The Defendant felt that sending money via courier is preferable since no fees would be deducted, since it cuts expense and since it guarantees more of the money will be left for the use of the poor.

In this conversation, the Defendant's father is telling the Defendant that he needed the name of donors (charities) to send them receipts. The Defendant told his father that another $1,000.00 has been collected. During Ramadan, there is a religious duty for Muslims to donate for the poor and needy. For example, Ziad Taha donated $400.00 for the Blind Girls School and a receipt of this donation was provided. The Lifta Society, named after the community which the Defendant came from, distributed money to poor families, orphans, and widows. The conversation is clearly about these types of donations. The Defendant's father is specifying the donation going to three charitable organizations (none remotely related to Palestinian Islamic Jihad). Some such receipts were proffered as evidence at the detention hearing.

The following is a partial translation of Overt Act 212 where distributing money was discussed:

Sameeh: (S) Father: (T)

T: I want to ask you about the names of those (donors) to get receipts.
S: Yes. We have collected another thousand.
T: Good, that means two thousands.
S: Yes.
T: But I cannot afford that. What I distribute now is from what I sell. I sold The Revolution (a book about Palestinian 1936-1939 revolution against the British). Currently I'm selling it wholesale.
S: Ok, there is my own money which was left. I ...
T: I don't want to touch it.

S: No father. I have the money here and I'll send it to you.
T: No. Use what you have if you need it.
S: I don't need it.
T: Ok.
S: I'll send it with the first person who may travel (to the West Bank).
T: Ok good.
S: I'll put them aside.
T: Send them via mail like before.
S: Ok I'll send them via mail. However, you may distribute the money because I have it.
T: Ok. That is very good. Give me ....
S Also, the wife of Amjad? Did you take the money from
T: She gave it to your mother.
S: You can take from it.
T That money, she said, is for Taghreed.
S: No problem. I have the money and will send it.
T: They already spent it. They paid to the workers (working on constructing a house) and things like that.
S: Ok
T: I believe so. That money I did not interfere with.
S: Ok fine.
T: These receipts should be issued in whose name?
S I have a group of people. If you want I can give you the names now.
T: Shall I put donors from ...
S: No, write the names.
T: Go ahead.
S: I have Ziad Taha.
T: Ziad Taha.
S: this person $400.
T: This is our friend. Ok, I'll get him a receipt in his name. This money I'll give to the Blind Girls (school).
S: You may get several receipts.
T: Ok good.
S: The sum of which is $400.
T: Ok.
S: Then Ziad Noufel.
T: Ziad.
S: Noufel.
T: Noufel
S: Yes.
T: Noufel, how much?
S: $300.00
T: $300, ok.
S: then Ibrahim Khader.

T: Yes.
S: $900.
T: Ok, then who else?
S: I have
T: yes, yes, you have ...
S: then I have, may the Peace of God be on our Master Muhammad, Kayed Said. Write down $300.
T: Kayed Said, Kayed Said, where is he from?
S: He is a Dibwani (from the village of Dier Dibwan).
T: Dibwani.
S: Yes.
T: Yes.
S: Ok?
T: Yes, ok?
S: These are $2000.00 and they are available. I'll send them to you as soon as I can.
T: Ok, these are (adding them up): 400; 700; 1600; 1900.
S: That's ok. There is miscellaneous money (collected). Not a big deal.
T: Ok, good. Ok good. There is also the "Society" which distributes to poor families, with orphans and widows. Is it ok if I give them a hundred or so.
S: Yes, it is ok. Which Society?
T: The Village, the Society of the village (Lifta).
S: What is most important is that you make sure that these are poor families and orphans. The best is (to give) the orphans.
T: I will give the orphans listed in the Zakat fund (annual dues on Muslims). There is a section for orphans.
S: this is good.
T: And the Family Revival (Society), and the Blind Girls (school).
S: The best is to give orphans.
T: Yes, and the rest of charitable institutions we will see from now til ....
S: Because the orphans are the most deserving ones. Here we collect the money for the orphans and the blind girls. Ok?
T: Ok.
S: There may be another amount.
T: What?
S: We may collect another one thousand during the coming ten days.
T: Is this Fitr Zakat money (should be paid by Muslims during the month of Ramadan, the month of fasting, and distributed before the feast which comes after the end of Ramadan) I meant to ask if I distribute part of it after the feast because I'm going to Amman (the capital of Jordan) on the 26th of Ramadan.
S: No distribute them before (you leave to Amman). I have this amount.
S: Yes, if more is needed, I'll send you the money. You can manage yourself.
T: Ok, no problem, do not send it ...
S: No problem, I'll send it. I have the money. I need someone to send it with.

(Overt Act 213)

The Defendant had a telephone conversation with Mr. Ribhi Hamid who was intending to travel to Palestine and made arrangements with him to deliver a package to his father. The Defendant's conversation with his father on December 29, 1999 specifies that the money should go to legitimate charitable organizations. Once again delivery by a trusted individual is a safe method in which 100% goes to the recipients. Ribhi and his brother Muhmmad were going to Palestine to visit their family and the defendant called him to send a package to carry to his father in Ramallah.

(Translation of Overt Act 213)

Ribhi: (R) Sameeh: (S)

R: Hello.
S: Peace be on you.
R: The peace and blessings of God on you.
S: How are you brother Ribhi?
R: Thanks be to God. Are you coming?
S: Abu Muhammad is coming (to your house) since he lives in the area and knows it better than me.
R: Ok.
S: I wish you, by the will of God, a successful trip. I sent a package with him.
R: And you are not able to come?
S: I am not coming.
R: No problem.
S: I wrote the phone numbers. Are you there?
R: I do not understand phone numbers for what?
S: I want Muhammad to carry an "Amana" (an Arabic word that means trust) for my father.
R: Ok, no problem.
S: I wrote his phone number at home and at the bookstore where he is during the day.
R: You mean in Palestine.
S: Yes in Palestine.
R: Ok fine, no problem.
S: In Ramallah.
R: No problem.
S: You're going to Beit Hanina, right?

R: We are going to Beit Hanina near Ramallah.
S: Do you have a phone there?
R: Yes we do.
S: Do you memorize the number?
R: Yes.
S: Give it to me.
R: 852970
S: 852970, Okay good. May God bless you.
R: Peace be upon you.
S: Peace and blessing of God on you.

(Overt Act 214)

In this conversation, the Defendant is telling his father he is sending him another $2,000.00 and specifying that part of the money was for the Defendant's mother and the rest of the money was for the Zakat fund (charity) not the Fitr fund. Zakat is an annual payment every Muslim should pay for specific charitable causes (i.e. poor people, schools, etc.) and the distribution can be made at any time. In contrast, Fitr is around the month of Ramadan and must be distributed before the end of Ramadan.

(Overt Act 215)

In this 14 minute conversation, Hatem Fariz informed the Defendant that he received the books which the Defendant sent to him. Fariz invited the Defendant to visit his mosque (Chicago Islamic Center) in June, 2000. Then Fairz talked about the results of the elections of the Executive Board of his mosque and that he was elected as a Chairman. He talked about the previous Chairman and his weaknesses, problems occurring after the elections, the Imam of the mosque, the election process and how it went, the constitution of the Center and what is says about the elections, and his involvement with another institution in Chicago.

At the end of the conversation, Fariz asked the Defendant to inform Abu-Abdullah,

without specifying what to inform him about. The Government here alleges that Fariz asked the Defendant to convey to Sami Al-Arian that he and Ballut would be permanent members of the Executive Board and to assure him (Al-Arian) that they were in control. The conversation however does not reflect that because the word "control" was not used and what to inform Abu-Abdullah (Al-Arian) was not specified. This was simply a request to extend personal greetings to him.

(Overt Act 216)

This conversation was between the Defendant and his brother (Maen) who is an accountant at a pharmaceutical factory in the city of Ramallah in the West Bank. The Defendant told his brother that he has saved money and instead of spending it he was thinking about investing it. The Defendant asked his brother for advice. The brother suggested buying a piece of land in the West Bank and told the Defendant to send the money.

They then discussed how to send the money. The Defendant asked his brother if he had a bank account. Maen answered yes and brought his check book to dictate the account number over the phone. When the Defendant asked him if he also has the international number for the bank, Maen said no. The Defendant also told him that the account should be in American currency to receive transfers in dollars. Thus, Maen told the Defendant that he was going to fax him the numbers the next day. The Defendant asked his brother if he knew someone in Ramallah, who has a bank account in the U.S. where the Defendant could transfer money and that person in turn give it to the brother, (another possible way to send the money). Maen said that he would check on this. The Defendant had also suggested in the conversation he send a check to his brother.

In the Indictment, the Government only alleges that the Defendant asked his relative to find someone who had an account in the U.S. in which he could deposit the funds and the relative could collect them from that person. Although nothing is illegal about this, the Government failed to mention that they discussed transferring the money through the bank or that the Defendant suggested sending a personal check to his brother. The Indictment is misleading because it suggests only one option of transfer was being discussed as if there was an attempt at secrecy.

(Overt Act 218)

In this conversation, the Defendant and Mazen Al-Najar spoke for 38 minutes. Many topics were discussed including religious studies. One sentence is related to being underpaid at IAF. The Defendant does criticize the way Mr. Al-Arian runs the school and community projects.

The part of the conversation where the school was mentioned is as follows:

Mazen: (M) Defendant: (D)

M: Work hard and finish your (PhD) work. May God help you.
D: By the will of God. (I'll be able to do that) if the community makes it easy on me.
M: They will not, what can you do? Do the best you can to pursue your goals.
D: Frankly, I am going to disregard their requests.
M: I see.
D: Their problems are similar to the problems of children. Their awareness is too low.
M: Be patient and keep trying with them.
D: I am absorbed in the school and do not even hear thank you. Also, and do not misunderstand me, one who works at the school does not even have enough for expenses. Why?
M: That's true.
D: They (parents of school children) live good lives and we (workers at the school) take care of their children.
M: Let me tell you something: put it straightforward to them; you have to understand my conditions (and ask me for less work).

It is clear that the Defendant was complaining about the behavior of the community members and the school parents. The issue of payment was mentioned as an example on how these people ask for too much and pay teachers less than they deserve. The Defendant managed his financial affairs through his full time work at IAF together with part time work at U.S.F., and with his wife's full time salary at IAF. The money which he and his wife saved and sent back home came through savings out of their work and through other legal means. The family received money gifts when their daughter Alaa was born in 1998 and the Defendant received $6,500.00 from the Palestinian Authority during 1997-1999. This extra money helped them to save.

(Overt Act 220)

In this conversation Dr. Al-Arian was complaining to Bashir Musa Mohammed Nafi about financial difficulties at IAF. He does mention that the Defendant was seeking an increase in salary. The Defendant's contact with Mr. Nafi was strictly academic in nature. It is known that Mr. Nafi is an accomplished scholar who works as a history professor at two London Universities. He writes a weekly article in the Arabic newspaper "Al-Quds Al-Arabi." He has published books and articles about modern Arabic history. Mr. Nafi wrote one book regarding Palestinian history in which the Defendant, among other academics, did assist Mr. Nafi in his research. Said book was introduced into evidence by the Defendant at the detention hearing. The book has nothing to do with Palestinian Islamic Jihad or terrorism and acknowledges the Defendant as having assisted the author.

(Overt Act 228)

In this conversation, the Defendant asks his cousins about what was asked of them *in an*

interview. The Indictment states that the cousin said the FBI agent asked about Sami Al-Arian's involvement. The tape, however, reveals that Al-Arian's name is never mentioned.

(Translation of Overt Act 228)

Sameeh: (S) Khalil: (K) Amjad: (A)

K: Hello
S: Yes Khalil, how are you?
K: Welcome.
S: How is your health?
K: Thanks be to God.
S: Are you busy with visitors?
K: No, it is only Amjad.
S: What happened?
K: No nothing. Everything is okay. He came and asked the same questions he asked to Amjad.
S: He came to you?
K: What?
S: He came to you at work?
K: No, he came here at the house. They left minutes ago.
S: What did they ask?
K: Questions about, you know, about work, and if we know somebody from that...I told him what shall I say to you, I do not know anything. What would I tell you? I showed him the (newsletter) of Deir Dibwan Association which we are members of it. It seems that he was given false information by somebody.
S: Ok.
K: Regarding names, we told him that a lot of people have the same name as our family.
S: How many came?
K: A male and a female. He brought a female with him but Taghreed (Klyalil's wife and Defendant's sister) left and did not attend.
S: He brought a female with him for what purpose?
K: So Taghreed may not be scared.
S: I see.
K: No, it is nothing.
S: did he ask you about me?
K: No, nothing.
S: He did not mention my name?
K: No.
S: Okay, fine.
K: Yup.
S: And who is that person from the Hammoudeh family he asked you about?

K: What?
S: Muhammad Ali Hammoudeh.
K: I do not know. He did not ask me about him. I said one comes home back from work unable to sustain himself. I come back home and sleep. Sometimes I take the kids to the park.
S: Ok, good.
K: How is your family?
S: They are fine and greet you.
K: Do you want to talk to Amjad?
S: Send him my greetings.
K: May God greet you.
S: Tell him to bring his wife back.
K: Here he is talk to him.
A: Hello.
S: How are you?
A: Welcome Sheikh Sameeh, how are you?
S: Thanks be to God.
A: How are you doing?
S: Thanks be to God.
A: Your friend came and he greets you.
S: What?
A: He greets you.
S: What?
A: He greets you.
S: Who?
A: Your friend.
S: My uncle?
A: I am talking about this man, he came and nothing to worry about.
S: Is he the same person who talked to you?
A: Yes.
S: So you were present today?
A: I told him: Do you mind if I come? He said okay.
S: Ok, what did he ask?
A: The same questions he asked me before but he made them short since I told him I am going to make it easier for you, I showed him the Zaytouna (a newsletter of Deir Dibwan Association). I found one copy in the trunk of my car.
S: I see.
A: He saw the names. I told him we are members of it (the Association) as a courtesy of us since we live there (in the village of Deir Dibwan).
S: What did he want to achieve?
A: His aim was, my brother, and Khalil heard this, to verify information they have received that we the Hammoudehs of Alameda are either dealing directly with or know people who deal with Islamic Jihad, or similar organizations. That is it. And Abu Alkhil

(Khalil) told him the same thing (as I did). Whatsoever we are only workers. He said: I could tell, you guys work hard. I told him we have no life. That is it. He asked usually asked questions.

S: Ok, fine.
A: How is your family?
S: Fine, your family is doing well?
A: Thanks be to God.
S: Oh, convey my greetings to them.
A: May God protect you.
S: Goodbye.

(Overt Act 229)

In this conversation, the Defendant is having a discussion regarding politics of the day with a religious cleric who had been the Defendant's religious advisor. Specifically, they discussed that Yasser Arafat and other Palestinian officials disagreed on how to handle negotiations with Israel. These were matters in the public news releases at the time but there were no comments in favor of terrorism.

(Overt Act 231)

On February 25, 2001, NOOR SELHAB, the treasurer of the Mosque in Tampa, called Sameeh Hamoudeh on the telephone and discussed the amounts of recent collections and their intended destinations. These monies were charitable donations which were distributed to the needy in Tampa, Gaza, the West Bank, Syria, and Iraq. These monies were collected and distributed during the month of Ramadan as a religious duty. (See affidavit of Baha Alak and Noor Selhab)

(Translation of Overt Act 231)

Sameeh: (S) Noor Selhab: (N)

Hanan: Hello
N: Peace be on you.
Hanan: And peace on to yuo.
N: Is Professor Sameeh there?
Hanan: Daddy, yes.
N: Can I please talk to him?
S: Yes, hello.

N: Peace be on you.
S: May the peace and blessings of God be on you.
N: How are you? By the will of God you are fine?
S: Welcome Abu Ghassan.
N: Is everything alright?
S: Thanks be to God.
N: And how is your hand? I hope it is fine.
S: Thanks be to God, (the injury) is minor.
N: It did not hurt you at night.
S: No, I had no pain.
N: I hope it did not swell, by the will of God.
S: No, no, nothing happened.
N: Thanks be to God. Take care of it and be watchful if anything comes out of the injury.
S: I spread medicine on it.
N: Ok.
S: Anti-bacterial.
N: Ok, I hope by the will of God, that the injury is not deep.
S: No, it is not deep. It is closing in.
N: By God, my brother I felt bad.
S: No man, nothing serious.
N: May God help you. I want to tell you another thing regarding those, if you recall, Fitr charities.
S: Yes.
N: We collected them at that time cash. Give me the number to report that we collected and distributed them. I just wanted to make a statement and distribute it tonight to the people (community leaders.)
S: Ok, just a second.
N: Ok.
S: Abu Ghassan.
N: Beloved of people.
S: First we have 4331.
N: 4331
S: Then we have 1991.
N: 1991
S: We also have 1170.
N: 1170. Ok. These are everything, that's enough. How was it distributed?
S: What?
N: How was it distributed? We will report that it had been paid.
S: By God we have distributed them here in Tampa, in Gaza, and in the West Bank.
N: That means I will report it had been paid.
S: And in Syria and Iraq.
N: Ok, ok.
S: We distributed them.

N: Ok, excellent. However, if anyone ask I will refer him to you. Fine, let me write a note: paid in Tampa, Palestine, Iraq, and Syria.
S: Yes.
N: That is it.
S: That is it.
N: Very good. Ok. Shall I put these as one time lump sum, or as three payments?
S: Put them as one number:
N: This is what I mean.
S: Part of them was also Zakat money, I mean $1,500.00 were Zakat.
N: Ok my friend, very good. May God bless you.
S: May god bless you.
N: See you today, ok?
S: No today I am not coming.
N: Why?
S: I am working on my exam and I want to finish it.
N: My friend, may God make things easy for you.
S: God bless you.
N: And make you successful.
S: By God's will.
N: Okay my brother. Thank you.
S: Peace be on you.
N: Peace be on you, goodbye.

(Overt Act 232)

This phone call was between Fawaz Damra, who is an Imam (Muslim Chaplain) in Cleveland, Ohio, the Defendant and Mazen Al-Najjar. It lasted for ten minutes. Damra spoke with the Defendant for one minute and said that he called his home and was informed that he was at the school, IAF. Damra asked the Defendant about the school and whether he worked at the University. He then asked about any news regarding Mazen Al-Najjar. The Defendant told him that Mazen is sitting next to him. Damra asked to speak with him. They conversed for almost seven minutes about several matters. This included Al-Najjar's case with the INS, raising funds for the school, IAF, Damra's participation in an interfaith group and his intention to travel to London to prepare for an interfaith conference, and the whereabouts of Dr. Ibrahim

Abu Rabi, a Muslim scholar who used to teach at Hartford Seminary, CT. Damra told Al-Najjar that he will stay in London for five days and on one of those days he will be preparing for the conference. Damra wanted to spend the other days visiting colleges and institutions and when he consulted with Ibrahim Abu Rabi, the latter advised him to contact Bashir Nafi. Thus, Damra asked for Bashir Nafi's phone number.

The Defendant gave him the telephone number and they discussed a possible fund raiser for the school in Cleveland's mosque in May and a lecture about Islamic culture by the Defendant at the mosque's monthly forum.

(Overt Act 235)

In this conversation, a secretary at the school (IAF) spoke with an unidentified woman. The suggestion to write a check to IAF was not pursuant to any instructions by the Defendant.

(Translation of Overt Act 235)

Undated (05/15/02 as in Indictment)

Time: not included duration: 1 minute

Hanan Majdalawi IAF Administrative Assistant (H:)

H: Islamic Academy of Florida, how can I help you?
-: What place is this?
H: Islamic Academy of Florida
-: Is this 130th Street?
H: Yes Maam.
-: And your address is 5910
H: Yes.
-: Avenue or Street
H: Avenue.
-: Okay, I have a question. I am supposed to send some money for the Palestinians, what should I write on the check?
H: You can write IAF.
-: IAF?

H: IAF
-: Okay and the memo I can write for the Palestinians.
H: Yes.
-: Okay.
H: Thank you.
-: Thank you.

(Overt Act 241)

This is a 6-minute conversation between the newly appointed principal of the IAF (school) and an unidentified woman who was seeking an official position as a babysitter at the school. IAF provides space for the daycare of teachers' children who are under 3 years of age but the individual employee would be responsible to pay that person. IAF was not part of that negotiation. The teachers who had children under 3 would negotiate the hourly rate with that person and pay for her services.

This conversation states clearly that: 1.) This program is only for teachers' children; 2.) Is separate from the school; and 3.) The teachers pay directly to the daycare provider.

Although the woman did say that she came on a tourist visa, she also said that her husband was apparently either a U.S. citizen or a legal resident and had applied for her. The woman was not concerned about money; she just wanted to busy herself because she was bored.

The Indictment alleges that Dr. Al-Arian and the Defendant somehow caused the principal to tell the woman that she would be paid in cash without any basis in fact. The principal had authority of hiring although he had to consult with the academic affairs committee in which Dr. Al-Arian was the chair. Nevertheless, this woman's name never came up because she was never employed by the school.

(Translation of Overt Act 241)

The exact translation between Dr. Abdelmajid Biuk, the new principal at IAF and the supposedly unidentified woman (Jihad Mohammad Odeh) seeking employment is as follows:

Abdelmajid Biuk: (A) Unidentified woman: (U)

A: Islamic Academy.
U: Peace be upon you.
A: Peace and God's mercy be with you.
U: May I speak with Abdelmajid?
A: Yes, I am Abdelmajid.
U: How are you?
A: Thanks to God.
U: I came through Sister Sarah.
A: Sarah Wajeeh?
U: Sister Sarah.
A: Sister Sarah, who is Sister Sarah?
U: Sarah.
A: Which Sarah? I know Ok. We have Sarah Wajeeh here. Do you know another Sarah her?
U: She is a teacher.
A: She is a teacher here. Yes, it's Sarah Wajeeh. She teaches science.
U: I came through her. I don't know if she talked to you. But she told that she talked to you concerning a person wanting to work at the day care.
A: For next year, yes.
U: Yes. So I called to find out what's required by the school.
A: I see. Here, we have the teachers' children who are 2 years, year and half and less than 1 year, I mean younger than 3 years. There are about 7 or 8 children. We had a sister who was in charge of them.
U: Yes.
A: She was in charge of them from morning until school's dismissal. The program is set up so the teachers will pay for the program separately, different that is.
U: This is throughout the year?
A: Yes, for all days of the week, from Monday to Friday. If you give me your telephone and your name and I'll talk to Brother Sameeh who is in charge of the program.
U: Ok. I'd like to tell you a couple of things. I do not have children. I would like to do this so I can busy myself. So I can spend time so I would not be bored. Also, I do not have a permanent residency. I came on a tourist visa so he could know this.
A: Ok.
U: But also, my husband has applied for me but I have not received them yet.
A: Ok.
U: I do not know if they are going to ask me about this.
A: Well, I will tell them that you do not have papers. If they pay you, they would pay you in

cash.

U; Ok. Would you like to get my telephone number?

A: What's your name?

U: My name is Jihad Mohammad Odeh.

A: Ok. What's your number?

U: 294-6242.

A: Ok. I'll let Brother Sameeh.

U I'll depend on God and on you to get me this job.

A: Of course we need someone because the sister who was doing it last year is not coming back.

U: I see.

A: I mean she's leaving because she found another job or something like that.

U: Yes.

A: So we need somebody. If you are available and there is an agreement, then fine.

U: I hope that I would be considered.

A: God willing, with His permission.

U: God willing. I talked to Sarah and explained to her everything.

A: She mentioned something to me. I will talk to Sameeh and ask him to put your name at the top of the list. He will call you, talk to you and negotiate with you on everything.

U: What I am concerned about. I'm sorry. What I'm concerned about is that he would ask about the papers.

A: Well. I will tell him that you do not have papers. He will pay you in cash; I mean the parents pay in cash.

U: I see. God willing. I do not want any money.

A: You must be paid money.

U: I know, but I said that because thanks to God, the Lord of the worlds, we are fine and God provided but I am bored, doing nothing for 24 hours.

A: So you want to utilize your time.

U: Yes, that is it.

A: Good.

U: I want to establish myself. I want to learn different languages, things like that. So I rely on God and you. I talked to Sarah and she said I would talk to the brother.

A: You do not have children?

U: No.

A: So you do not have children, no problem. God willing, I will talk to Brother Sameeh and take care of the matter.

U: God willing, do you know when you will call me or at what time?

A: Of course it is too early now. The school does not start until August.

U: When is the first day of school?

A: The beginning of the month. The first day of August.

U: God willing.

A: God willing, I will call you before then so you can come and sit with us.

U: Ok. You can call me anyway, and if you do not find me you may leave a message so I

know that you called when I am not home.
A: Ok, may God bless you, thank you.
U: May God keep you.
A: Ok, may God protect you.
U: Ok, may God reward you. Peace be with you.
A: Peace be with you.

Ultimately, as noted previously, the lady was not called nor hired since other arrangements were made and the program's financial matters were handled by the accounting department.

(Overt Act 246)

This conversation is clearly about an IAF donor list for the school.

(Overt Act 248)

This is a conversation between the principal of the school, Dr. Abdelmajid Biuk and the chairman of the budget committee and the treasurer Mr. Yasin Saad, concerning how to pay certain employees at the IAF as well as hiring an administrative assistant.

The Indictment states that Dr. Al-Arian and the Defendant caused an employee (presumably Mr. Biuk) to discuss paying three undocumented workers at the IAF. However, Dr. Al-Arian had already resigned his position as principal and chairman of the academy. Mr. Saad said at the end of the call that he would talk to the new chairman Mr. Abu Malik (nickname for Dr. Abul Rahman Hamed). In addition, during the conversation, Mr. Biuk makes it clear that he is <u>not</u> going to talk to Dr. Al-Arian or the Defendant about the situation, and that the committee (i.e. .budget committee) must address the issue.

(Translation of Overt Act 248)

Abdelmajid Biuk: (B) Yasin Saad: (S)

R: Good morning, Colonial.
B: May I speak to Yasin, please
R: May I ask who is calling?
B: This is Abdelmajid from the school.
R: One moment. What is you name again?
B: Abdul.
R: One moment.
S: Peace be with you.
B: Peace and God's mercy be with you.
S: How are you?
B: How are you brother?
S: Thanks to God. May God greet you.
B: I need to solve some problems. I do not know. The meeting did not give me anything yesterday as far as the three or four things that I do not know if this is the budget committee or the financial-whatever it is-I do not know who is in charge of this. I need to hire somebody to be the administrative assistant. I need somebody to close the deal. I need to figure out how to pay all of these people. I have four people at least one of them, she has papers, she is an American citizen, but I need to find a way to pay her because she was not supposed to be working at this time. But anyway I have Jani and sister Aisha and sister Wafa. All of these people do not have papers, ok. I need to make a decision about hiring whomever is going to be the administrative assistant. So what did you decide? I do not remember now.
S: Well. Who is Jani the one that does not have papers?
B: Jani and Aisha, both of them computer (computer teachers). They are students.
S: The do not have papers.
B: They do not have papers. (They are actually on students' visa) for Wafa, she has been working at the school from before and they used to give her cash. But now no one is giving her anything. We need to find a way now and I do not know. I am going to be honest with you. I am not going to go with this to anybody else. I am going to follow the channels that are already agreed upon. I am not going to talk to Sami; I am not going to talk to Sameeh (the Defendant). I am going to talk to who is responsible for this. These people have been working, they have been working for the past 4 weeks, almost 2 months. We need to reach a decision. I do not know. What's the solution?
S: Well brother. That is one of the things they always leave hanging until it becomes chaotic.
B: For instance, for Jani and Aisha, Sami told me to give them through Mazen's brother, since Mazen was paid through his brother who is living in Emirates. The least thing I have to do, I have to ask the man himself.
S: What?
B: At least, I am supposed to ask him whether that is ok with him or not. I do not know whether he is in agreement or not.
S: Yes, yes.
B: Furthermore, I do not want to do anything now unless I am 100% sure about it because if

anything happens I will be responsible, not him.

S: I thought that we agreed to form a committee just for that (i.e. personnel committee).

B: Fine. Do you know who is on that committee? Yesterday I asked him more than once; I need the names so I can talk to them.

S: Ok. Let me talk to Abu Malik.

B: Talk to Abu Malik and tell him I need it. This is urgent, because the people are coming and this decision was to be made. I also have another one. His name is Majed. Majed has worked for us as a driver for a month. He has about 70 hours. It is not a lot of money but he paid tolls and gas. But he needs his money. People are coming to me and I did not even hire them. I did not even know how much I am supposed to pay them because nobody told me. So brother let me know, this committee is a priority, if you can do it.

S: Let us sit together tomorrow morning.

B: If you can do it today. The committee must meet as soon as possible to take decisions on this matter, God willing.

S: God willing. Let me talk to Abu Malik, and I will give you a call back.

B: All right.

S: Ok, thank you. Peace be with you.

B: Peace be with you.

C. General Assertions from the taped intercepts:

After a review of the tapes provided in discovery the following conclusions are asserted for purposes of bail: 1) The Defendant never had a conversation where he favored violence or acts of terrorism as a way of invoking change in Palestine; 2) He spoke clearly about money for specific, identifiable charitable causes and other individuals corroborate his statements; 3) He was not always in alignment with Dr. Al-Arian. In fact, on several occasions, he was unhappy with Dr. Al-Arian and his performance in the community, and with the school. (See affidavit of Baha Alak 7/29/03); 4) IAF was a legitimate school and was never a front for Palestinian Islamic Jihad; 5) The Defendant was committed to the success of IAF and to a career in academic affairs beyond his work at IAF; 6) The Defendant has strong ties in the United States, expressed a desire to settle in the United States because it is better for his family; 7) The

Defendant did not use an alias. The Defendant was nicknamed Abu Anas which simply means father of Anas, the name he intended to give to his unborn son. It is a well-known traditional way of addressing Palestinian fathers and it has nothing to do with concealing one's identity. The nickname of current Palestinian Prime Minister Mahmoud Abbas is Abu Mazen. This nickname is used in the Arab media more than his real name; 8) The Defendant has been affiliated with the Palestinian Authority promoting peaceful resolutions (money referred to on page 34 under Overt Act 218) not the PIJ. The Palestinian Authority historically and publically opposes the PIJ and would not give money to the PIJ or PIJ members; 9) The Defendant did not participate in any of the phone conversations prior to July 6, 1998, despite this fact, the Government alleged during the bail hearing that the Defendant was a salaried member of PIJ with no direct proof offered to establish that. Instead the Government depends on phone conversations between other people in which the Defendant's name, as the Government believes, was mentioned. These phone conversations, according to the Indictment, are: a) Sami Al-Arian and Abd Al Aziz Awda on or about January 22, 1994 (Overt Act 31); b) between Sami Al-Arian and Bashir Nafi on or about April 15, 1994 (Overt Act 89); c) Between Sami Al-Arian and Bashir Nafi on or about July 3, 1994 (Overt Act 103); The Government alleged as suspicious activities that the Defendant had received $19,984.50 from Fathi Shiqaqi on or about April 22, 1994 (Overt Act 93), and that the Defendant sent a check for $16,000.00 to WISE on or about May 4, 1994 (Overt Act 100). Furthermore, the Government mentioned in the Indictment that the Defendant wire transferred $3,190.00 to Tarek Mekawi in the city of Nablus, the West Bank on or about February 28, 1995 (Overt Act 136). 10); Regarding the $19,984.50, the Defendant received in his bank account, it should be noted that the name of the sender, as the

bank records show, is Fathi Abdul, and not Fathi Shiqaqi. The Defendant was asked by the director of WISE at the time (Dr. Ramadan Abdullah) to receive that money in his bank account. Pursuant to Mr. Abdullah's request, the Defendant then transferred $16,000.00 to WISE and $4,000.00 to Mr. Abdullah himself. The Defendant did not receive any money for himself. The Defendant was simply doing a favor for a man he worked for.; 11) Regarding Overt Act 136, the Defendant sent that money to Mr. Mekawi, who owns a book shop and distributes publications, in order to re-print and distribute Issue No. 17 of the journal titled "Political Readings" produced by WISE. As the Government records show, the Defendant received a faxed letter from Mekawi prior to sending the money requesting exactly that. Both issues were printed (one printed in Tampa and one reprinted in Palestine). This shows that the correspondence was about real journals not code words for something illegal (See affidavit from Mr. Mekawi and evidence in discovery Box 2 A/C 16-18 folder 1 of 3); 12) The financial records substantiate that the Defendant left WISE in July or August 1994 where he was being paid a salary of $1,500.00 a month. A check dated March, 1995 (stating a zero balance) was for money owed for 1994. The 1995 records confirm that the Defendant was only working at IAF and U.S.F.

D. Magistrate's Order

It is asserted that the Detention Order made some erroneous conclusions when the government's proffer is compared to the content of the actual intercepts themselves:

1. That the Palestinian Islamic Jihad paid the Defendant (p. 4).

2. That the Defendant was not associated with U.S.F. by coincidence and U.S.F. was an academic cover for the Defendant and co-defendants (p. 4).

3. That the Defendant (and co-defendants) are committed to Palestinian Islamic *Jihad*

and violent acts (p. 8).

4. That the weight of the evidence against the Defendant is substantial (p. 13).

5. The Defendant is willing to sacrifice everything for the Palestinian Islamic Jihad's goals and that the "aura of Palestinian Islamic Jihad's vision for Palestine captivated Al-Arian and Hammoudeh more than the successful life each had made in the United States" (p. 25).

The Order mentioned intercepted dialogues involving the Defendant promoting violence aimed at "cleansing" Palestine (p. 19). There is simply no basis in fact for that conclusion unless one blindly accepts the principle that any discussion about money is necessarily Palestinian Islamic Jihad money as opposed to money that goes to innocent or non-prohibited causes. While the Magistrate states that the Defendant "hid and obfuscated his Palestinian Islamic Jihad association" at every turn (p. 20), the Defendant submits the opposite is true. The taped conversations and other evidence corroborate the fact that the Defendant was extremely open about his activities including money transactions.

In a footnote on page 14, the Magistrate perceives a discrepancy with the Defendant's donations and his income. In fact, there is no discrepancy but rather a misplaced belief by the Magistrate that all donations handled by the Defendant were actually the Defendant's personal money. Although the Defendant personally made charitable contributions, most of the money he helped to distribute belonged to other members of his mosque. It becomes more evident when you recognize that most of the money was sent during Ramadan or Hajj periods (religious occasions.)

On page 13 of this Order, the Magistrate states that "a variety of sources and events prove Hammoudeh's longstanding association and involvement with the PIJ." He incorrectly

reasons that several Shura members agreed the PIJ should pay the Defendant $1,000.00 a month for his services obviously showing that the Defendant was a valued member of PIJ when this is not supported by a review of the translated intercepts which were not available to the magistrate.

The Magistrate cites a January 22, 1994, conversation between Abd Ziz Awda and Dr. Al-Arian discussing the Defendant's salary. First of all, the reference to salaries was for work at WISE not PIJ. Secondly, his salary was $1,500.00 a month not $1,000.00. Thirdly, the conversation alluded to, occurred 13 months after the Defendant arrived in the United States not just one month as the Magistrate mistakenly concluded and apparently gave great weight to the timing.

FACTOR NUMBER 3

The evolution of the law about foreign nationals on this factor begins with a decision of Justice William Brennan in *Truong Dinh Hung v. United States*, 439 U.S. 1326, 99 S.Ct. 16 (1978), in which he held that ties to the United States are sufficient to show ties to the community. Truong Dinh Hung was a Vietnamese citizen who was charged with espionage offenses. Although he was not a citizen, Justice Brennan concluded that he should be given pretrial release for, among other reasons:

> He has resided continuously in this country since 1965, and has extensive ties in the community. He has produced numerous affidavits attesting to his character and to his reliability as a bail risk. He has maintained a close relationship with his sister, a permanent resident of the United States since 1969. The equity in his sister's Las Angeles home constitutes a substantial measure of the security for applicant's bail.

Even though the defendant was not a citizen, Justice Brennan found that his community ties to the United States through both himself and his relationship with his sister were sufficient

to ensure his presence at trial.

The next development in this evolution of law toward community came in the Seventh Circuit and was decided in February 1986 when the Court held that the defendants who were Cuban immigrants who had lawfully been in this country for about five years, had sufficient community ties. Specifically, the Court Stated:

> Mr. Rodriguez, at the time of his arrest, was employed as a body shop mechanic and had been so for some time. Mr. Dominquez is married and has family in florida and Nevada; he has been employed as a welder since coming to this country and owns a welding business incorporated in Florida. This evidence of economic and social stability, coupled with the absence of any relevant criminal record, at least suggests that defendants would be less likely to continue to engage in criminal activity while on pretrial release. *United States v. Dominguez and Rodriguez*, 783 F.2d 702 (7th Cir. 1986).

The fact that the defendants had community ties in Florida, therefore, while being charged in Iowa, was sufficient to overcome the presumption of dangerousness under 18 U.S.C. section 3142(e).

The Third Circuit followed suite in August 1986 in *United States v. Himler*, 797 F.2d 156 (3rd Cir. 1986). Himler did not have ties himself to the community in which he was charged but had family ties. The court held that those ties were sufficient to rebut the argument that he might flee. He was granted release because of those ties, even though he was unemployed.

The Ninth Circuit became the next circuit to follow this trend in *United States v. Townsend*, 897 F.2d 989 (9th Cir. 1990). The court cited *Truong Dinh Hung* and *Himler* for the proposition in their holding that "community" embraces both the community in which the charges are brought and also a community in the United States to which the defendant has ties. Defendant Mohan was a citizen of India, and none of the defendants has ties to the Western District of Washington. Although holding in that case that community includes a community in

the United States to which the defendant has ties, the court went on to hold that the defendants did not have sufficient ties to any community to ensure their presence at trial and denied pretrial release.

Finally, in *United States v. Garcia*, 801 F. Supp. 258 (S.D. Iowa 1992), the district court held that the defendant's ties to Tucson, Arizona were sufficient to establish that he had ties to the community even though he was charged in Iowa. The court relied heavily on the *Townsend* decision in its holding that 18 U.S.C. section 3142 "embraces both the community in which the charges are brought and also a community in the United States to which the defendant has ties." *801 F. Supp at 262.*

Sameeh Hammoudeh is a forty three year old husband and father of his six children (ages ranging from 2 to 17 years). Born in Bethlehem, Palestine, he came to this country in December, 1992. Other than a two-month trip in 1996 to visit family in Palestine, the Defendant has not traveled outside the United States since his arrival. The Government has seized the Defendant's passport and he has no visas to other countries. Despite being aware of the investigation for approximately seven years, he has made no attempt to flee, move or conceal his identity. He has no prior criminal history.

At the time of his arrest, the Defendant was a student (3.7 grade point average) and adjunct professor (Arabic language) at the University of South Florida (U.S.F.). In addition, he was employed as a teacher at the Islamic Academy of Florida. As a devout Muslim, he was greatly involved in the activities of a local mosque (Islamic Community of Tampa). Also, as an ardent supporter of the Palestinian cause, he was a strong promoter of cultural understanding and non-violence as the ultimate resolution to the conflict with Israel and the Arab world. *Examples*

of this are: 1) He has written articles in Arabic newspapers.; 2) He appeared on local television on October, 2000 (immediately after a Palestinian/Jewish conflict) with a Jewish representative in which he stressed the need for peace and cooperation.; 3) Testimony at the bail hearing from family, friends, U.S.F. students and fellow Muslims.; 4) Sermons given by the Defendant at the mosque.

Many of the Defendant's views are documented in his Master's Thesis written in 1996 entitled, "The Impact on American-Arab Relations of the Image of Muslims in American Culture (1861-1921). Addressing the role of culture in future Islam-West relations, he states as follows:

"The distorted image of Islam in Western culture in the past centuries has mostly led to conflicts and wars. Lack of communication and transportation difficulties were two important factors contributing to that situation. But in the current open world, cross-cultural dialogue should replace conflicts among nations so that the inevitable confrontations between the "self" and the "other" can be more positive and mutually rewarding. Indeed, such dialogue would create a healthier discourse in each culture - one that acknowledges diversity in human understanding and ideas. It is the diversity that guarantees the evolution of human thought and the birth of new ideas. More cooperation is likely if the realities of multiculturalism, rather than xenophobia and aggressive, race-oriented nationalism (or identity) are stressed. Many historical realities support the possibility of such a world."

Family members, members of the mosque where the Defendant worships, and people associated with IAF, where the Defendant worked, all corroborate the Defendant's honest and *peaceful* character. He has always promoted peace, not violence. He has always advocated

cultural understanding, not destroying the alleged enemy.

Many respected and credible witnesses testified at the bail hearing on the Defendant's behalf, including Drs. Purcell and David Austel, director of the International Studies Office at U.S.F. The Government and Magistrate dismissed this evidence with the unfounded conclusion that the Defendant has done a masterful job of deceiving his family, friends, and associates about his true feelings and affiliation. Such a conclusion is not based on evidence because the evidence leads to the opposite conclusion. Such a conclusion ignores the basic principle of the Defendant being presumed innocent until proven guilty beyond a reasonable doubt. Credible evidence of good character and innocence should be considered as evidence of good character and innocence, not evidence of being a master of deception.

FACTOR NUMBER 4

The Defendant is not a serious risk to flee. The Defendant knew of the Government investigation since 1995. The fact that the Defendant did not flee nor take any covert action is indicative that he is not a flight risk nor is he trying to hide anything.

The Magistrate expressed a fear that because of the Defendant's love for Palestine he is likely to flee there if given the opportunity. Respectfully, this fear is an over simplification. Palestine is occupied and controlled by the Israeli Government that would likely treat the Defendant much more severely in light of the pending charges and therefore would not be a safe harbor for him.

This country's judicial system is based on fairness and the presumption of innocence. Pretrial detention should not be based on unsubstantiated Government accusations. The lengthy pre-trial delay, which is necessary in this case, should be strongly considered. **THE**

DEFENDANT DOES NOT POSE A FLIGHT RISK NOR A THREAT TO SOCIETY and he is agreeable to any restrictive condition of pre-trial release including home detention, electronic monitoring and daily reporting. Finally, his community is willing to offer a considerable amount of collateral to secure the Defendant's presence in court indicating the extent to which they believe this to be true.

Respectfully Submitted,

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