

Tuesday, 23rd January 2007

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(2.00 pm)

MR JUSTICE MACKAY: Yes, Mr Hilliard.

MR HILLIARD: My Lord, I do not know if as before it might just help if I was to introduce the material to your Lordship briefly before calling Mr Kohlmann?

MR ROBERTSON: Perhaps he could do the introducing of the material. I do not want to delay him.

MR JUSTICE MACKAY: Well, before anyone introduces any material, can I just understand what the exercise is we are engaged on? This is an exceptional procedure to establish on a voir dire the expertise of this witness. I have received from you an edited version of his report which indicates the areas you would want him to ask about if he was to qualify in my judgment as an expert witness with relevant evidence to give.

MR HILLIARD: Yes. It may be that the evidence is -- really all I wanted to say is that the emphasis may be on the latter, the relevant evidence to give, because as your Lordship will see I think from the material I have highlighted, I think almost without exception it does not in fact involve expressing an opinion at all.

MR JUSTICE MACKAY: Well --

MR HILLIARD: It is a question of dealing with the material --

1 MR JUSTICE MACKAY: The material that is in circulation in
2 other places. I understand that entirely. I also
3 understood Mr Robertson, before we got to that, to
4 say: this man is not an expert of any sort in the sense
5 that we look at expert witnesses. Is that still being
6 contended, Mr Robertson?

7 MR ROBERTSON: Oh yes, it is.

8 MR JUSTICE MACKAY: Yes. Well then that is the first
9 business for today; is it not?

10 MR ROBERTSON: Yes.

11 MR JUSTICE MACKAY: Then I need to consider, if I can find
12 my note, what investigation I am embarking on; what am
13 I looking for.

14 MR HILLIARD: Yes.

15 MR JUSTICE MACKAY: This is in section 10 of --

16 MR HILLIARD: Well it is 10-64.

17 MR JUSTICE MACKAY: There is that long quotation from
18 a south Australian case; is there not?

19 MR HILLIARD: My Lord, that is absolutely right.

20 MR JUSTICE MACKAY: Mr Robertson, do you accept that is the
21 ambit of this inquiry this afternoon?

22 MR ROBERTSON: Oh yes. Yes, yes.

23 MR JUSTICE MACKAY: It is not controversial, any of that?

24 MR ROBERTSON: No, I think Cross and Archbold set out the
25 general principles and indeed we have set them out even

1 more shortly in our skeleton.

2 MR JUSTICE MACKAY: All right. So we look at that and then
3 we say, if I am satisfied -- if I am not satisfied he
4 qualifies as an expert that is the end of it. If he
5 does, is the material that is proposed to go through
6 with him relevant to issues in the case?

7 MR ROBERTSON: Yes.

8 MR JUSTICE MACKAY: Thank you. Sorry to be pedantic. Can
9 I just get another piece of paper off my desk and give
10 it to you without calling for comment.

11 These are the jury questions that were asked of the
12 other case currently going on in this court. I asked
13 for them out of interest. You may have seen them
14 already, I do not know if you have.

15 MR ROBERTSON: No.

16 MR JUSTICE MACKAY: There are four copies, two for each
17 side. Obviously they need adapting, but if you care to
18 think about them overnight and let me have your views.

19 MR ROBERTSON: Thank you very much.

20 MR JUSTICE MACKAY: All right. Yes, sorry. On you go.

21 MR HILLIARD: Yes. Mr Kohlmann, please.

22 MR KOHLMANN (affirmed)

23 Examination-in-chief by MR HILLIARD

24 MR HILLIARD: Can you give us your full name, please?

25 A. My full name is Evan F Kohlmann.

1 Q. And your occupation now, as at this time?

2 A. I currently serve as an international terrorism
3 consultant providing expert services to media, law
4 enforcement and prosecutors in the United States,
5 United Kingdom and Australia.

6 Q. Can you help us please just a bit about your background.
7 I am really interested, as it were, in your educational
8 qualifications, and I do not mean at school, obviously,
9 but since then, and your academic background. Can you
10 help us about that?

11 A. Sure. I am a graduate of the Edmund A Walsh School of
12 Foreign Service at Georgetown University in
13 Washington DC. While at Georgetown University, I was
14 focussing on the Arab-Afghans. I minored in Islam at
15 the Centre of Muslim-Christian Understanding at
16 Georgetown University.

17 MR JUSTICE MACKAY: Sorry. That was a bit fast for me. So
18 you went to Georgetown University. Your degree, this is
19 a first degree?

20 A. That is correct, my Lord. The degree was in
21 International Security Studies, International Politics.
22 And I did a minor programme in Islam and
23 Muslim-Christian Understanding from the Centre for
24 Muslim-Christian Understanding at Georgetown University.

25 MR JUSTICE MACKAY: You will have to help me on a minor.

1 What is a minor? Is that part of your first degree or
2 is it subsequent?

3 A. It was almost like an addendum degree to that. It is
4 actually, at Georgetown University, it is referred to as
5 a certificate programme. While at Georgetown I also
6 served as a research assistant to Dr Mamoun Fandy, at
7 the Centre for Contemporary Arab Studies. Afterwards,
8 I gained a law degree at the University of Pennsylvania
9 Law School in Philadelphia, Pennsylvania, where
10 I focused on national security, cybercrime law and
11 I also took separate classes at the grad school in such
12 subjects as Afghanistan and Islamic trends in
13 Afghanistan.

14 Since then I have contributed scholarly pieces,
15 scholarly articles, to a number of recognised
16 publications including Foreign Affairs. I have also
17 written a book, which was published by an university
18 publisher here in the United Kingdom, the title of that
19 book is Al Qaeda's Jihad in Europe. That book is used
20 in a textbook in university classes in Canada, the
21 United States and Australia. It has also been cited by
22 the US Congressional 9/11 Commission in their final
23 report as a source of information.

24 My recent papers include the North African Mujahadin
25 Network of the Western Balkans, published as a part of

1 Bosnian Security after Dayton, which came out last
2 month -- excuse me, three months ago. I have also
3 recently published the Role of International -- excuse
4 me, the Role of Islamic Charities in International
5 Terrorist Fundraising and Recruitment on behalf of the
6 Danish Institute for International Studies.

7 MR ROBERTSON: I trust we will be supplied with these
8 papers. We have asked for them and not thus been
9 supplied.

10 MR JUSTICE MACKAY: You will get your turn to --

11 MR ROBERTSON: Yes.

12 MR HILLIARD: I have forgotten where you were.

13 MR JUSTICE MACKAY: We were on the role of Islamic studies
14 in international terrorist fundraising. Where was that
15 published?

16 A. That was published as part of a conference organised by
17 the Danish Institute for International Studies in
18 Copenhagen. Another paper of mine that was recently
19 published is the Afghan-Bosnian Mujahadin Network in
20 Western Europe, which was published by the Swedish
21 National Defence College and presented at a symposium in
22 Stockholm, Sweden, organised by the European Emergency
23 Management Agency and the Swedish National Defence
24 College.

25 MR JUSTICE MACKAY: Mm hmm.

1 MR HILLIARD: Can you just help us with this, before we look
2 at one or two other areas: have you given evidence in
3 court as an expert before?

4 A. Yes, I have.

5 Q. In this country or abroad or both?

6 A. In both.

7 Q. In this country, can you just help us with what that was
8 about?

9 A. Sure. Last year I testified in R v Palvinder Singh and
10 Mohammed Ajmal Khan. During that case I provided expert
11 testimony on the Arab Afghans, on Lashkar-e-Taiba, which
12 is also known as Army of the Pure, which is an Afghan
13 linked group active in both Afghanistan and Kashmir.

14 Q. That was a case I think in front of Mr Justice Fulford;
15 is that right?

16 A. I believe that is correct.

17 Q. Abroad, can you help us about cases where you have given
18 evidence as an expert abroad?

19 A. Yes, I have testified five times in the US federal court
20 as an expert witness in cases including United States v
21 Sabri Ben Khala, United States v --

22 MR JUSTICE MACKAY: I do not need the names, I do not think.

23 MR HILLIARD: We have the names on a sheet. Can you just
24 help us, what the issues were, the area was that those
25 cases concerned. Does your Lordship have this document

1 that has the names of the cases?

2 MR JUSTICE MACKAY: Did I have that with his original

3 report?

4 MR HILLIARD: Not with the original one. We have a copy.

5 It just saves your Lordship writing it all down.

6 MR JUSTICE MACKAY: Thank you.

7 MR ROBERTSON: What document is this?

8 MR JUSTICE MACKAY: Have you had this?

9 MR ROBERTSON: Yes, we have.

10 MR JUSTICE MACKAY: Expert background. Thank you very much.

11 All right, yes.

12 MR HILLIARD: So those cases, we have them in a list, and

13 I may not be pronouncing them right but I am sure you

14 will know the case I mean. Sabri Ben Khala. Can you

15 help us, what was the area about which you gave expert

16 evidence in that case?

17 A. In that case I testified in a number of diverse areas

18 relating to Mujahadin organisations active in

19 Afghanistan, Europe and also on the internet. My

20 testimony included tracing internet IP addresses. It

21 included playing Jihadist videos for the court,

22 explaining their sources and their origins; it also

23 included explaining the background and histories of

24 various of the Mujahadin organisations that had surfaced

25 during the case, including the Taliban, Al Qaeda,

1 Lashkar-e-Taiba and others.

2 Q. And the Ali Timini case?

3 A. The Ali Timini case also was the same areas of
4 testimony. Also in the Eastern District of Virginia.

5 Q. And in Uzair Paracha?

6 A. In United States v Uzair Paracha, I testified on the
7 history and development of Al Qaeda in Afghanistan, of
8 the Arab Afghan movement generally, of tactics, and
9 I suppose methods used by Mujahadin organisations such
10 as those active in Afghanistan. I testified on the
11 location and nature of terrorist training camps in
12 Afghanistan and also the nature of the network that
13 Al Qaeda employs.

14 Q. And Ali Asad Chandia?

15 A. Ali Asad Chandia, United States v Ali Asad Chandia,
16 I testified again, the same subjects as United States v
17 Sabri Ben Khala and United States v Ali Timini.

18 Q. And United States v Yassin Aref?

19 A. In United States v Yassin Aref I testified on several
20 issues including the Islamic Movement of Kurdistan,
21 Ansar al-Islam, various individuals in Iraq,
22 Saudi Arabia, North Africa and elsewhere who are active
23 in international terrorist organisations such as the
24 Saudi cleric Abu Sulaiman Al-Makki. I also testified as
25 to the general background of the Bangladeshi militant

1 group Jamaat-i-Islami.

2 Excuse me, I forgot, I also testified as to the
3 identity of Libyan nationals who were recorded as having
4 met with the defendant, including leaders of the Libyan
5 Islamic Fighting Group.

6 Q. Since about 1997, have you been engaged on a particular
7 project?

8 A. Yes. Since approximately 1997, I have been engaged in
9 a far-reaching project to gather information about
10 international Mujahadin, or holy warrior organisations
11 with links, shared common linkages, through the Jihad in
12 Afghanistan, both --

13 Q. Pause for a moment.

14 MR JUSTICE MACKAY: Well, if you are taking him through EK5,
15 for my purposes you can take this as read, and if need
16 be, ask questions on it, because I am reading it now as
17 I go through it. You are on the first paragraph of this
18 at the moment.

19 MR HILLIARD: My Lord, I am. I just want to get the sense
20 of it. So to gather information you said about
21 international Mujahadin, I think you said with reference
22 to Afghanistan. Can you just help me about that?

23 A. Yes. During, when I was doing the research for my
24 thesis at Georgetown University, the focus of my
25 research was on the Arab Afghan Brotherhood.

1 Individuals who had gone to Afghanistan from various
2 countries in the Middle East and elsewhere in the Muslim
3 world with the hopes of saving the Afghan people from
4 catastrophe. In the end they had formed their own
5 Jihadist organisations in the hopes of inspiring Islamic
6 revolutions in their own home countries.

7 But what I discovered upon researching these
8 organisations is that while they did maintain separate
9 organisations, they had shared common linkages. They
10 shared the same spiritual leaders; they shared the same
11 sources of money; they shared weapons; they shared
12 training camps, and in fact what would often happen is
13 if one organisation needed the resources of another
14 organisation, including personnel, that essentially work
15 could be contracted out between and among these
16 organisations.

17 So while the organisations in the beginning, were
18 not explicit allies, they formed a brotherhood, an
19 Afghan brotherhood, which grew closer over the years.

20 Q. In the course of gathering that information, have you
21 gathered information about something called the
22 Libyan Islamic Fighting Group?

23 A. Yes, I have.

24 Q. Were members of that group in Afghanistan?

25 A. Yes, the Libyan Islamic Fighting Group first emerged in

1 the early 1990s and as a result almost directly of the
2 involvement of Libyan Islamists inside of Afghanistan.
3 One of the seminal events for LIFG was the travel of
4 senior members of the group, that would found the group,
5 to Afghanistan in the late 1980s. As a result a number
6 of the individuals who went on to found the Libyan
7 Islamic Fighting Group became influential figures not
8 just within that organisation but within other
9 organisations as well, affiliated with the Afghan Jihad,
10 including Makhtab --

11 MR JUSTICE MACKAY: Do not let us have a history of the LIFG
12 at this stage. I have the picture. We may want to know
13 more about this later.

14 MR HILLIARD: You have prepared two reports that we have.
15 In particular the main one runs to 19 pages and deals
16 with the Libyan Islamic Fighting Group, has a large
17 number of footnotes, 113 or so. You know the report
18 I mean?

19 A. Yes.

20 Q. The material that you deal with in that report, is that
21 material that you are very familiar with?

22 A. Much of the material in the report was drawn from
23 original sources taken from the Libyan Islamic Fighting
24 Group. Perhaps one of the most important sources was
25 the actual website run by the Libyan Islamic Fighting

1 Group. That website began as Almuqatila.com, first
2 surfaced in August 2000. It later went offline, was
3 kicked offline, in approximately late July 2002. Then
4 within two months a new website surfaced, a new
5 incarnation, you could say, of Almuqatila, except that
6 this new incarnation was hosted at Almuqatila.cc,
7 instead of .com.

8 These websites contain copies of virtually all
9 communiques, official communiques issued by the Libyan
10 Islamic Fighting Group from the very date that the
11 organisation was officially founded in October 1995. It
12 also contained what are known as fatwas, which are
13 religious edicts, issued either on behalf of Libyan
14 Islamic Fighting Group clerics, or clerics whom the
15 Libyan Islamic Fighting Group deemed allegiance to,
16 offered allegiance to, along with numerous other
17 documents including links to speeches by individuals
18 such as Sheik Abdullah Azzam, and Sheik Osama Bin Laden.

19 MR HILLIARD: The material on the website, I just want to be
20 clear, is that material that you have only accessed and
21 researched for the purposes of this case or has that
22 been part of the work you have told us you have been
23 doing since 1997?

24 A. When the Almuqatila.com website first surfaced in August
25 of 2000, I was working in a thinktank in Washington DC

1 that specialised in gathering open source information on
2 terrorist groups. One of the responsibilities that
3 I had at that organisation was tracking North African
4 militant groups, and a secondary task that I had at that
5 organisation was to track websites of militant groups.
6 So the Almuqatila site actually hit at a juncture
7 between two areas of which I was primarily responsible
8 for. I began monitoring Almuqatila.com virtually at its
9 inception. I have saved multiple archived versions of
10 that website over time. I was a regular visitor to that
11 website. When it went offline I quickly -- I guess you
12 say tracked on to the new website, Almuqatila.cc, of
13 which I also saved archive copies --

14 MR ROBERTSON: I am sorry to interrupt. We are not getting
15 our LiveNote. I gather the prosecution is and the
16 defence is not.

17 MR JUSTICE MACKAY: Let us do as well as we can. You will,
18 I am sure, get this eventually.

19 MR ROBERTSON: We did not get it yesterday either and I was
20 told it had been fixed today, but it has not.

21 MR JUSTICE MACKAY: It becomes more important, when real
22 evidence is being given but it is not easy for you.

23 MR HILLIARD: You were just telling us that when
24 Almuqatila.com went offline, you quickly found a couple
25 of months or so later, Almuqatila.cc.

1 A. .cc, that is correct, which was on-line from
2 approximately October 2002 until July 2003. I also have
3 multiple archived versions of that website, including
4 versions that were saved with commercial website
5 archiving software, which create detailed logs
6 explaining which files were saved, what times they were
7 saved at, how they were saved and where they were saved
8 from. Those files include again communiques from the
9 Libyan Islamic Fighting Group; they include fatwas, or
10 religious edicts urging Muslims to fight in Jihad in
11 Libya, in Iraq and elsewhere, in Afghanistan and various
12 other documents.

13 I should add, I also maintain copies of all of that
14 material, and I can present it if necessary.

15 Q. All the material you have had long since and not simply
16 for the purposes of this case?

17 A. No, I have been tracking both of these websites from
18 their inception and I have researched them over the
19 space of at least four years, if not more.

20 Q. Thank you very much.

21 A. Thank you very much.

22 MR JUSTICE MACKAY: Mr Robertson.

23 Cross-examination by MR ROBERTSON

24 MR ROBERTSON: Yes. Mr Kohlmann, how old are you?

25 A. I am 28.

1 Q. You are 28. So that means that in 1997, when you
2 embarked on this exercise, you were 19?
3 A. That is correct, or 18, but yes.
4 Q. 18, probably. Now tell us about your education. You
5 went to the Edmund A Walsh School of Foreign Service at
6 Georgetown. When did you begin that degree?
7 A. The same year I began my work on the Afghan-linked
8 extremist groups, that was in 1997.
9 Q. So when you were 18?
10 A. That is correct.
11 Q. Was that a three-year course or a four-year course?
12 A. No, that was four years.
13 Q. A liberal arts course, it is described, on its website?
14 A. It is not a standard university education as per what is
15 offered in the United States. It is a cross between
16 a graduate and an undergraduate programme in which
17 individuals with --
18 Q. It is an undergraduate programme; is it not?
19 A. It is -- I received a bachelor in --
20 Q. Sure. There was a masters programme you could have gone
21 on to but you chose not to?
22 A. I chose to go to law school instead.
23 Q. Right. Just going back to the Georgetown University
24 liberal arts course for four years in which you majored
25 in International Politics. Unusually, one of the points

1 about the course you did is that it is usually
2 a postgraduate course; is it not?

3 A. Yes, although the course of study that I did was --
4 International Politics was the general rubric, but
5 underneath that I actually did a more specific study on
6 international security studies and within that
7 particular field I even specialised further and I did
8 a focus purely on the Islamic world. My thesis --

9 Q. Your minor was in Islamic Studies and a minor in
10 American terminology is a small element of the
11 university course; correct?

12 A. Well, that is why it is not called the minor by
13 Georgetown. They call it a certificate.

14 Q. But you called it a minor in your evidence and you call
15 it a minor in your CV.

16 A. That is because typically when I come to court people do
17 not know what a certificate programme means and the
18 closest equivalent to it is a minor.

19 Q. A minor has a very clear meaning. All American
20 universities have majors and minors and a minor is
21 a small study that is a small element of the main
22 course.

23 A. But that was not the extent of my studies of Islam
24 though, because aside from my minor certificate,
25 whatever you want to call it, in Islam, on top of that

1 I also wrote an honours thesis.

2 Q. How many words?

3 A. I cannot give you a word count.

4 Q. There would have been a word count requirement,
5 presumably, for a thesis?

6 A. It has been several years. It was over a hundred pages
7 long.

8 Q. Yes. It depends on the type, I suppose, as to how many
9 words, but it was not a masters thesis or a doctorate?

10 A. No.

11 Q. That is quite a different dimension in which you do not
12 have a say?

13 A. I do not have a doctorate, no.

14 Q. Here you were doing an international politics course for
15 four years from 18, 19, 20, 21, then you do a JD, which
16 is an undergraduate law course?

17 A. No. A JD is a graduate law degree.

18 Q. I am sorry, JD is what we would call a first law degree.

19 A. I am not sure how it is referred to in the
20 United Kingdom but in the United States, in order to
21 practice as an attorney, you achieve a JD. If you want
22 to teach as a law professor, then you would go on and
23 get a LOM or a SJD, but those degrees are only for
24 individuals generally looking to teach in law school.

25 Q. So a JD, I am correct in saying, is a first law degree.

1 How many years? Three years?

2 A. Three years, yes.

3 Q. You begin your first year with torts and contracts and
4 so forth?

5 A. That is correct, yes.

6 Q. Your second year and third year, more electives. Did
7 you elect to do the rules of evidence?

8 A. Well, that was included on a course in trial advocacy,
9 yes.

10 Q. That is a course in your third year. So three years
11 doing a first law degree. Then you are aged, what, 25?

12 A. When I graduated from law school I was 25, yes.

13 Q. You are now 28. So you have had a couple of years in
14 which you have been a researcher.

15 A. Well, that is actually not true, because I have also --
16 when I was an undergraduate and when I was at law school
17 I was also working as a researcher, as a senior
18 researcher, actually, at the investigative project,
19 which is a counterterrorism thinktank and research group
20 in Washington DC. I started working there
21 in February 1998 and I continued working through there
22 until my law school was finished, at which point
23 I branched out and I began doing my research on
24 a freelance basis instead of with the investigative
25 team.

1 Q. While you were at law school and doing an undergraduate
2 you moonlighted as a researcher for some other
3 institution, about which I do not think you have
4 supplied any details?

5 A. It should be in my resume, at the bottom of my resume
6 you should see a paragraph about it. But it was not
7 really moonlighting. My exact title at the
8 investigative project was senior terrorism consultant,
9 or senior terrorism analyst.

10 Q. Let us be clear, Mr Kohlmann, you are an 18, 19-year old
11 undergraduate who is helping with the research for
12 a thinktank, correct?

13 A. No, I was basically the deputy head of the organisation.
14 I was speaking on television, on nationally televised
15 shows about terrorism on behalf of the investigative
16 project. At that point I was testifying --

17 Q. Who is on the board of the investigative project? Who
18 is the CEO?

19 A. The executive director of the investigative project is
20 Mr Steven Emerson.

21 Q. Steve Emerson, who has written a number of books on
22 politics?

23 A. More on terrorism, but yeah.

24 Q. So you are a researcher on project, and you are doing
25 that at the same time as you are doing your law exams

1 and your politics exams?

2 A. Essentially what I was attempting to do is fuse all of
3 this together into one common stream. So essentially
4 the work that I did for my thesis, I researched my
5 thesis while at work. I used research that I had done
6 at work in my thesis. When I was at law school I took
7 courses I believed that would help me do forensic work
8 and do analysis work in terms of terrorism, such as
9 taking cybercrime seminars taught by investigators, by
10 federal investigators at the University of Pennsylvania.

11 Q. You have never been, for any lengthy period of time,
12 under anyone's discipline; you have never been tutored,
13 you have never been controlled or subject to peer
14 review. Correct?

15 A. No, I have been subject to peer review.

16 Q. Your book is a book described as published by Berg
17 Publishers?

18 A. It is Oxford University Press, I believe.

19 Q. That is a false statement, Mr Kohlmann; is it not?
20 Oxford University Press? It was published by Berg?

21 A. Which is an imprint of Oxford University Press.

22 Q. No, it is an imprint of Oxford International Publishers,
23 which is not Oxford University Press?

24 A. Excuse me. The book itself was peer reviewed. In order
25 to have it published by Berg I had to have it peer

1 reviewed first of all by individuals of my choosing,
2 then subsequently it was peer reviewed by individuals of
3 their choosing with whom I did not have any contact, nor
4 do I even today know who they were. But every paper
5 that I write is extensively peer reviewed by academics
6 and by others around the world. I maintain regular
7 discussions with individuals at universities in the
8 United States, the United Kingdom, South Asia,
9 Australia. Everything --

10 Q. Yes, you said it was set as a textbook --

11 A. That is correct.

12 Q. -- in Australian universities. Tell us one Australian
13 university where it is set as a textbook?

14 A. It is -- I forget the name of it. It is in Sydney.
15 I can give you --

16 Q. There are five universities in Sydney. You said it with
17 such confidence that -- you told us in evidence with
18 great confidence that this book, published in 2005, was
19 set as a textbook in courses in Canada and Australia?

20 A. Yes.

21 Q. Now I am asking you what universities in Australia is it
22 set as a textbook?

23 A. Offhand, I do not know the university in Australia, but
24 I do know it is used as a textbook at Harvard University
25 in Boston by Richard Clarke, who was the former national

1 security council adviser on counterterrorism during
2 the Clinton --

3 Q. Your evidence in this court was that this book was set
4 as a textbook in Australian universities. In which
5 Australian universities was it set as a textbook,
6 Mr Kohlmann?

7 A. Off the top of my head, I cannot tell you, but I can
8 tell you that it is -- I have been contacted by
9 individuals who have studied from it, who have read from
10 it, and also individuals who have taught with it in
11 Australia.

12 Q. What are their names?

13 A. Offhand I cannot tell you.

14 Q. You have been contacted, you say. Does that mean that
15 it has been set as a textbook in Australian universes,
16 Mr Kohlmann, which you swore under oath?

17 A. Yes, I swear it is.

18 Q. You cannot tell us the name of the Australian
19 universities, the name of the academic who has contacted
20 you or any academics who have contacted you or the name
21 of their course?

22 A. Not offhand, no.

23 Q. You see --

24 A. If you like I can provide that information subsequently.
25 It should not be difficult to find.

1 Q. Have you been apprised of the expert witness protocol,
2 of the duties that expert witnesses have to the courts
3 in this country?

4 A. Not specifically, I do not believe. Excuse me, I have
5 been sent a copy of it, yes.

6 Q. Of what?

7 A. Of the expert witness protocol, but I am not sure if it
8 was in the context of this case.

9 Q. How did you come to testify? Were you contacted by
10 police, and is there some sort of letter of contract?

11 A. I was contacted by individuals from the
12 Metropolitan Police, and I was asked to prepare a report
13 on certain subjects, namely the Libyan Islamic Fighting
14 Group. Also subsequently I was asked to produce
15 a report on the Abu Yahya al-Liby training camp in
16 Afghanistan and I was also asked to prepare a report
17 detailing several definitions of key terms such as
18 shahid and Mujahadin.

19 Q. Your first report, contract, you were asked to prepare
20 it, what, in a letter which included the protocol, or
21 a letter that had contractual terms in it? What was the
22 basis of your contract for this case?

23 A. Maybe I am not understanding your question. What do you
24 mean, the basis of my contract?

25 Q. Yes. Why are you here? You were flown here --

1 A. Yes.

2 Q. Business class, I assume?

3 A. That is correct, yes.

4 Q. You are being paid?

5 A. Eventually, hopefully, yes.

6 Q. Well, what is your rate? What rate have you agreed?

7 A. The general rate which I charge is \$275 a hour.

8 Q. \$275 an hour?

9 A. US dollars an hour.

10 Q. Which would include travel, of course?

11 A. That does not include -- travel is an extra expense on
12 to that.

13 Q. That is an extra expense. But the time that you are
14 travelling and preparing, it is all \$275 dollars
15 an hour. Is that written down somewhere in the
16 contract?

17 A. I do not know that I ever wrote that down in a written
18 contract, no.

19 Q. But you say that you have been shown the expert
20 protocol, but you cannot remember in relation to this
21 case?

22 A. Honestly, I cannot remember if it was sent to me in
23 relation to this case.

24 Q. Where is your letter of instructions in relation to this
25 case? Were you sent a letter of instructions?

1 A. Through the mail?

2 Q. Or e-mail?

3 A. I do not recall.

4 Q. You see -- you do not recall receiving a letter of
5 instructions?

6 A. I sent -- there were numerous correspondence sent
7 between me and the Metropolitan Police with regards to
8 my report. There have been so many, I honestly cannot
9 recall off the top of my head exactly whether there was
10 a letter of instruction or whether it was simply an
11 e-mail, but the instructions were to -- yes, to write
12 a report about the Libyan Islamic Fighting Group.

13 Q. You have that letter, presumably?

14 A. I have a copy of all the correspondence that I have had.

15 Q. Right. Did you bring it with you?

16 A. No.

17 Q. We will have to obtain it from the prosecution. But in
18 any event you were paid \$275 dollars an hour for
19 producing this 19 page report on the Libyan Islamic
20 Fighting Group?

21 A. I have not been paid anything yet.

22 Q. Have you sent your bill in?

23 A. No. But with these cases, generally speaking, I do not
24 get paid until well after the case is over.

25 Q. You have testified in a number of cases in the

1 United States, always for the prosecution?

2 A. I have been requested to testify by the defence in only
3 one case. I would be more than happy to testify on
4 behalf of defendants. The only reason why I did not
5 testify on behalf of the defendant in that case was
6 because it was a war crimes case involving a Croatian
7 military individual and I did not want my research to be
8 used in the defence of an individual who was accused of
9 committing gross crimes against Muslims in Bosnia.

10 Q. Even though he might be innocent you were not prepared
11 to allow your research to be used in the service of
12 justice?

13 A. No, I was willing. I sat down with the attorney
14 involved and I discussed with him how he wanted to use
15 my research, but in the end I felt that the way in which
16 he intended to use my research did not appropriately
17 reflect my conclusions, the research, and I felt that
18 also by doing so, that I would antagonise Muslims who
19 are a key part of my research so I did not wish to do
20 that.

21 Q. So you withheld your assistance on that occasion even
22 though in the witness box you would be able to represent
23 your report properly?

24 A. I am sorry, what is that?

25 Q. You withheld your services from the defence on that

1 occasion?

2 A. After discussions with the attorney. But generally
3 speaking, I mean, I would be happy to testify on behalf
4 of defendants. I mean, my research is my research. My
5 conclusions are my own. If a defendant sees that part
6 of my research or part of my conclusions would be
7 helpful, I would be more than happy to testify in their
8 regard, as long as my research is not being twisted in
9 ways that it does not represent what I have found.

10 Q. Well, let us take a look at your research. The first
11 document that is presented to us is the 19-page document
12 on the Libyan Islamic Fighting Group. Do you have that
13 there?

14 A. I do not have a copy in front of me, no.

15 Q. Perhaps you could be shown it. (Handed).

16 MR JUSTICE MACKAY: This is EK1, is it?

17 A. Yes. This is the 19-page document which, today for the
18 first time at lunchtime, we were given a copy of with
19 parts of it --

20 MR HILLIARD: That was to help. I am sorry, I did not
21 realise --

22 MR JUSTICE MACKAY: Do not let us bicker.

23 MR HILLIARD: I am sorry. I did it to try and help.

24 MR ROBERTSON: This is the document that was withheld from
25 us, but let us pass on. This document shows the quality

1 of your research and we find that everything that is
2 said about the Libyan Islamic Fighting Group on page 1,
3 this will be a feature of this document, is sourced to
4 Norman Benotman, correct?

5 A. I am sorry, I cannot hear what you are saying. Can you
6 repeat that?

7 Q. Everything in page 1 -- every statement you make in
8 page 1 that is not common knowledge -- is sourced to an
9 interview with Norman Benotman; is that correct?

10 A. No, that is not correct.

11 Q. Well, the second one -- let us go through it. The first
12 paragraph begins with:

13 "A group of ambitious military officers, led by
14 Gaddafi, staged a coup d'etat."

15 That is common knowledge.

16 A. That is common knowledge.

17 Q. "Though he claimed his revolution was aimed at achieving
18 direct popular democracy, his regime nonetheless began
19 to generate resentment among dissidents who questioned
20 his true commitment."

21 That is correct up to a point; is it not? Common
22 knowledge?

23 A. Well, I do not know if it is common knowledge, but,
24 I mean, it is common knowledge for me.

25 Q. It is very common knowledge that Colonel Gaddafi killed

1 and tortured dozens, hundreds of people, is it not, you
2 do not mention that?

3 A. That was not directly relevant to the Libyan Islamic --

4 Q. Not directly relevant to the reason why Libyans opposed
5 Gaddafi?

6 A. That is why I said it began to generate resentment among
7 dissidents and I also said that the Libyan security
8 forces had rounded up members of Islamist cells and
9 sentenced them to death.

10 Q. No mention of Gaddafi's human rights record here, is
11 there?

12 A. I was not asked to write a report about that.

13 Q. No, I appreciate that. But you see when you come to
14 talk about the Libyan -- offer any opinion about the
15 Libyan Islamic Fighting Group, in the second paragraph,
16 you say that:

17 "Although the Libyan Islamic Fighting Group did not
18 officially announce its formation until 1995, the roots
19 of the movement are closely linked to the first group of
20 Libyans who fought and declared their Jihad against
21 Gaddafi's regime."

22 You source there some April 11th website.

23 A. That website is probably the second most important
24 terrorist website on the internet. It is run by a group
25 known as Jaish al-Islami in Iraq, the Islamic Army in

1 Iraq, which is an organisation that works with Al Qaeda.
2 This material, the material posted on this website, is
3 considered to be entirely credible because it is posted
4 in Arabic by individuals who work in these
5 organisations. This website is a password protected
6 website.

7 Q. I am sure it is all of those things. The only I want to
8 make, I want you to accept, is that the truth of that
9 statement depends on a statement on an Al Qaeda website?

10 A. Made by individuals with close intimate knowledge of the
11 situation.

12 Q. It depends on a statement that appears on an Al Qaeda
13 website; is that right?

14 A. That is correct, sure.

15 Q. "During their early years of existence, distracted by
16 disagreements and rivalries ..."

17 Your source for that is Norman Benotman; is that
18 correct?

19 A. That is correct.

20 Q. You do not know it of your own knowledge, you draw
21 entirely on Mr Benotman?

22 A. This -- when I cited sources here, they were meant to be
23 the primary sources. However, most of what is in this
24 is something that has been fused together from multiple
25 sources. Part of writing a document like this is taking

1 various sources and matching them up next to each other
2 and corroborating the information. When someone's name
3 or a fact continually appears over and over again in
4 multiple sources, such as for instance the names of the
5 Allied chief commanders or in this case Awatha
6 al-Zuwawi, when you start seeing names pop up over and
7 over again, that tends to lend significant credence to
8 these sources.

9 Q. That depends on a statement by Benotman; does it not:

10 "They were distracted by disagreements and rivalries
11 during the early years of their existence."

12 A. That was the primary source but not the only source that
13 was used in that.

14 Q. Then, when we go down to the next paragraph:

15 "Despite these disheartening failures, the Libyan
16 Mujahadin volunteers remained committed to their Jihad
17 against the apostate Gaddafi, fighters began to band
18 together under Commander al-Zuwawi, a student of Islamic
19 law in Tripoli, who formed an underground Jihadist
20 organisation in Libya in 1985."

21 That statement again depends on an interview with
22 Norman Benotman; does it not?

23 A. That is actually also corroborated by the statement
24 issued on al-Boraq.

25 Q. I see, so it depends on a statement made on an Al Qaeda

1 website and corroborated by Mr Benotman?

2 A. A former Shura Council member.

3 Q. Corroborated by an interview with Mr Benotman?

4 A. As an Shura Council --

5 MR JUSTICE MACKAY: Just a yes or no will do. Do not answer
6 your case yet, Mr Kohlmann.

7 A. I am sorry, yes.

8 MR ROBERTSON: Of course, that in turn depends on whether
9 Mr Benotman was quoted correctly.

10 A. That is true, but I am -- some of my colleagues at the
11 Jamestown Foundation, so I have reason to believe that
12 this interview was done in a professional and correct
13 manner.

14 Q. Have you interviewed Mr Benotman?

15 A. Not me personally.

16 Q. Look at your sixth footnote:

17 "Most of the founding leaders and cadres of the
18 Fighting Group were members of Zuwawi's clandestine
19 organisation."

20 Again that statement depends on Mr Benotman?

21 A. That is correct.

22 Q. And on the accuracy of his interview in some journal of
23 the Jamestown Foundation?

24 A. That is correct.

25 Q. You have never been to Libya yourself, have you?

1 A. No, I have not.

2 MR JUSTICE MACKAY: Are you an Arab speaker?

3 A. Not fluently. I speak English and French fluently and
4 I speak some Arabic.

5 MR ROBERTSON: Some Arabic, you have never done a proper
6 lengthy course in Arabic to qualify yourself as a fluent
7 Arabic speaker or translator.

8 A. No, hardly.

9 Q. Do you read Arabic?

10 A. No, but I understand it aurally, from watching many,
11 many hours of video tapes and audio tapes and listening
12 to original lectures and also as a result of studying
13 Arabic --

14 Q. These texts are in Arabic; are they not?

15 A. Yes, that is correct.

16 Q. Not this one, but a lot of the texts you rely upon are
17 in Arabic and you do not put yourself forward as an
18 expert translator. You have had to rely on other
19 people's translations?

20 A. I have translators who work for me. Basically, when it
21 comes to material such as this, because of the fact that
22 many of the original materials put out by terrorist
23 organisations have involved colloquialisms and involves
24 material where really only native speakers would be able
25 to interpret it or be able to properly translate it,

1 I have native speakers do that for me.

2 Q. Benotman is your primary source, I suggest, about LIFG.
3 We find him at footnote 7. This interview, footnote 8,
4 and throughout this text, at the bottom, four lines from
5 the bottom:

6 "Former LIFG, Shura Council member, Norman Benotman
7 notes that ..."

8 And again, you quote him from an interview that he
9 has given. I will not take you to all the cases but
10 I suggest if we look through this 19-page document, his
11 name appears again and again. If we look at page 3, at
12 the footnotes, he is the source of footnote 13 and
13 footnote 14. He is the source of -- over at page 5, he
14 is the source of footnote 23, 26, of 27. Correct?

15 A. He is not my primary source. My primary source was the
16 Almuqatila websites, but he is an important secondary
17 source. That is correct.

18 Q. Let us go on, page 8, he is at footnote 48. Page 9,
19 what do you mean he is not the primary source? He is
20 the source of almost every statement on page 9.
21 Footnote 49, footnote 50, 51, 52?

22 A. The major source of my knowledge about the Libyan
23 Islamic Fighting Group is not the interview with Norman
24 Benotman, but I cite him as a source here because I felt
25 that the words of a former LIFG Shura Council member

1 were certainly valuable and definitely accented the
2 other information which I was presenting.

3 Let me put it this way: when I started writing this
4 report, the first sources I went to when writing this
5 report were the actual communiques put out by the LIFG.

6 Q. So he is an important source?

7 A. That is correct.

8 Q. As someone who was actually in the group, in
9 a leadership position, you would expect him to be the
10 best able to provide good evidence, if not the best
11 evidence, of what the group was really about?

12 A. I think he can provide valuable personal insight,
13 I think.

14 Q. You are reporting second or third-hand hearsay evidence.
15 He is the real thing. If the prosecution wanted him,
16 wanted to give the jury a true insight into this group,
17 they would call him; would they not?

18 A. Well, he only can tell part of the story, and that is
19 the problem. This is a story that really does not take
20 place in Libya. The LIFG's primary base for their
21 activities is outside of Libya. It is in Afghanistan
22 and in Europe. In order to closely track everything
23 that they have done over the years, you cannot simply
24 stop at 1995, 1996, 1997. Norman Benotman's knowledge
25 is very good for certain years, just as the communiques

1 that LIFG puts out are excellent at demonstrating their
2 activities for a certain number of years. But part of
3 what I do as an expert, is that I take various sources,
4 I take primary sources such as the communiques,
5 secondary sources such as the interview with Norman
6 Benotman and I juxtapose these together. What I do is
7 I evaluate what is credible and not credible and from
8 there as an expert I create a fusion, which is
9 ultimately my testimony and my expert report.

10 Q. You are not an expert in Libya, are you?

11 A. In Libya itself, no.

12 Q. You are not an expert in Arabic?

13 A. In the Arabic language?

14 Q. Yes?

15 A. No.

16 Q. You are not an expert in Libyans, their character, their
17 experience?

18 A. I would say I am an expert in Libyan Islamists.

19 Q. The real problem with Norman Benotman, who is available
20 in London for the prosecution to use first-hand rather
21 than to go to you third-hand, is that Mr Benotman has
22 made it totally clear that you are totally wrong and
23 that the LIFG was never sympathetic to Al Qaeda; there
24 was no ideological affinity with them and it has always
25 been focused entirely on Libya?

1 A. He -- Mr Benotman left the group.

2 Q. That is what he says in the Jamestown interview and that
3 is what you do not footnote.

4 A. Mr Benotman left the group. Mr Benotman --

5 Q. Mr Benotman gives the lie to your thesis, which is why
6 and you do not quote that part of his Jamestown
7 interview, which is why the prosecution is not calling
8 him.

9 A. Again, as an expert what I do is I take interviews such
10 as this one and I evaluate it for information that is
11 factual, of a factual nature, versus what is of a nature
12 which contradicts what we know about the Libyan Islamic
13 Fighting Group, from the Group itself.

14 I did not think Mr Benotman had any motivation to
15 lie about the roots of his own organisation in the 1980s
16 in Libya because those are establishable facts and they
17 are facts which, I do not really see what the point of
18 disputing them is. However the point about whether or
19 not the LIFG is connected to Al Qaeda, that is a very
20 sensitive issue, legally or otherwise.

21 Q. Mr Benotman's statement in the interview in which you
22 quote him was that the LIFG has never been sympathetic
23 to Al Qaeda, that there has never been a single case of
24 it being implicated in international terrorism; it has
25 always been focused entirely on Libya and its objective

1 is the creation of an Islamic state in Libya. That is
2 Mr Benotman's conclusion which you do not quote.

3 A. Well he stated that but that directly contradicts --

4 Q. That --

5 MR JUSTICE MACKAY: You are interrupting his answers.

6 MR ROBERTSON: Sorry.

7 A. That may be what he states but that directly
8 contradicts -- this interview is a secondary source
9 whereas the communiques from the LIFG are a primary
10 source. Now if I have information in a primary source
11 that contradicts that of a secondary source, especially
12 on an issue of controversy such as this, especially when
13 there would be a motivation for the secondary source to
14 fib about this or to manipulate the facts, I have to go
15 to the primary source as the correct document. If we
16 have official signed communiques from the LIFG stating
17 very specific facts that directly contradict the facts
18 in a secondary source, I have no choice but to adopt the
19 view in the primary source. What is more is that the
20 research that I have done, both in Bosnia-Herzegovina,
21 Afghanistan and elsewhere, directly contradicts what
22 Mr Benotman says in that particular portion. Large
23 parts of what he said were confirmed through other parts
24 of research I did, but that particular conclusion, those
25 particular statements were directly contradicted by

1 members of the Libyan Islamic group, by members of other
2 Mujahadin organisations, by Awatha al-Zuwawi, by
3 Al Qaeda itself. There were so many different sources
4 that contradicted --

5 Q. Have you spoken to any of these people?

6 A. No.

7 Q. Mr Benotman is a primary source if he is put in the
8 witness box because he is a member of the LIFG governing
9 council. Correct?

10 A. If he testified as a primary witness, yes.

11 Q. Let us have a look at what you say is a primary source,
12 and I ask you to think carefully because I suggest to
13 you that no expert would ever say that an English
14 translation of an Arabic website was -- particularly
15 issued by some group that cannot be exactly specified is
16 a primary source. You rely upon these websites that you
17 have told us about. The first website which claimed to
18 be a LIFG website emanated from America; did it not?

19 A. Almuqatila.com?

20 Q. Yes.

21 A. I do not know where it was hosted initially but in the
22 latter stages it was hosted in Pakistan.

23 Q. Right. So you do not know, this website you claim as
24 a primary source, you do not know where it was hosted?

25 A. Again, initially when it was first set up, I do not have

1 records of where it was hosted. Later on it was hosted
2 in Pakistan.

3 Q. Do you know the names of the people who were putting
4 material on this website?

5 A. The individuals that put material on this website
6 included Abu Abdullah al-Sadeq.

7 Q. What did he put on the website?

8 A. He put on their calls to the fighters of the Libyan
9 Islamic Fighting Group urging them to continue their
10 Jihad, there were other --

11 Q. How do you know that he put --

12 MR JUSTICE MACKAY: If these answers are important, they
13 must be finished, Mr Robertson. You asked him for
14 example: do you know the people on the website. He is
15 in the middle of explaining it if it is important for
16 this exercise, which I doubt, then you took him on to
17 another point.

18 MR ROBERTSON: I am sorry, I was trying to speed things up.
19 I was simply going to ask you whether you knew that that
20 person posted it or whether someone posted it in his
21 name.

22 A. I do not know whether it was posted in his name or he
23 posted it personally but with these websites what tends
24 to happen is that if this is not a legitimate statement,
25 the organisation, in this case the Libyan Islamic

1 Fighting Group, would have come out with their own
2 statement saying this is not a legitimate website. This
3 website carries the logo of the Libyan Islamic Fighting
4 Group. It professes itself to be the official website
5 of the Libyan Islamic Fighting Group, including photos
6 and videos of LIFG activities and LIFG members that
7 no body else has. Given those facts and given the fact
8 that no one from the LIFG ever condemned this website,
9 said it was illegitimate, suggested that anything on the
10 website was anything other than the explicit truth, it
11 stands to reason to take that this website is indeed the
12 official website for the Libyan Islamic Fighting Group.

13 Q. That is your reason for stating that it is the official
14 website. In relation to the statement it makes, on what
15 grounds do you say those statements must be believed
16 given the tradition of all political websites to spin
17 and to exaggerate and to lie?

18 A. I am not taking what they are saying as per the truth.
19 What I am taking is this is their opinion. If they make
20 a statement: we believe this, and this is coming from
21 the official Jamaah Islamiya Islamia Almuqatila, this is
22 coming from the Libyan Islamic Fighting Group, this is
23 a statement of their policy. Whether their policy is
24 right or wrong or whether the underlying facts they
25 state are correct or incorrect, that is irrelevant to

1 me. I am only interested in what they are saying and
2 accurately portraying their views as represented on this
3 website.

4 Q. I want to look at very briefly at your other sources.
5 Some of your sources are trial transcripts; correct?

6 A. That is correct, yes. Sorry.

7 Q. You do not examine and have been in no position to
8 examine the individuals speaking as to their motives,
9 whether they have been tortured, whether they have an
10 inducement to make those statements?

11 A. Well, this is sworn testimony in federal court so
12 these --

13 Q. Sworn testimony is often untrue.

14 A. These individuals were sworn in federal court and the
15 defence attorneys had an opportunity to cross-examine
16 them and they did not find anything specific or major
17 holes in their testimony. The defendants in this case
18 were ultimately convicted on the weight of this
19 testimony. This testimony that I cite was among the
20 most important pieces of evidence that were actually
21 submitted in this trial.

22 Again, as part of my job as an expert it is up to me
23 to evaluate the credibility of certain evidence. Had
24 this person been someone that had been random, I did not
25 know his background, it is possible. But on page, for

1 instance, 3 to 4, I cite testimony from a Moroccan
2 Al Qaeda operative called Lihoussaine Kherchtou.

3 The reason I feel confident in citing Mr Kherchtou's
4 testimony is I am familiar with his background and I am
5 familiar with the places in Europe at which he
6 congregated with other Mujahadin representatives and
7 others, such as the Islamic Cultural Institute in Milan,
8 Italy, which served for a headquarters for, among other
9 groups --

10 MR JUSTICE MACKAY: There is an example of the kind of at
11 the moment. We will now give the unfortunate
12 transcriber a break. She has had an afternoon and
13 a half, I should think. Ten minutes, please.

14 (3.09 pm)

15 (A short break)

16 (3.22 pm)

17 MR JUSTICE MACKAY: Yes.

18 MR ROBERTSON: To clarify, have you ever met anyone from the
19 LIFG?

20 A. I have not met any members of the LIFG, no.

21 Q. You have not met any members of the LIFG. The case of
22 R v Singh, which you testified in before
23 Mr Justice Fulford, your qualifications as an expert in
24 that case were not gone into, were not raised?

25 A. I am sorry, my expert qualifications were --

1 Q. The question of your expert qualification was not raised
2 by the defence, which used you or got from you some
3 assistance?

4 A. I testified on behalf of the Crown in that case.

5 Q. Yes, but the defence did not raise any issue as to your
6 expertise. They obtained information from you and the
7 men were acquitted?

8 A. I do not know whether they challenged my qualifications
9 or not. I really do not know.

10 Q. Okay. We have dealt with two of your main sources. Can
11 we just look briefly at your other sources for this
12 19-page report. One source that you quote is the Libyan
13 government. You really think that the Libyan government
14 is a credible source?

15 A. I actually did not quote them. I only quoted I believe
16 in one instance. I did not quote them for the substance
17 of the charges. What I quoted was one of the elements
18 of what they had accused an individual of associating
19 with, in fact that he had gone out to a particular camp
20 in Afghanistan. I couched that very specifically by
21 instead of stating it as a fact, I said: the Libyan
22 government has said in an indictment that they have
23 issued. The reason why that is basically the only time
24 that I used anything from the Libyan government is
25 because generally speaking in a case like this the

1 Libyan government is not generally a trustworthy source.

2 Q. Right, but that is why you use it at page 15. You say

3 it cites, "... instances of wanted LIFG fugitives who

4 have received weapons training."

5 MR JUSTICE MACKAY: Sorry, where are we?

6 MR ROBERTSON: Page 15 at the bottom of the first full

7 paragraph. You cite it as a credible source there. No

8 question about its credibility.

9 A. Again, that is why I couched it with "according to the

10 Libyan government". I believe that the Libyan

11 government generally speaking when it comes to the LIFG

12 is not a completely trustworthy source. However as per

13 a specific allegation that an individual went to

14 Afghanistan and met with another member of the Libyan

15 Islamic Fighting Group there, I thought it was worthy of

16 mentioning as long as it was couched in, "this is

17 according to the Libyan government". That was the only

18 time I cited anything from the Libyan government with

19 regard to the Libyan Islamic Fighting Group and it is

20 really a very minor issue.

21 Q. You do not cast any question over the credibility of the

22 Libyan government there or elsewhere.

23 A. Again that was not the subject of my report but again,

24 with the exception of this one fact, which I deemed to

25 be relevant despite the source, I did not cite the

1 Libyan government.

2 Q. Another source that you cite several times is
3 John Negraponte. Tell us who he is.

4 A. He was the director of national intelligence but
5 I believe I only cited him, again, once.

6 Q. Well he is cited at page 18 for the proposition that
7 LIFG has called on Muslims everywhere to fight the US in
8 Iraq. That is a statement by an American official,
9 which you have not investigated.

10 A. I have investigated that. Actually the reason that
11 I included that statement was because it was directly
12 backed up by primary evidence that I myself had
13 collected with regard to Libyan Islamists who had gone
14 to Iraq to become suicide bombers, who had become
15 members of the organisation run by Abu Musab al-Zarqawi.
16 As a matter of fact there was a statement that was
17 published on Almuqatila.cc, which directly encouraged
18 Muslims around the world, both in Libya and elsewhere,
19 to support the Jihad in Iraq, including supporting the
20 brothers in the Ansar al-Islam, which was a partner with
21 Zarqawi. So the reason that I included that statement
22 was because I felt that that was a conclusion that was
23 very thoroughly backed up by weighty evidence.

24 By the way, I should add: evidence gathered directly
25 from Zarqawi's affiliates in Iraq.

1 Q. But not by you?

2 A. By me.

3 Q. With whom? Whom have you spoken to?

4 A. This information was disseminated via propaganda videos
5 directly from Iraq, from these organisations, of which
6 I have a complete archive.

7 Q. You make a series of allegations against the defendant
8 on page 18; do you not?

9 A. Are you referring to the reference to the Rabat Criminal
10 Court of Appeals?

11 Q. Yes:

12 "He has a history of GICM related activity," you
13 claim, "and has served as a key liaison between LIFG and
14 GICM."

15 These defamatory statements which you make about
16 him, your authority for that --

17 A. Again, I am not making these --

18 MR JUSTICE MACKAY: Now you are interrupting now. If you
19 interrupt the questions and he interrupts the answers,
20 this is going to be a most terrible trial, so do not do
21 it please, either of you.

22 A. Excuse me. The --

23 MR JUSTICE MACKAY: No, he had not finished the question.
24 That is why I intervened. Start again, Mr Robertson.

25 MR ROBERTSON: You have seen the passage that I read.

1 A. Yes.

2 Q. And the serious allegations that you make there. Your
3 source for that is, again, the United States government,
4 is it?

5 A. The source of that is a designation by the United States
6 Treasury Department of individuals under the 1996 --

7 MR JUSTICE MACKAY: The answer is yes, then?

8 A. Yes. Excuse me, my Lord.

9 MR ROBERTSON: And not your own opinion, it is the opinion
10 that you are producing to the court of the United States
11 government?

12 A. To the court of the United States government?

13 Q. To this court, you are producing the opinion of the
14 United States government?

15 A. Again I believe that the facts that are in that
16 statement from the United States Treasury Department
17 generally reflect correct statements and thus when they
18 made these statements I felt that it was worthy of
19 mentioning in this report. I consider the US Treasury
20 Department to be a relatively reliable source.

21 Q. But you yourself have no evidence that the defendant has
22 a history of GICM related activity, do you?

23 A. No, that is why I put that in quotes.

24 Q. You yourself have no evidence for what you did not put
25 in quotes, namely that he served as a key liaison

1 between the LIFG and GICM?

2 A. That was a direct summary of what was in the Treasury
3 Department release but I mean I cited it right there.
4 That was the source for that.

5 Q. You have no basis for expressing that opinion or belief
6 yourself, from your own research?

7 A. Well, other than my confidence in the United States
8 Treasury Department.

9 Q. I am sure it is 100 per cent.

10 Then over the page you show your confidence again in
11 the last paragraph:

12 "In February 2006 the US Treasury Department took
13 significant action aimed at the LIFG's operation base in
14 the United Kingdom, designating five individuals, three
15 companies and one charity, as terrorists."

16 A. Well that is just a statement of fact. I did not
17 actually make an opinion whether or not the Treasury
18 Department was correct or incorrect. I said exactly
19 what they had ruled, why, and I quoted them
20 extensionally.

21 Again, I believe the US Treasury Department to be a
22 reliable source of information when it comes to
23 terrorist financing and terrorists supporting charities.
24 I consider this to be a fact. It is a de facto issue.
25 Whether you agree with the Treasury Department or not,

1 this is what they have printed. It is a relevant
2 factual --

3 Q. You consider it as a fact?

4 A. I consider it as a relatively reliable fact.

5 Q. As a reliable fact that the defendant is a senior leader
6 of the LIFG?

7 A. As per stated by the United States Treasury Department.
8 But again, here, this paragraph is a statement of fact.
9 I did not see any reason to doubt that the United States
10 Treasury Department made that statement.

11 Q. That is your primary report, and I think the prosecution
12 want to introduce a two-page report, which I think your
13 Lordship has. Do you have it, Mr Kohlmann? Dossier for
14 Shahid Abu Liby training camp.

15 A. Actually I do not have a copy.

16 Q. Perhaps you could be shown it. (Handed).

17 A. Yes, I have it in front of me.

18 Q. Your basic evidence here, or you rely upon, a record of
19 interrogation conducted in Morocco by the Moroccan
20 Judicial Police Service?

21 A. That is correct.

22 Q. You were not present at that interrogation?

23 A. No.

24 Q. You do not know what interrogative tools were used by
25 the Moroccan Police Service?

1 A. No, I do not.

2 Q. So that is the primary source. Over the page -- and you
3 also rely on an article in the Wall Street Journal.

4 A. It was actually -- the article is listed as a source,
5 however I had a direct interview with the author of the
6 article, Jay Soloman. He is a colleague of mine.

7 Q. Not with Khalid Sheik Mohammed?

8 A. As much as I would like to interview Khalid Sheik
9 Mohammed, I do not think I am going to get that
10 opportunity.

11 Q. I am sure you are not the only one. You have been
12 provided, you say, with an Arabic language document
13 along with the corresponding English translation by
14 Detective Constable Glen Grummit, now was he the
15 gentleman who commissioned you for this case?

16 A. No, I do not believe so.

17 Q. Did he give it to you in person?

18 A. No, this was sent to me I believe electronically by
19 e-mail.

20 Q. And you were given -- you were not asked to translate
21 it, but you were presented with an English translation?

22 A. I was presented both with the original document and the
23 English translation.

24 Q. The form that you have attached to this, over the page:
25 "Top secret, in the name of God the merciful, the

1 compassionate."

2 Is that a form that you have provided from the
3 Padilla case?

4 A. Yes, that is correct --

5 Q. Which is your form, that was not provided to you?

6 A. The form from the Padilla case?

7 Q. Yes.

8 A. That was actually made public in January 2006 by the
9 United States Justice Department, it was released
10 I believe via their internet site, and I included it as
11 an appendix to this report.

12 Q. We have asked for the other publications that you cited,
13 but have not been provided with them. We have provided
14 ourselves with two. One is your article in foreign
15 affairs, which is a journalistic publication, albeit
16 sometimes having scholars write 2,000 or 3,000 words,
17 but basically a journalistic publication available at
18 news agents and so on, and you wrote an article called
19 "The Real On-line Terrorism Threat"?

20 A. I mean, it is considered to be a pretty respectable
21 publication.

22 Q. Yes, I am not disputing whether it is respectable. What
23 I want to have you simply confirm is that that said
24 nothing about Libya or about the Libyan Islamic Fighting
25 Group?

1 A. Oh, no. That was about --

2 Q. It was entirely about the US's capacity to intercept and
3 to deal with the internet as it was being used by
4 Jihadists?

5 A. Well, that is part of the article, but a large part of
6 the article is about how -- is actually about how
7 Jihadists, Mujahadin organisations are using the
8 internet and specific case studies. There is less --

9 Q. Yes. There was no reference to Libya or to the Libyan
10 international fighting group in that article?

11 A. Not in the final draft, no.

12 Q. Sorry?

13 A. Not in the final draft, no. I believe in one of the
14 initial drafts there might have been a reference to --

15 Q. Well, the answer is yes, there is no reference to --

16 A. In the final draft, no, there is not.

17 Q. I have, if I can find it, finally to ask you about your
18 book. Do you have a copy of "Al Qaeda's Jihad in
19 Europe"?

20 A. In front of me?

21 Q. Yes.

22 A. No, I am sorry.

23 Q. Do you have it in a bag, or does the prosecution have
24 it, since you testified about it in a statement that was
25 handed up on your behalf. Do you have it?

1 A. I am sorry, I did not bring a copy with me.

2 Q. In the statement that was handed up to the learned
3 judge, you said that you -- in this book, you recount
4 the stories of Muslim foreign fighters who joined the
5 Jihad in Bosnia, including a number of Libyan Islamists.
6 One of the key figures was a Libyan dissident formerly
7 living in exile in Vienna who became a senior figure
8 among foreign fighters.

9 A. That is correct, Dr Abul-Harith Al-Liby.

10 Q. Let us be clear, this book contains no reference to
11 Libya? Libya is not in the index.

12 A. No. No.

13 Q. And it contains no reference to the Libyan Islamic
14 Fighting Group. That is not in the index.

15 A. No. I indexed the names of Libyan fighters under their
16 kunya, or combat names.

17 Q. You list two Libyan fighters, one the gentleman that you
18 mention who was a doctor, right?

19 A. He was a little bit more than that. He was the deputy
20 commander and then subsequently the commander of the
21 el-Mujahedin unit in Bosnia-Herzegovina.

22 Q. I want to put to you, he is listed on about six pages,
23 but you deal with him entirely -- you say, "In his late
24 30s, he worked as a doctor in Austria for many years
25 prior to the Bosnia war", then you describe him in his

1 role in the Bosnia war?

2 A. I have also reviewed original documents on behalf of the
3 International War Crimes Tribunal at the Hague, original
4 letters from Dr Abul-Harith Al-Liby, original
5 correspondence from Dr Abul-Harith Al-Liby. My book,
6 I had to consolidate it down to what would be readable
7 for an average browser, but there is a tremendous amount
8 of research that was involved to --

9 Q. No doubt. But in your book, and you agree with this
10 proposition, that you deal with Dr Abul-Harith Al-Liby
11 entirely in the context of his life and death in Bosnia?

12 A. That is correct.

13 Q. And make no reference at all to his Libya background?

14 A. That is correct. That is correct.

15 Q. And the other gentleman that you have mentioned who is
16 from Libya is Abu Abdullah, whom you mention at
17 page 128. The only Libyan aspect that you mention in
18 relation to him is that he had previously been a tank
19 driver in the Libyan army?

20 A. That is right, he had left Libya after serving in the
21 military and become a dissident.

22 Q. And this book is footnoted in the same way as we have
23 seen with -- published by reference to other published
24 accounts and court papers?

25 A. Again, it is a collection of primary, secondary and

1 tertiary sources. Most of them are material on
2 Abul-Harith Al-Liby and Abu Abdullah Al-Liby(?), who was
3 also known as the Black Lion, were derived almost
4 exclusively from Mujahadin sources. Audio recordings,
5 video recordings, put out by the el-Mujahedin brigade in
6 Bosnia-Herzegovina.

7 MR JUSTICE MACKAY: Let us just call it Bosnia.

8 A. Okay, Bosnia. The sources of that information were
9 almost exclusively again from Mujahadin organisations,
10 including Mujahadin veterans here in the United Kingdom.

11 MR ROBERTSON: You know, do you not, that there are a number
12 of distinguished experts on terrorism and on Libya in
13 Britain, professors and the like.

14 A. I do not know of any academic, offhand, anyway, that is
15 an expert on the Libyan Islamic Fighting Group.

16 Q. Do you not know of Professor Wilkinson from Aberdeen?

17 A. I am familiar with Professor Wilkinson but I am not
18 familiar with what his expertise is on --

19 Q. He is a professor of terrorism, and there are other
20 professors specialising in terrorism?

21 A. Again, I am familiar with Professor Wilkinson, but I am
22 not familiar with his expertise on the Libyan Islamic
23 Fighting Group.

24 Q. Are you familiar with Reuben Paz(?)?

25 A. He is actually a colleague of mine.

1 Q. Of course, and you know the work that his group, Prism,
2 does?

3 A. Again, Reuben is a colleague of mine. I am supposed to
4 speak with him at a conference in a week.

5 Q. In short -- and you know that there are a number of
6 distinguished professors, particularly at English
7 universities, experienced in Libyan history and politics
8 and government?

9 A. If I can just go back for a second, I know Reuben pretty
10 well. I have never seen anything from Reuben on the
11 Libyan Islamic Fighting Group. As far as experts or
12 academics here in the United Kingdom are familiar with
13 Libya, I do not know, but there is a difference between
14 being familiar with Libya and being familiar with the
15 Libyan Islamic Fighting Group. The organisation LIFG is
16 predominantly made up of exiles. Only during a very
17 brief period was it actually active inside Libya. Most
18 of the activity associated with the LIFG has been
19 outside of Libya in places like Afghanistan and Western
20 Europe. Most of that activity has taken place in the
21 last decade and a half. Most of that activity has taken
22 place rather furtively and has been only documented by
23 Mujahadin sources, and again, the occasional report from
24 a government or an interrogation. As a result there are
25 very few academics, no matter how well that they know

1 Libya, that know much about what the LIFG has done or
2 have had access to their communiques or have had access
3 to other material. It is just not that common.

4 Q. Or had access to what purports to be LIFG material and
5 what purports to be LIFG websites?

6 A. However you want to describe it.

7 Q. One final question: you describe yourself in your own CV
8 as being currently employed by NBC News.

9 A. That is correct.

10 Q. Are you currently an employee of NBC News?

11 A. I am an on-air analyst, so I am a contractor. I am paid
12 by NBC News to provide expert advice and assistance when
13 it comes to on-air discussions regarding terrorism.
14 I also provide them original access to material from
15 terrorist organisations around the world through my
16 travels, through the internet, through other mechanisms.

17 Q. Sure, and you comment on court cases and developments in
18 the area?

19 A. Well, that is a bit difficult. Because of the fact that
20 I am involved in some of the court cases, I only comment
21 on cases that I am not involved in.

22 Q. And like other people contracted those various ways by
23 NBC and by other news services -- you have a contract
24 with others, no doubt. You are really, to sum you up
25 with one word, a journalist.

1 A. No. I wish that that would be -- there was a one word
2 way to describe what I do. But the best way to describe
3 what I do is that I am a micro-historian; that I have
4 taken a very tiny piece of modern history and I have
5 dissected it using sources that are usually unavailable
6 to academics, and I have attempted to create a narrative
7 and an in-depth explanation of these activities, again,
8 generally from the perspective of the Mujahadin
9 themselves.

10 A journalist would be writing books, would be
11 looking to make money, you know, making mass-produced
12 books. I have not made a cent off the book that
13 I produced. It was purely for academic reasons. Most
14 of my research work and what-not is done with academics,
15 not journalists, and in fact that is why NBC employs me:
16 because I have access to material that is outside the
17 bounds of what a traditional journalist would have
18 access to.

19 Q. That is quite wrong, in relation to journalists like
20 Robert Fisk, who you cite quite a lot?

21 A. What about that is incorrect?

22 Q. Journalists in their portentous moments say that they
23 write the first draft of history. Your answer at the
24 beginning suggests that you think you are doing very
25 much the same thing. You are putting together scraps of

1 information from other sources in the hope that you can
2 find or produce any links.

3 A. But I do not produce newspaper articles. I produce
4 academic studies --

5 MR JUSTICE MACKAY: There we are, we could debate the
6 definition of a journalist for a long time.

7 MR ROBERTSON: Yes, that is quite enough.

8 MR JUSTICE MACKAY: Very interesting. Yes.

9 Re-examination by MR HILLIARD

10 MR HILLIARD: Just three matters. First of all,
11 Mr Kohlmann, you said you had never been to Libya
12 yourself.

13 A. That is correct.

14 Q. Can you help us, does that affect your ability to speak
15 about LIFG, and if not, why not?

16 A. I do not believe it significantly affects it because of
17 the fact that, again, as I have stated, the LIFG is an
18 organisation that predominantly has its activities
19 inside of Afghanistan and Western Europe. Except for
20 a very brief period in 1995 and 1996, more or less the
21 LIFG has not had a presence in Libya. Its presence was
22 wiped out by the intelligence and law enforcement of
23 Gaddafi.

24 As a result, the organisation can best be studied
25 not in Libya, but by studying events in Afghanistan and

1 by studying their organisational activities in countries
2 like the United Kingdom. It is in these countries and
3 these regions where you see -- you get an actual look
4 inside what the LIFG is really up to. Because, again,
5 there really are no significant LIFG members left inside
6 Libya. They have not been there for many, many years.
7 In fact many of the people that are senior --

8 MR JUSTICE MACKAY: Right, that is an answer to that
9 question.

10 A. Sorry.

11 MR HILLIARD: You were being asked about other people and
12 LIFG, and you said that there were very few academics,
13 you thought, who knew very much about LIFG and what it
14 had done. Do you consider yourself to be an expert so
15 far as LIFG is concerned, and if so, why? What is the
16 study? Just summarise it for us, please, that you have
17 done.

18 A. Sure. I do consider myself to be an expert in LIFG.
19 Number 1, I have studied the organisation's activities
20 at length in Europe, in the United Kingdom, in
21 Bosnia-Herzegovina, in Italy and elsewhere. I have very
22 closely studied the interactions between the LIFG and
23 other Mujahadin groups such as the Egyptian Al-Ga
24 maat --

25 MR JUSTICE MACKAY: Let us just call them the Egyptian Group

1 for the moment.

2 A. That is correct, the Egyptian Group. On top of that,
3 because of the fact that the LIFG really was one of the
4 first Mujahadin organisations on earth to jump on the
5 internet to establish an official internet website, we
6 know more -- or I should say I know more about the LIFG
7 than many other organisations like it that have fought
8 in Afghanistan, because this was an organisation that
9 was remarkably open in the material that it was
10 presenting. Remarkably quick about posting communiques,
11 about providing information, even past information.

12 For instance, when Almuqatila.com was put on-line in
13 2000, it did not merely include the communiques from
14 2000 on; they also included the communiques going all
15 the way back to the group's formation in October 1995,
16 thus offering an unparalleled look into what the LIFG
17 was actually doing in those years.

18 MR ROBERTSON: Just two last matters. When the new website
19 came as it were onstream two months or so after the
20 first one had shut down, was all the previous material
21 as it were posted again?

22 A. Most of the original material was posted again. There
23 were a few items that were missing and there were a few
24 new items that were added. However, the bions(?), the
25 communiques that were issued by the LIFG were still on

1 bit of argument to be had about what we have heard, and
2 I think that is it.

3 MR JUSTICE MACKAY: You think that is it.

4 MR HILLIARD: That is it.

5 MR JUSTICE MACKAY: The little bit of argument I think we
6 can complete this afternoon.

7 MR ROBERTSON: Subject to this: I do not want to seem to be
8 a perpetual whinger, but we got, as your Lordship knows,
9 the two page report from Mr Kohlmann in October. It was
10 not until December that we got the 19 page report,
11 without any apology. It should have been sent to us
12 originally. Then, we still do not have any of these
13 publications that Mr Kohlmann has relied upon.

14 MR JUSTICE MACKAY: Yes, that is something I should have
15 asked him about.

16 MR ROBERTSON: I take the view that we cannot -- the
17 prosecution, which has failed in this respect, should
18 not be in a position to rely upon it other than the
19 publications which we have managed to get, which is the
20 book, the only book which is written, of which I have
21 a copy and I can hand it up.

22 MR JUSTICE MACKAY: You mean should not be able to rely upon
23 it for the purposes of this --

24 MR ROBERTSON: Of accrediting him.

25 MR JUSTICE MACKAY: I agree with that.

1 MR ROBERTSON: And this includes the American cases. I have
2 the transcript of his appearance in Singh, where I can
3 show your Lordship there was no challenge at all to him;
4 in fact he was helpful to the defence and they did not
5 make any challenge.

6 MR JUSTICE MACKAY: I am sorry, I thought you were talking
7 about the papers that he had written and the --

8 MR ROBERTSON: The papers that he mentioned and the US
9 cases.

10 MR JUSTICE MACKAY: What do you want, the entire transcript
11 of the US cases?

12 MR ROBERTSON: Well, we need to see what he was testifying
13 about.

14 MR JUSTICE MACKAY: Does he have those? Do witnesses leave
15 a case with a transcript of their --

16 MR ROBERTSON: We cannot get the transcripts because they
17 are first instance cases; they are not reported cases.

18 MR JUSTICE MACKAY: But he will not have them. I would not
19 have thought so.

20 MR ROBERTSON: No, I would not have thought so. The
21 prosecution has the duty to establish him as a witness.
22 If it is going to rely on his having testified in the US
23 before, we have to see it, because he could well have
24 testified as a witness of fact. It may well be that as
25 a witness of fact he can produce this or that

1 communique, but the question of whether he is an expert
2 who can venture an opinion is a very different matter.
3 On that basis, unless my learned friend can produce this
4 material for me overnight, I would seek to address your
5 Lordship on the basis that that material upon which --
6 which he has mentioned which cannot be produced cannot
7 be relied upon.

8 MR JUSTICE MACKAY: Right. Thank you. Mr Hilliard, what do
9 you say about that?

10 MR HILLIARD: My Lord, I will do my best to see what we can
11 get overnight. But can I just say this: if your
12 Lordship looks carefully at the copy of the report, I am
13 not suggesting your Lordship would not, but if your
14 Lordship has time to look carefully at it, your Lordship
15 will see, I do not think there is an opinion in it that
16 I am seeking to elicit.

17 MR JUSTICE MACKAY: I have gone through it again, just
18 looking at your red sections.

19 MR HILLIARD: As my learned friend has indicated, no
20 dispute, no difficulty about him as a witness of fact
21 producing the communiques; he has just said that. And
22 that is in fact, if one looks at it, what I am seeking
23 to do.

24 MR JUSTICE MACKAY: The problem with that is, and I can
25 understand as a good advocate why you are seeking to do

1 that, expert witnesses -- and I suspect this gentleman
2 will be no exception to this general rule -- find it
3 very difficult not to express opinions, even if they are
4 merely being called to, as it were, act as an index to
5 material which is in circulation, if I can put it that
6 way.

7 MR HILLIARD: My Lord, perhaps they do. With great respect,
8 they should not really do. It is not very difficult if
9 it is made plain to somebody that what they are simply
10 doing is going through a series of -- it is a pretty
11 small number of --

12 MR JUSTICE MACKAY: Yes, but for example, we had a little
13 taste of it this afternoon, Mr Robertson is entitled to
14 say before the jury: well, you have said X; you have
15 given us a source for X, Y; Y is a tainted source for
16 this or that reason; to which the witness may well
17 respond: well, in my opinion it is not because it is
18 accepted as a good source, or it is corroborated by
19 other material I have seen in other ... that is the
20 thing. One would expect him to say that.

21 MR HILLIARD: Yes, but --

22 MR JUSTICE MACKAY: You are calling this man as an expert
23 witness, not just as a sort of card index system.

24 MR HILLIARD: My Lord, that is why I was seeking to
25 introduce the material at the beginning, and I think

1 Mr Robertson politely objected to my doing that, simply
2 because what I wanted to say was that it is our
3 submission that he is an expert, but in my submission,
4 actually what I want from him is not in fact expert
5 evidence at all. What I simply want to deal with
6 through him are the contents of the communiques. As
7 your Lordship appreciates, they are published on the
8 group's website throughout the document in count 2,
9 written in the defendant's own hand. There are
10 references that he has written about the need to consult
11 the group's website. It is directly relevant to --

12 MR JUSTICE MACKAY: Then why can you not just get together
13 the group's website, the communiques, what have you, and
14 either get Mr Robertson to agree that that is what they
15 are, or if he does not, get this witness to say,
16 "I produce the following documents which emanate from
17 LIFG: 1, 2, 3, 4, 5, "and leave them to be read by the
18 jury. If you want them to be interpreted, then it is
19 another matter.

20 MR HILLIARD: No, I do not want to do that. If I can just
21 finish the point, because I have not had much of a go on
22 this.

23 MR JUSTICE MACKAY: No, do not worry --

24 MR HILLIARD: No, I do want to make the point, rather than
25 have it all taken up by cross-examination and then I do

1 not get a chance.

2 There are many references in the count 2 document to
3 the need to consult the website, and then the defendant
4 has in his possession -- it is in the proposed jury
5 bundle -- he has himself got a copy of communique 1.

6 So in the Crown's submission, aside from the more
7 general question of relevance and whether it is relevant
8 to see whether LIFG is solely concerned with Libya or
9 whether it is interested and involved in things beyond
10 Libya -- that is perhaps a different question that we
11 were talking about yesterday. In my submission, for the
12 same reasons as yesterday, dealing with possession, so
13 far as count 1 is concerned, why has he got this
14 material on both counts if it is in possession. In my
15 submission, this material -- and I do not know whether
16 your Lordship is going to let me do it now, but it may
17 be helpful -- your Lordship has --

18 MR JUSTICE MACKAY: I will let you do anything -- look. Do
19 not feel in a hurry. The trial that follows this trial
20 is looking increasingly doomed, as far as I can see, and
21 you and I ought to relax about that, and should
22 Mr Robertson and everyone else, and we try this case at
23 the speed at which it needs to be tried. So you take
24 whatever time you need.

25 MR HILLIARD: Right. If your Lordship goes to our bundle,

1 and at the very back of it, the bundle that we prepared
2 for this argument.

3 MR JUSTICE MACKAY: Yes. It has some communiques in.

4 MR HILLIARD: My Lord, it has some communiques in it, the
5 first of which the defendant has I think on two tapes in
6 his house, but it is page 94 at the bottom. Your
7 Lordship will see, fourth paragraph, not in bold:

8 "Confronting the evil dictators [that is dictators
9 plural] of this era like Gaddafi has become one of the
10 most important obligations."

11 Last paragraph, first two lines, the reference to:

12 " ... the brotherly, friendly and loving word of
13 peace to all the Jihadi groups."

14 Over the page, including the date, five lines up
15 from the bottom:

16 " ... mode of operation but taking a supportive
17 stand with respect to all Jihadi groups, wherever they
18 may be."

19 Over at page 96, the third paragraph down,
20 indicating --

21 MR JUSTICE MACKAY: This comes from the website?

22 MR HILLIARD: Yes, it does. All of these do.

23 MR JUSTICE MACKAY: All the rest do?

24 MR HILLIARD: Yes. Third paragraph down:

25 "The Libyan Islamic Fighting Group's support for the

1 armed Islamic group in Algeria was based ..."

2 Because, my Lord, what happens, this document makes
3 it plain that it is putting an end to the support and
4 assistance that it has given. So this is not confined
5 to Libya.

6 If your Lordship goes over the page, sort of halfway
7 down, without troubling your Lordship with why it is,
8 but:

9 "Based on the above and the other things that we
10 cannot elaborate on at this time for certain
11 reasons ..."

12 MR JUSTICE MACKAY: Sorry, I am --

13 MR HILLIARD: Just below the middle of the page, third
14 paragraph down, "Based on the above".

15 MR JUSTICE MACKAY: Yes.

16 MR HILLIARD: " ... the other things that we cannot
17 elaborate on at this time for certain reasons ... "

18 Does your Lordship have that, page 97?

19 MR JUSTICE MACKAY: Yes.

20 MR HILLIARD: " ... the Islamic Fighting Group declares it
21 is putting an end to its support and assistance to the
22 armed Islamic group in Algeria."

23 It explains, 2:

24 " ... still against the groups who have deviated,
25 call for democracy, fight in its name or believe that

1 Tamkin for glorious Allah's religion can be done without
2 Jihad."

3 So against groups that call for democracy.

4 MR JUSTICE MACKAY: Yes.

5 MR HILLIARD: And then third:

6 "We support the Jihad against the apostates in
7 Algeria and any of our countries as long as it is in
8 accordance with ..."

9 And so on it goes.

10 MR JUSTICE MACKAY: Yes.

11 MR HILLIARD: 14, page 99, fourth paragraph down:

12 "Islamic Fighting Group strongly ... so after
13 American action in Sudan and Afghanistan ... Islamic
14 group condemns it ... announces its support and
15 assistance of Muslims in Sudan and Afghanistan, want to
16 prove that America is not only the enemy of Osama Bin
17 Laden and the Islamic movements but rather the enemy of
18 the Islamic nation ... "

19 Over the page, four lines down:

20 "The Islamic fighting group calls upon Muslims to
21 stand up against the American aggression."

22 And it goes over just to 101, communique 18, to do
23 with the second intifada, but over the page, second
24 paragraph:

25 "Palestine's liberation and the expulsion of the

1 Jews from it is the duty of the entire Islamic nation.
2 It will undoubtedly require hefty sacrifices and the
3 spilling of tolerants, of pure blood."

4 Then we have one of the fatwas. This was issued
5 in September of 2001 by the group's religious adviser.
6 It begins at your Lordship's page 103, explaining in the
7 text, six lines down, all that is happening after the
8 cities of New York and Washington were suddenly and
9 fiercely attacked.

10 Then if your Lordship just goes over to 104, just to
11 get the flavour of it:

12 "2. All Muslim scholars have agreed ...

13 "4. That any Muslim country being attacked
14 ...(Reading to the words)... must fight the enemy and
15 protect their homeland. That duty is upon each and
16 every individual in that country, and later it becomes
17 a duty upon that whole Islamic Nation".

18 So not only that particular nation, but as it were,
19 the whole Islamic Nation, capital "N".

20 "Every individual in the Islamic Nation must
21 contribute in defeating that enemy with any means
22 possible.

23 "3. The United States of America by declaring war
24 against the Muslims and occupying their countries has
25 made all its interests across the world become

1 a legitimate target for the Mujahadin. They shall bomb
2 and demolish it with any means possible. These
3 militaries include ...(Reading to the words)... touristy
4 or individuals in any place upon earth."

5 Then the reference to children and the elderly; that
6 it depends, as it were, on who they were around at the
7 time that they are killed.

8 Lord, I have not, in putting that bundle together,
9 as it were, dealt with -- I think it is probably most of
10 it, but it is virtually I think one or two other
11 passages -- there is much mileage in my -- I mean, I
12 could identify them, but in the report that I have
13 highlighted, as it were, that solely deals, apart from
14 the first page, which I think we were told it was agreed
15 was common knowledge, of the report, about Gaddafi
16 coming to power in 1969 or whenever it was. The rest of
17 what I have highlighted is simply concerned with the
18 production of the communiques and the fatwas.

19 MR JUSTICE MACKAY: Well, you may be none the worse for it,
20 but it surely goes beyond that, because he threads these
21 documents together and gives us a history of the
22 travails and travels of the group: how it starts in
23 Libya, is driven out, goes to Afghanistan, tries to come
24 back, makes a mess of it, thrown out to somewhere else.
25 There is --

1 MR HILLIARD: My Lord, all of that is set out. That appears
2 I think in one of the communiques, I think, the history
3 of the group, certainly the one that the defendant has
4 in his possession. The attacks against --

5 MR JUSTICE MACKAY: You are not going to be asking this
6 witness to give a commentary on this?

7 MR HILLIARD: No.

8 MR JUSTICE MACKAY: Are you really saying that so far as
9 your use of this expert witness, if he is such, is
10 concerned, it will be confined to him telling the jury
11 what he is and what he does, and then producing these
12 documents that you have referred to?

13 MR HILLIARD: That is all I want to do through him.

14 MR JUSTICE MACKAY: So if that is right, I am sorry --

15 MR HILLIARD: That is what I want to do.

16 MR JUSTICE MACKAY: That being so, I should say, it is still
17 expert evidence in this sense: that he is -- well, what
18 is the analysis? He is not giving direct evidence of
19 the facts. What he is saying is, I have looked into
20 various places, particularly the website, which I can
21 answer questions about if anyone wants me to say what it
22 is, or what it appears to be, and I produced these
23 extracts of what I found on it, or what was on it. That
24 is an activity which I suppose is beyond the experience
25 of the man on the street.

1 MR HILLIARD: It is certainly giving the jury information
2 they would otherwise not have. He has obtained it and
3 we have one part of it, as I say, namely the very first
4 communique which the group has issued, which as I say
5 sets out a large amount of its history and says now is
6 the time that they have decided to go public. They
7 obviously have a website because the defendant --
8 perhaps I can just show your Lordship -- because the
9 defendant keeps writing out that people should look at
10 it. So if it is not this, we do not know what the
11 website of the Libyan Islamic Fighting Group is.

12 MR JUSTICE MACKAY: Well it is either a genuine website or
13 it has misled this defendant.

14 MR HILLIARD: Absolutely. He must have been sitting there
15 thinking: I agree with what it says but it is not from
16 us so I do not know how this has happened.

17 In my submission there is a real connection, both
18 because he has one of these communiques at his house and
19 because he accepts what is written out. But in the
20 larger jury bundle, it begins at page 6, top right.

21 MR JUSTICE MACKAY: You mean the --

22 MR HILLIARD: The graphic, where we have this exhibit set
23 out.

24 MR JUSTICE MACKAY: What are we going to call this larger
25 jury bundle?

1 MR HILLIARD: Exhibit 1 might be a good start.

2 MR JUSTICE MACKAY: That is a reasonable start. What page
3 am I looking at?

4 MR HILLIARD: Page 6 at the top right. Then in the middle
5 of it, the middle page, so it has 2 at the top, if your
6 Lordship counts nine lines down, there is a reference
7 there to "some advice through the site".

8 MR ROBERTSON: Is this page 6?

9 MR JUSTICE MACKAY: Page 6, Mr Robertson, central section,
10 if that is the right word --

11 MR ROBERTSON: My page 6 is in Arabic, but page 7 has the
12 page 6 of the document.

13 MR JUSTICE MACKAY: Are you looking at this (indicates)?

14 MR ROBERTSON: Yes.

15 MR JUSTICE MACKAY: Page 6 on the top right is an English
16 text in mine.

17 MR ROBERTSON: Page 6 in our top right is in Arabic text.

18 MR JUSTICE MACKAY: Right. Well all of this will have to be
19 gone into. But do you have the FBF5A English
20 translation of BRM3.

21 MR ROBERTSON: Yes, we do.

22 MR HILLIARD: It is the second typed translated page might
23 be the best way to refer to it. It begins "now then".

24 MR JUSTICE MACKAY: "Now then in view of the tens of
25 letters"; do you have that?

1 MR ROBERTSON: Perhaps if you could let us have one copy.

2 MR HILLIARD: We will give you some other copies later. It
3 is the paragraph that begins "now then"and it is ten
4 lines down. (Handed).

5 MR ROBERTSON: Thank you.

6 MR HILLIARD: Anyway, your Lordship sees there the
7 reference --

8 MR JUSTICE MACKAY: This is advice to the would-be
9 participant.

10 MR HILLIARD: Yes. If your Lordship goes --

11 MR JUSTICE MACKAY: "Some of them ask us to write to him and
12 the likes of him. Some advice through the site so that
13 it becomes available to you."

14 Yes. Well that is a reference to the site, yes.

15 MR HILLIARD: Yes. If you look over the page, your
16 Lordship, at page 8 at the top and page 4, Mr Robertson,
17 it is the page again that begins with the word
18 "committee", four lines down, talking about the
19 organisation, so the group:

20 "One can increase his knowledge about that committee
21 through what is published on the site about the
22 committee and their activities."

23 Then if your Lordship goes to page 16, and it is the
24 last typed page of the translation. It is the last
25 three lines of that first paragraph:

1 "Must take precautions of any announcement issued by
2 the group and that is published on the website on the
3 internet of the group, as the site ..."

4 This is what he is writing out in his hand:

5 " ... as the site is the only place speaking on
6 behalf of the group."

7 MR JUSTICE MACKAY: Yes. So that ties it in, yes.

8 MR HILLIARD: My Lord, in my submission, it is certainly, as
9 it were, sufficient for allowing the issue to the jury.
10 For that threshold, it would be open for your Lordship
11 to say, well, looking at the references to the website
12 that he himself has written out, looking at the evidence
13 of what is on the website under the group's name, and
14 bearing in mind that, as it were, the very first time
15 the defendant has it, he has it in his own possession.

16 MR JUSTICE MACKAY: Yes, Mr Robertson can make his points on
17 it, and that gets it off the ground as some sort of
18 apparent organ which gives the views of the
19 organisation.

20 But coming back to what you have said this
21 afternoon, you said, "I only intend to use the witness
22 for the production of the pages from the website which
23 you have taken me through."

24 MR HILLIARD: There may be one or two, as it were, by virtue
25 of the passages I have highlighted in the report,

1 because I think there may be one or two more in the
2 report that are not actually been copied at the
3 moment --

4 MR JUSTICE MACKAY: You will not be asking him to comment on
5 them or express an opinion --

6 MR HILLIARD: No.

7 MR JUSTICE MACKAY: Either as to the truth of their
8 contents, is that right?

9 MR HILLIARD: No, simply that that is what the organisation
10 was putting out.

11 MR JUSTICE MACKAY: Or as to the authenticity of the source,
12 that is to say if it is a non-website source -- well,
13 I do not know what other ones you do intend to --

14 MR HILLIARD: My Lord, they are all from the website.

15 MR JUSTICE MACKAY: They are all from the website.

16 MR HILLIARD: Yes. There are about two, as it were, that
17 are referred to in the report.

18 MR JUSTICE MACKAY: So you only intend to get him to produce
19 material which emanates from the LIFG website.

20 MR HILLIARD: Yes.

21 MR JUSTICE MACKAY: Then you will, as it were, sit down.

22 MR HILLIARD: Yes.

23 MR JUSTICE MACKAY: Yes. Do you want to say anything more
24 to me at this stage?

25 MR HILLIARD: My Lord, not at this stage, but at some point,

1 and I am sure it is plain, I know your Lordship will
2 have it well in mind, I have already submitted I suppose
3 as your Lordship will recall yesterday, the defendant
4 saying he knows nothing of the CD that is -- on which,
5 as it were, count 1 is, nothing about any part of the
6 CD, already submitted that other material on the CD
7 connects with other material at his address and has the
8 same themes. That material -- so all the material on
9 the CD which we say he is in possession of all of, and
10 the other material in his house, we submit the jury
11 would be -- it would be open to the jury to say that
12 that demonstrates this person is not solely concerned
13 with the conflict.

14 MR JUSTICE MACKAY: Yes. These are matters we talked about
15 yesterday.

16 MR HILLIARD: Absolutely.

17 MR JUSTICE MACKAY: I have that point firmly in mind. I am
18 beginning to write my decision on that point.

19 MR HILLIARD: Yes, my Lord, I am sure, and I am probably not
20 helping.

21 MR JUSTICE MACKAY: No, no.

22 MR HILLIARD: It is only a small part, and it is not a large
23 amount of material. It is a relatively small number of
24 the communiques. But in our submission, in assessing
25 that, is that right, that he, as he claimed, is solely

1 concerned with Libya, well, the material in his house
2 suggests not. If you actually look at what is issued by
3 the group of which he is a member, in our submission
4 that suggests not either. There are similar themes in
5 that material, attacking America, which is both on the
6 CD and in other material at his house, and in the
7 communiques, shedding blood in Palestine. Again, there
8 are themes through it. All we are saying is that there
9 is really no reason why the jury should not have that
10 part of the picture in deciding the very important
11 issues in this case.

12 MR JUSTICE MACKAY: Yes. Coming back to this afternoon's
13 agenda, does it need this gentleman really, forgive me
14 for saying so, \$275 an hour and a business class
15 transatlantic fare -- jolly good for him -- to come over
16 and produce six communiques from a website?

17 MR HILLIARD: My Lord, it may not do --

18 MR JUSTICE MACKAY: Having read his first report I have to
19 say, and I suspect Mr Robertson felt this, there was
20 a more ambitious agenda for him.

21 MR HILLIARD: My Lord, certainly that was the report he
22 produced. I rightly or wrongly have to take a decision
23 as to what I think I need.

24 MR JUSTICE MACKAY: Of course.

25 MR HILLIARD: And, as it were, what is safely admissible.

1 I have taken a view --

2 MR JUSTICE MACKAY: Yes, that is your job. This is how you
3 are doing it, and I understand it, yes.

4 MR HILLIARD: My Lord, it may not. It certainly needed him
5 to find them, I have to say. I was aware that the
6 defendant had one communique, the rest of us did not
7 have archived material from the website. He has
8 certainly come up with that. Your Lordship is right,
9 and I have to say, I would be very surprised if
10 Mr Robertson will just admit it like that and somebody
11 else able to deal with it.

12 MR JUSTICE MACKAY: Well we will find out in a moment.

13 MR HILLIARD: But if he would, it can be dealt with in that
14 way.

15 MR JUSTICE MACKAY: All right. Mr Robertson, given that
16 that is the use to which -- I am sympathetic to you in
17 the sense that when I read this report for the first
18 time I thought: here we go, we are going to have
19 a debate on the geopolitics of the Middle East, which
20 would be fascinating but not perhaps productive for this
21 trial.

22 Now that Mr Hilliard has rightly done what
23 a prosecutor should and cut it down to what he wants
24 this witness to produce, why does he not have the
25 ability to produce it as a witness?

1 MR ROBERTSON: My Lord, I am in a state of bewilderment.
2 I was served at lunchtime with this cut down version,
3 which still contained at least, about ten pages of
4 geopolitical material as being the part of the report
5 that he wanted to rely upon. But can I just come back
6 and ask your Lordship to see it through my eyes for
7 a moment. We were served in October with a two-page
8 opinion from Mr Kohlmann. This is the one with
9 operation (inaudible), and it contains an eight-page
10 document which is --

11 MR JUSTICE MACKAY: This is the training camp?

12 MR ROBERTSON: That is right. So we begin with Mr Kohlmann
13 as an expert witness --

14 MR JUSTICE MACKAY: All right, you can go through all this
15 if you want --

16 MR ROBERTSON: No, I do not want to go through it, if it is
17 going to be abandoned, but I want to know --

18 MR JUSTICE MACKAY: It is. He has just said, he will not
19 call him to deal with the training camp, so you can put
20 that to one side.

21 MR ROBERTSON: We will put to one side all the work we have
22 done on his first expert report. That is fine.

23 We are then in December. We get, finally, a copy of
24 this 19-page report and we ask for the footnotes.
25 A case again of our seeking information which ends up

1 being produced as part of the prosecution case. But we
2 get to see several thousands of pages of footnotes,
3 including these communiques. It now transpires, after
4 we challenge Mr Kohlmann's expertise in the way that we
5 did in our skeleton, and after the cross-examination
6 this afternoon, that Mr Kohlmann is no longer put
7 forward as an expert. The Crown seem to have resiled
8 entirely from the use of him as an expert. He is being
9 used --

10 MR JUSTICE MACKAY: Well, I do not know --

11 MR ROBERTSON: -- to produce --

12 MR JUSTICE MACKAY: He is being used as a witness to produce
13 this material. As I said, rather inelegantly, I think
14 it does require a form of expertise if you are going to
15 be analytical, to do that.

16 MR ROBERTSON: If it is on the website it could be produced
17 by a police officer.

18 MR JUSTICE MACKAY: Well, if you want we can send him home
19 and you can get a police officer to give the same
20 evidence. Are you happy with that?

21 MR ROBERTSON: No, because I want to see a statement.
22 I want to see a statement from someone annexing those
23 communiques which my learned friend wants to introduce,
24 because this is a shifting sand. This whole
25 prosecution, in so many ways, but in this way in

1 particular. I cannot -- my friend and I cannot take
2 instructions and I cannot deal with something that is
3 described airily this afternoon at 4.30 pm by my learned
4 friend, having resiled from a position that has been his
5 for four months. I just need a statement by someone,
6 whether it is Mr Kohlmann or a police officer, which
7 produces in proper form the exhibits which he wants to
8 introduce to the jury and those communiques, there are
9 no doubt hundreds of communiques from this site, but
10 those communiques that he wants to introduce. Then --

11 MR JUSTICE MACKAY: Are you saying these are admissible or
12 inadmissible?

13 MR ROBERTSON: Well that is the next question. Are they
14 admissible? He has got communique 1 in, but I need to
15 see -- I cannot say or argue whether they are admissible
16 until I know who is going to produce them and I have
17 a statement. That is the proper way.

18 MR JUSTICE MACKAY: How is that going to benefit you? You
19 know perfectly well if it is this witness he is going to
20 say: I got them from the website --

21 MR ROBERTSON: That is what he said this afternoon for the
22 first time.

23 MR JUSTICE MACKAY: You want that in a written statement?

24 MR ROBERTSON: Yes. For the first time this afternoon we
25 had the witness who does not deal with their original

1 provenance in any way in any previous report said --
2 gave a whole great deal of evidence which we do not even
3 have down because we do not have the note, that -- for
4 the first time.

5 MR JUSTICE MACKAY: Right. Well, then, we will adjourn this
6 issue, shall we, get a further witness statement from
7 this witness, which can incorporate, by reference, his
8 CV and the personal stuff he has already proposed to and
9 say, "I now produce the following six documents which
10 have come from this source," and express no opinion
11 further than that.

12 MR ROBERTSON: Well, it is up to my learned friend. If he
13 is going to introduce him as an expert, that is one
14 thing. If he is going to introduce him simply as the
15 producer of these documents, that no doubt will be
16 another. But I must know on what basis this witness is
17 to be tendered, if he is to be tendered and I must know
18 exactly what he is going to produce.

19 My learned friend apparently has abandoned the
20 training camp document. That is fine. Now we know
21 where we are. But that means out it goes and we have no
22 evidence about it.

23 MR HILLIARD: Sorry -- well, I will wait until Mr Robertson
24 has finished.

25 MR ROBERTSON: Do you abandon the training camp --

1 MR JUSTICE MACKAY: Let us not have a direct debate. You do
2 this outside of court if you do it at all.

3 MR ROBERTSON: Yes, I am sorry. But that is the sort of
4 thing I need to know, as a matter of fairness, whether
5 my learned friend is abandoning Mr Kohlmann as an
6 expert, is abandoning the training camp document, which
7 has been part of his case from the first case summary,
8 or whether he is going to try and do it another way --

9 MR JUSTICE MACKAY: Well you are entitled to know the
10 position on the training camp document, I agree.
11 I would like to know it too. What is the position on
12 that?

13 MR HILLIARD: The training camp document does not depend on
14 Mr Kohlmann at all. The training camp document is
15 simply in the house.

16 MR JUSTICE MACKAY: The one that is found in the house.

17 MR HILLIARD: Yes, I do not need Mr Kohlmann --

18 MR JUSTICE MACKAY: So all you need is a policeman to say:
19 I found it in such and such --

20 MR HILLIARD: Yes, and because we know that the document the
21 defendant has written out indicates that you should go
22 to training camps. There is a direct link.

23 MR JUSTICE MACKAY: So anyone could produce that.

24 MR HILLIARD: Yes.

25 MR JUSTICE MACKAY: Is there any progress as a matter of

1 interest in admissions of fact, as to what documents
2 were found where and all the rest of it?

3 MR HILLIARD: My Lord, there is a little bit of progress.
4 It is just so short in any event; it is actually going
5 to be easier to follow if Mr -- it is not Mr Smith.
6 There are two searchers.

7 MR JUSTICE MACKAY: I mean, all right, your judgment is it
8 would be easier to do it through a live witness.

9 MR HILLIARD: It really will, because it is not long.

10 MR JUSTICE MACKAY: All right, I will leave that point. I
11 will not press it. Would you be good enough to get
12 somebody to take a short statement from this gentleman,
13 dealing with what it is he intends to produce and where
14 it is he found it.

15 MR HILLIARD: Of course. Yes, we will certainly do that.

16 MR JUSTICE MACKAY: He need not restate -- I do not construe
17 your action as abandoning him as an expert witness.

18 MR HILLIARD: I did not want to interrupt.

19 MR JUSTICE MACKAY: I am not terribly interested in who has
20 won or lost that but for what it is worth I think it
21 does or may require a level of expertise beyond the
22 competence of an average juror to go looking for this
23 and know where to look for it.

24 MR ROBERTSON: Yes, but the expertise of an internet
25 researcher not the expertise of a geopolitician.

1 MR JUSTICE MACKAY: Whatever you want to call him, internet
2 researcher, give him any name you want.

3 MR ROBERTSON: I am going to want to have my computer expert
4 look at what he says. That is the marker I put down,
5 otherwise it is ambush.

6 MR JUSTICE MACKAY: Well, we will see what he says.

7 MR HILLIARD: Yes.

8 MR JUSTICE MACKAY: All right. I think that concludes the
9 contentious business for the day, does it?

10 MR HILLIARD: In court, at least. We will see if we can get
11 on better outside.

12 MR JUSTICE MACKAY: Yes. Well, I hope you can. Now,
13 tomorrow, we have a jury being assembled, and we have
14 a requirement to have -- there is a requirement for my
15 decision on the essential points yesterday, on which, as
16 I say, I have made some progress, having had this
17 morning. My instinct, tell me either of you if you are
18 opposed to this, but it is not a very firm one, is to
19 get the jury sworn first, which make take a little time;
20 give them a little homily, the contents of which I need
21 to discuss with you, which is a sort of expanded version
22 of the one you would be give in a normal case, but about
23 contacts and non-discussion and so forth, and send them
24 away without further ado, then give my decision on the
25 things I have to give you a decision on. The only

1 problem I suppose with doing it that way is if one or
2 other of you wants to appeal.

3 MR ROBERTSON: I think there is a problem, because once we
4 swear a jury we are out of the preparatory hearing, so
5 I think your Lordship, with respect --

6 MR JUSTICE MACKAY: The appeal has to take place within the
7 preparatory hearing.

8 MR ROBERTSON: Yes. So your Lordship should give your
9 decision --

10 MR JUSTICE MACKAY: I think that is right. You will lose
11 the right of a pretrial appeal.

12 MR ROBERTSON: Correct. We should have the opportunity to
13 consider the -- both sides -- your Lordship's decision,
14 on all these points, and either have your Lordship's
15 leave to go up or approach the Court of Appeal.

16 MR JUSTICE MACKAY: Then is there any -- I will not be --
17 I do not expect to be ready at 10.30 am with the ruling.

18 MR ROBERTSON: We have a conference with our computer
19 expert, and I can see that we can -- because we have the
20 DC Lewis position, and if your new statement has to --
21 we are having him down tomorrow afternoon to chambers,
22 so that is quite an important thing for the defence. It
23 may be that your Lordship could e-mail your decision?

24 MR JUSTICE MACKAY: I could do that. Are you happy with
25 that?

1 MR HILLIARD: Yes.

2 MR JUSTICE MACKAY: If I do it as a Word document and send
3 it to both of you, and then come into court, say: for
4 the reasons in the e-mail decision, my rulings are as
5 follows ...

6 MR ROBERTSON: In that way we could come back to court on
7 Thursday and --

8 MR JUSTICE MACKAY: And start the jury business then.

9 MR ROBERTSON: Or let your Lordship know which way we ...

10 MR JUSTICE MACKAY: Well I think you both have to -- I mean,
11 you do not know who is going to win or lose. You know
12 one of you is, and each of you may have, by then,
13 contingent plans on what it is you want to do.

14 MR ROBERTSON: There may be two losers of course.

15 MR JUSTICE MACKAY: I hope there will be only one.

16 MR ROBERTSON: There are a number of issues.

17 MR JUSTICE MACKAY: I see what you mean.

18 MR ROBERTSON: Will then ask for leave to appeal, because it
19 is a novel matter, and failing that, will have to go to
20 the Court of Appeal probably on Friday.

21 MR HILLIARD: My Lord, I do not know whether --

22 MR ROBERTSON: I think it is done in writing.

23 MR HILLIARD: It would not take long -- I mean, I do not
24 know whether it is just possible to at least finish
25 tomorrow Mr Kohlmann's part of things, because as your

1 Lordship says, \$275 an hour, if somebody is going to do
2 it, it is not long, but if it would be possible just to
3 come back to court in the morning, I can well understand
4 about the conference -- the decision can be e-mailed,
5 with great respect, whenever it was convenient to your
6 Lordship -- but it just would mean we had at least
7 hopefully nailed one more issue down.

8 MR JUSTICE MACKAY: Well, I see that. You mean you are
9 going to produce a statement tonight, overnight, rather.

10 MR HILLIARD: Yes.

11 MR JUSTICE MACKAY: You will serve it in the morning.

12 MR HILLIARD: Even if my learned friend's junior -- it does
13 not require him, tentatively, if we were able to resolve
14 the issue, Mr Robertson need not be here but we have the
15 chance of putting at least one issue to bed.

16 MR ROBERTSON: We cannot put Mr Kohlmann to bed until A we
17 get the statement and B if it is going to be computer
18 expertise, we have our computer expert look at it, which
19 he can do tomorrow afternoon. So it does not make sense
20 to spend the money reconvening the court tomorrow. If
21 we can do this tomorrow, we get his Lordship's judgment
22 by e-mail and we are back on Thursday with our
23 submissions on it and we can put Mr Kohlmann to bed on
24 Thursday morning.

25 MR JUSTICE MACKAY: I think, although I understand your

1 position, Mr Hilliard, I think it is safer to --

2 MR HILLIARD: My Lord, certainly.

3 MR JUSTICE MACKAY: -- go slower rather than faster on this.

4 MR HILLIARD: My Lord, I was not intending to. Let us leave

5 it until Thursday.

6 MR JUSTICE MACKAY: I think we will leave it until then. It

7 does not help you to have this case listed for

8 a conference with your client, it is the expert --

9 MR ROBERTSON: No, it is the expert we need to see first,

10 and he can see us tomorrow afternoon. Then we will have

11 the conference with the client on Thursday morning.

12 MR JUSTICE MACKAY: Very well. Then I think that is what we

13 will do. To be frank, I would be grateful for the

14 further time. I do not like taking up lots of time in

15 the case to get my ruling right. So would you both

16 kindly leave an e-mail contact address with my clerk and

17 I will get that to you, I will say no more than this, in

18 the course of tomorrow.

19 MR ROBERTSON: Thank you.

20 MR JUSTICE MACKAY: The great thing about e-mails is you can

21 serve them at all hours of the day and night, as we all

22 know. So this case need not be listed, and the jury,

23 I am sorry to say, will not be needed tomorrow but may

24 be needed, will be needed, I hope, but may be needed on

25 Thursday, but again, may not, but ought to be present.

1 10.30 am Thursday?

2 MR HILLIARD: Yes, please.

3 MR JUSTICE MACKAY: Yes, please. All right. Any other

4 matters?

5 MR HILLIARD: No, thank you very much.

6 MR ROBERTSON: Thank you.

7 MR JUSTICE MACKAY: Thank you both very much. I think

8 I ought to say this, and it is without commitment on my

9 part: I have the power to give leave, have I not, on

10 a preparatory hearing appeal? If it is on either of the

11 first two points, as it were, that is to say section 1

12 and reasonable excuse, without committing myself, and

13 I know the trial judge is not normally meant to give

14 leave, I think it may well be a case where the trial

15 judge ought to, whichever way it goes.

16 MR ROBERTSON: Yes.

17 MR JUSTICE MACKAY: But that depends on the losing party, as

18 it were, wanting to do so.

19 MR ROBERTSON: Of course.

20 MR JUSTICE MACKAY: All right.

21 MR ROBERTSON: Thank you.

22 MR JUSTICE MACKAY: But it may help your discussions if

23 I tell you.

24 (4.35 pm)

25 (The Court adjourned until 10.30 am on Thursday,

25th January 2007)

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