

1
2
3
4
5
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

No. 13-cr-20772

RASMIEH YOUSEF ODEH,

Defendant.
_____ /

MOTION/EVIDENTIARY HEARING

BEFORE THE HONORABLE GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Tuesday, October 21, 2014

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21
22
23
24
25

TABLE OF CONTENTS

WITNESSES: PLAINTIFF

PAGE

None

WITNESSES: DEFENDANT

MARY FABRI

Direct examination by Mr. Deutsch

64

Cross-examination by Mr. Tukel

73

OTHER MATERIAL IN TRANSCRIPT:

Motions

5

EXHIBITS:

Identified

Received

DX #1

65

1 Detroit, Michigan

2 Tuesday, October 21, 2014 - 11:05 a.m.

3 THE CLERK: All rise. The United States District
4 Court for the Eastern District of Michigan is now in session.
5 The Honorable Gershwin A. Drain presiding.

6 You may be seated.

7 The Court calls Case Number 13-cr-20772, the
8 United States of America versus Rasmieh Odeh.

9 Counsel, step forward, place your appearances on
10 the record.

11 MR. TUKEL: May it please the Court, Jonathan Tukel
12 on behalf of the United States.

13 MR. JEBSON: Good morning, your Honor. Mark Jebson
14 on behalf of the United States.

15 MR. DEUTSCH: Michael Deutsch on behalf of the
16 defendant, Rasmieh Odeh.

17 MR. FENNERTY: James Fennerty on behalf of the
18 defendant, Rasmieh Odeh.

19 THE COURT: Good morning.

20 MR. GOODMAN: Good morning. William Goodman.

21 MS. BERRY: I'm Rana Berry. I'm the interpreter.

22 THE COURT: Okay. All right. Gentlemen, I
23 guess, let me first say that we need to swear the interpreter
24 before we get started.

25 THE CLERK: Raise your right hand. Do you

1 solemnly swear that you will correctly translate the oath in
2 such questions as shall be put to this defendant from the
3 Arabic language to the English language and her answers from
4 the Arabic language to the English language to the best of your
5 ability so help you God?

6 MS. BERRY: Yes.

7 (At 11:06 a.m., Rana Berry sworn by the Clerk to
8 interpret English into Arabic and Arabic into English)

9 THE CLERK: Thank you.

10 THE COURT: All right. Then, we've got a number
11 of motions and an evidentiary hearing scheduled, and I guess
12 the first motion I'll take is the motion to exclude evidence
13 produced by the Israel Military Occupation.

14 And then the government has almost a counter
15 motion to rule admissible evidence produced pursuant to the
16 Mutual Legal Assistance Treaty.

17 So, Mr. Deutsch, you may begin.

18 MR. DEUTSCH: Thank you, judge.

19 Essentially our motion is based on what we have
20 alleged and supported by affidavit that the military legal
21 system that was imposed after the 1967 war when the Israel
22 military invaded the West Bank of the Jordan River and set up a
23 military legal system based on a belligerent occupation, which
24 is illegal under international law. The occupation itself is
25 illegal under international law. The United Nations has held

1 that. The red cross has held that, and even our own state
2 department has found that the occupation of land that does not
3 belong to the state of Israel is illegal under international
4 law.

5 So, you have an illegal occupation and then the
6 occupiers set up this military legal system, which is in no way
7 commensurate with due process or fundamental fairness or any of
8 the standards of U.S. Judicial System or U.S. Constitutional
9 Law.

10 Primarily there are several major reasons why the
11 military legal system set up under the occupation is
12 fundamentally flawed and unfair.

13 Number one, and again --

14 THE COURT: Let me just stop you for a minute.
15 I think what I'm going to do on this motion is give both sides
16 no more than 15 minutes, just so you know.

17 MR. DEUTSCH: Thank you, judge. I thought I only
18 had ten, actually, based on last week.

19 THE COURT: I increased it a little bit since
20 they're both competing motions. Actually, two motions instead
21 of one.

22 MR. DEUTSCH: So as I was saying, there's several
23 fundamental flaws in this legal system. Most importantly, the
24 legal system systematically tortures people, Palestinians who
25 are subject to arrest by the Israeli defense forces. The

1 military doesn't need an arrest warrant. They don't need to
2 give a reason to the people who are arrested. Essentially,
3 they have the power given to them by the occupation of rules
4 that have been set up to arrest anyone for any reason.

5 And then, and this has been found by all kinds of
6 international human rights groups by the Israeli human rights
7 groups, by the Palestinian human rights groups, by Amnesty
8 International, by Human Rights Watch, by the United Nations and
9 by our own state department that there has been systematic
10 torture of Palestinian detainees, particularly those who are
11 charged with security offenses in order to obtain confessions.

12 So, what happens is that someone who's arrested
13 they're held in incommunicado. You don't get to see a lawyer.
14 In fact, under that system you may not see a lawyer as long as
15 six months.

16 So you're interrogation goes on. You're brought
17 to these special interrogators who are part of the secret
18 security police called the Shin Bet or general security
19 services. They isolate you. They deprive you of sleep. They
20 -- in that particular period of time, which is 1969, they were
21 using electric shock on people. They were beating people.
22 They were sexually abusing people. And as a result of that
23 they let that interrogation go on until the person confesses,
24 and then when they confess, they bring them before a police
25 officer, an Israeli police officer, who then takes the

1 statement, which has already been prepared by the security
2 secret security police.

3 So that's one problem. This system is based on
4 systematic use of torture and coercion. This is how they get
5 the evidence that they use.

6 Secondly --

7 THE COURT: Okay. Let me stop you for a minute.

8 I don't know that the interpreter is speaking.

9 THE INTERPRETER: She had told me she understands
10 a lot of English; that she would ask me when she feels like
11 she's not understanding what's going on.

12 THE COURT: Okay.

13 So you're going to interpret when she doesn't
14 understand.

15 MR. DEUTSCH: Right.

16 THE INTERPRETER: Yeah. So she says she
17 understands most --

18 THE COURT: And I haven't seen you doing any
19 interpreting yet.

20 THE INTERPRETER: I have tried and she said she's
21 understanding what's going on. That's why.

22 THE COURT: Okay.

23 MR. DEUTSCH: Okay.

24 Secondly, and this is critically important, the
25 judges are military officers. They are part of the same army

1 that invaded the country two years prior and have carried out a
2 war against the people who are living there. Now these people
3 are now sitting in judgment as judges, but they're military
4 officers. The prosecutor is a military officer. The clerk is
5 a military officer. The interpreter is a military officer.

6 So the whole system is based on a failure to
7 provide independent judiciary, independent noninvolved
8 determination.

9 Secondly -- thirdly, and this is what I think is
10 really critical and differentiates that system for our system.
11 In our system if you're arrested, you get a right to a lawyer.
12 A lawyer sits and advises you and you can decide whether or not
13 you're going to give information.

14 Under that system, you don't get to see a lawyer.
15 Initially you don't get to see a lawyer for 18 days and then
16 they can go to court without a lawyer. They bring you to a
17 secret court proceedings and they can ask for an additional 10
18 days, and after that they can ask for an additional 20 days.

19 So, you don't get a lawyer until you confess.
20 Once you confess, then you get to see a lawyer, and even the
21 interrogation doesn't necessarily end after that. It can
22 continue.

23 Now Ms. Odeh was, didn't get to see a lawyer for
24 45 days after her arrest. She went through horrific torture
25 for 25 days, include electric shock, including beatings,

1 including being hung, including being, her father being brought
2 in the cell where she was and saying her father was going to
3 rape her. And he was beaten, passed out, and by the way, her
4 father was a U.S. citizen at the time from, living in Detroit.
5 He had come back after the '67 war.

6 So you have a system based on torture. You have
7 a system where the judges are military officers who are not
8 impartial. You have a situation where you don't get access to
9 a lawyer until you have confessed. And you don't get a right
10 to know what you're arrested for or what you're charged with
11 until you're finally brought before these military judges after
12 they already obtained a written confession, and this is when
13 they then say, now you're going to have your trial. And, of
14 course, your trial is not with a jury. It's in front of these
15 judges. They do have a procedure for what we would consider
16 motion to suppress based on torture. I would submit to you
17 that in the 45 years since this military court has operated, I
18 know of no case in which a confession has been suppressed by
19 one of these military judges.

20 So it's basically -- and there are other things
21 that have been pointed out, that are pointed out in our
22 memorandum and briefs.

23 But, basically, what we're saying to you, judge,
24 is that we, we cannot accept evidence from this type of
25 judicial quote-unquote system. It is inconsistent with human

1 rights. It's inconsistent with our constitution, and there is
2 a, it's dicta I can see. But there is a Supreme Court case
3 called United States versus Small in which Judge Breyer in
4 determining whether to accept a conviction, a foreign
5 conviction said:

6 "There are several reasons why we would not accept
7 a foreign conviction and one of them is based on the
8 treatment, and the procedures are inconsistent with
9 U.S. concepts of fundamental fairness."

10 THE COURT: What country was that from, that
11 conviction in Small?

12 MR. DEUTSCH: I think Japan, but I'm not sure.

13 And I'm not saying if they were an Israeli regular
14 court that we would not accept a conviction from Israel or any
15 system. But this is a military occupation system that's been
16 imposed on the people living there, who only, only hears cases
17 of Palestinians. That's it. Especially set up to investigate
18 and prosecute Palestinians.

19 THE COURT: Mr. Deutsch, let me ask you this,
20 because I looked at that Small case and it was a felon in
21 possession case.

22 MR. DEUTSCH: Right.

23 THE COURT: Which is a lot different from this
24 case.

25 MR. DEUTSCH: Yeah, I can see, judge. It's dicta.

1 THE COURT: In a lot of different ways.

2 And, I guess, what I'm curious about is in this
3 situation we've got a treaty between two countries, the [Mutual
4 Legal Assistance Treaty, and I'm curious if you have any case
5 where a foreign judgment has been excluded notwithstanding that
6 treaty.

7 MR. DEUTSCH: I don't have a specific case that I
8 can give you right now as to that question, but I would submit
9 to you that the U.S. constitution supersedes any treaty and the
10 treaty that we, the treaty that we have with Israel, in my
11 view, deals with convictions by the Israeli civilian courts.
12 This is a special military tribunal. And I -- if you look at
13 that treaty, the treaty does not say that we are going to take
14 any type of ad hoc judicial proceeding that's set up in a
15 foreign land by occupied, military that occupies that land. I
16 don't think there's a case on that, judge.

17 But I think if we look at what's fair, I don't
18 think that treaty supersedes what's fundamental due process
19 requires and if we accept the work of the military, occupying
20 military court and put that into our judicial system, I think
21 we're selling our judicial system.

22 Now, the government may argue, well, the issue is
23 not whether she was convicted properly or not convicted
24 properly; the issue is whether or not she answered the
25 questions on her citizen application, and that may be true in

1 one level, but I'm talking about a fundamental level. Are we
2 going to let evidence into this courtroom to prove her
3 conviction which is based on torture and a denial of
4 fundamental fairness. That's our position.

5 Thank you, judge.

6 I guess, I have two minutes left for rebuttal.

7 THE COURT: Yeah, you've go about two, about two
8 left.

9 MR. TUKEL: May it please the Court, as a
10 preliminary matter, your Honor, I want to address a couple
11 points, although, I don't think they go to the heart of the
12 legal argument.

13 Number one is the status of the Israeli military
14 legal system and the type of due process it affords is a very
15 contentious issue and there are certainly authorities on the
16 other side and if there's an evidentiary hearing on this
17 question, we would present those.

18 In addition, I think what the Court needs to
19 judge, if the Court goes down that factual path, is what
20 happened in the particular case and not the system in general.
21 We are talking about a system that's 45 years old and the type
22 of process that's afforded has changed at different times and
23 so what's going on at any particular time is very different.

24 For instance, in their papers the defense has
25 referred to something called the Landau Report, which was

1 authored by a retired Israeli Supreme Court Justice in 1987
2 which talked about historical practices. And while it
3 acknowledged that there were some of the things Mr. Deutsch
4 talked about, it says that those practices really began in
5 1971, which is after the events at issue in this case.

6 So, number one, we would have to focus on the
7 specific period of time.

8 As to the U.S. versus Small, I don't have a lot to
9 add to what the Court stated, but it was, that was not a
10 question dealing at all with admissibility of evidence. That
11 was a case, and it was Japan, that was a case dealing with
12 whether a statute promulgated by congress, the felon in
13 possession statute, when it used the term "conviction" meant to
14 include foreign convictions. And the court using standard
15 rules of construction held that it did not. And the court
16 specifically noted that that interpretation might be different
17 in a case involving immigration or terrorism because those are
18 particularly areas where congress might, in fact, intend to
19 refer to foreign convictions.

20 So that really has nothing to do with
21 admissibility, which is the issue here.

22 Fundamentally, your Honor, what we're dealing with
23 here, and I would just like to say, there is a different
24 definition of conviction at issue here. There's a specific
25 definition in the immigration statute and the Ninth Circuit

1 interpreting that in an immigration context. So it is
2 instructive, but it's not controlling, because it's not a
3 criminal case.

4 THE COURT: What case is it -- oh, it's not a
5 criminal case.

6 MR. TUKEL: No. It was an administrative case
7 dealing with naturalization. Brice versus Pickett, 515 F2nd
8 153, 1975 from the Ninth Circuit.

9 But the Ninth Circuit said that even if Brice
10 could prove that the foreign conviction was obtained in
11 proceedings which is conducted in this country, would be
12 violative of United States Constitutional guarantees.

13 We find no requirements that a foreign court's
14 proceedings or convictions must conform to the United States
15 Constitutional standard. And the reason for that, I think, is
16 simple, your Honor, congress created under its plenary
17 authority over immigration laws, it created the particular
18 immigration laws that are at issue here. And congress
19 provided a definition for purposes of the statute of
20 conviction.

21 And the, I think the entire defense argument is
22 based on a misapprehension, which is, that there are some how
23 exceptions in that definition for convictions which don't meet
24 U.S. or other constitutional standards, and that's simply not
25 there. There's a definition of conviction. It's someone who

1 is tried or pleads guilty before a judge and a punishment is
2 imposed.

3 Now, that doesn't mean that in the immigration
4 context claims as to the validity or the reliability or any of
5 those things about a particular conviction can't be brought up.
6 They could have been before U.S. Citizenship and Immigration
7 Services, which would have been the way to do it, and the
8 government intends to offer testimony at trial from an expert
9 witness who's employed at the immigration service.

10 THE COURT: And just out of curiosity --

11 MR. TUKEL: Sure.

12 THE COURT: -- what, have you decided what
13 documents or what evidence you want to admit during trial
14 pursuant to the treaty, because -- if I recall correctly,
15 there's 1400 pages of documents.

16 MR. TUKEL: Well, there are 1400 pages, but we have
17 a much reduced list. I mean, we're not seeking to offer all
18 1400 pages.

19 THE COURT: Okay.

20 MR. TUKEL: But it's generally -- and this is, of
21 course, I mean, there can be redactions and all sorts of other
22 things, but in general it's the charge, it's the indictment
23 because, just to digress for a second, the N-400 asked the
24 questions of:

25 Have you ever been charged?

1 Have you ever been arrested?

2 Have you ever been convicted?

3 Have you ever been imprisoned?

4 And so the documents go directly to that. It's
5 the charging documents; it's the arrest documents; it's the
6 imprisonment documents, and it's the conviction documents.

7 And I suppose we can quibble, I mean, there's a
8 lengthy recitation by the court, which incidentally rejected
9 the claim of torture that the defendant is making here. She
10 raised almost the identical claim there. The court rejected it
11 for a number of reasons, including it did not find her credible
12 and it relied on corroborating physical evidence.

13 But we can, we can certainly work with whatever
14 rulings of the court. Sometimes the recitation of the verdict
15 by the court recites some of the confession. We can certainly
16 work around not including that, but the fundamental aspect of
17 it is covered by the treaty and the treaty says it is
18 admissible, because it is an official record of the government
19 and it was produced.

20 Whatever weight I think the defense argument might
21 have as to admissibility of foreign evidence that violates, or
22 allegedly violates US Constitutional standards, I don't think
23 that can apply in this case, precisely because it is a treaty
24 and treaty making authority is inherently an executive branch
25 function. This treaty was signed by President Clinton. It was

1 approved by the senate.

2 And it's important to note that was done in 1998.
3 So, allegations about what the Israeli military justice system
4 was or what it was doing, those have been topics of public
5 debate for 30 years at that point. And that president,
6 President Clinton went ahead and signed that treaty, negotiated
7 and signed it. The senate ratified it. It didn't -- the
8 treaty doesn't draw any distinction between any particular type
9 of Israeli documents. It says documents produced by the
10 Israeli government are subject to treaty and with the proper
11 authentication, which I'll talk about in connection with our
12 motion, are admissible as such.

13 And defendant's argument really boils down to
14 asking the Court to judicially repeal at least a portion of
15 that treaty, which is an executive branch function; it's not a
16 judicial branch function.

17 Because what the defense is saying is, any case in
18 which there is an MLAT request from the government of Israel
19 involving the military system those are now judicially excluded
20 from the treaty contrary to the plain language of the treaty.
21 I don't think that result can hold.

22 Unless the Court has questions about any aspect of
23 that, I will address the remaining issues in connection with
24 the government's motion.

25 THE COURT: Okay.

1 And, you know what, your motion was just the
2 opposite of --

3 MR. TUKEL: It is very similar, your Honor,
4 although there are some other aspects to it.

5 THE COURT: And I had went to 15 minutes to allow
6 both of you to argue your respective motions, but I -- I'll let
7 you make some further arguments later.

8 MR. TUKEL: Okay. Very good.

9 MR. DEUTSCH: Judge --

10 THE COURT: All right. Mr. Deutsch?

11 MR. DEUTSCH: -- it's our position that evidence
12 that is inconsistent with the U.S. Constitution should not be
13 admitted into a U.S. Court and the treaty, if you look at the
14 treaty, it doesn't specify military courts. It doesn't specify
15 belligerent occupation courts.

16 If they were going to submit evidence from the
17 Israeli civilian courts, that would be a different question.
18 This is outside the scope of the treaty in my estimation and my
19 argument and there is no evidence to the contrary that the
20 treaty was intended to apply to military tribunals in an
21 occupied country. It's just outside the scope of what we
22 should allow.

23 And just, when -- I recognize that the decision by
24 Justice Breyer in Small that I'm relying on is dicta. It's not
25 part of the finding of the court.

1 But it's clear, he says:

2 "Foreign convictions differ from domestic
3 convictions in important ways."

4 And then he goes on to say they would include a
5 "conviction from a legal system that is inconsistent with an
6 American understanding of fairness."

7 And he cites to the U. S. Department of State,
8 Country Reports.

9 If you look at the U.S. Department of State,
10 Country Reports on the treatment of Palestinians by the Israeli
11 occupation courts, they consistently condemn that, and they
12 find that the courts have used torture as a systematic way to
13 obtain confessions, and maybe 98 percent of the people who go
14 through that system are forced to confess.

15 Now, counsel says, oh, she had a motion to
16 suppress and the judge found that she was not credible. Think
17 about this judge. You put on a defendant who says that these
18 former or present military officers tortured me and the judge
19 is a military officer sitting up there and trying to decide the
20 credibility, is he going to find for the poor Palestinian
21 that's saying she was tortured in secret, or is he going to
22 find for the Israeli military who tortured.

23 There's no fairness here. It's clear there's no
24 fairness. We should not allow this type of evidence brought
25 into a U.S. Court.

1 Now he -- counsel refers to the Landau
2 Commission --

3 THE COURT: You've got about a minute left.

4 MR. DEUTSCH: I'm going to get right to it.

5 Here's what the Landau commission found. This is
6 1987, led by a former supreme court justice. They found that
7 the interrogators were consistently lying under oath to cover
8 up the use of physical force in obtaining confessions. And in
9 order to kind of appease the military, they said from now on
10 they should not only be able to use moderate physical force in
11 obtaining confessions. What they did for the last 20 years,
12 they can't do anymore.

13 And Menachem Begin, who became the prime minister
14 of Israel in 1979, issued an order to his interrogators that we
15 should no longer use torture in obtaining confessions. This is
16 the prime minister issuing a report saying that and ordering
17 his interrogators not to use force.

18 We don't want to sully our courts with this type
19 of evidence, judge. It's not credible, legitimate evidence
20 and I submit to you that it should not be admitted for any
21 reason in this trial.

22 MR. TUKEL: Your Honor, I'm not sure I understood
23 Mr. Deutsch properly, but I thought he made an argument about
24 what the treaty said or doesn't say.

25 THE COURT: Are you arguing your motion now?

1 MR. TUCEL: I was actually rebutting that, but I
2 can use --

3 THE COURT: You know, we have the movement,
4 response, and reply, and that's it.

5 MR. TUCEL: All right.

6 THE COURT: So, let's talk about your motion,
7 too, and since we already spent some time on it a little bit, I
8 think I'll limit the whole thing to ten minutes. You get ten
9 minutes; Mr. Deutsch can respond with ten minutes.

10 MR. TUCEL: All right.

11 So, what we are trying to do, what this evidence
12 is being offered for is to simply prove straightforward
13 historical facts. Those historical facts are that the
14 defendant was arrested, that she was charged, that she was
15 convicted and that she was imprisoned in Israel. That's what
16 they're for.

17 So we've talked about that a little bit with the
18 earlier motion. But it is the conviction as such which has
19 relevance and that's because congress defined it to not have
20 exceptions in the definition, in the immigration laws that a
21 conviction is the fact of being found guilty or admitting guilt
22 and being punished. There's no particular standard involved.
23 There's no requirement that it meet U.S. standards.

24 Because the citizenship and immigration service
25 can consider any evidence that, that an applicant puts forward

1 as to why a particular conviction should not be believed, and
2 we intend to offer that evidence at trial, that people can and
3 do present that. So, it was incumbent on defendant if she
4 wanted to make that argument to do it, but she can't create her
5 own definition of what conviction is and simply omit that from
6 the application.

7 There are a series of objections that the defense
8 raised to our motion to admit that treaty evidence that center
9 on authentication, and I don't think they are correct. The
10 authentication is actually very straightforward and there are
11 two analyses, either one of which gets you to the same result,
12 but the more simple and straightforward one is Federal Rule of
13 Criminal Procedure 27, which provides that proving an official
14 record can be done in the same manner as in a civil action,
15 which the committee notes say, incorporates by reference
16 Federal Rule of Civil Procedure 44.

17 And so when you then turn to Federal Rule 44, the
18 civil rule 44, it says that each of the following evidence a
19 foreign official record or an entry in it that is otherwise
20 admissible. And under roman numeral two, (ii), the record or
21 copy that is attested by an authorized person and is
22 accompanied either by a final certification of genuineness or
23 certification under a treaty or convention to which the United
24 States in which the country where the record is located are
25 parties.

1 So these records were located in Israel, there is
2 a Mutual Legal Assistance Treaty enforced between the United
3 States and Israel and they were certified pursuant to the terms
4 of the treaty.

5 The treaty itself as to certification, it's in
6 Article Nine Paragraph Two, which was attached to the
7 government's motion. The entire treaty is Exhibit A. It says
8 official records produced pursuant to this article, and I'm
9 quoting only the latter half here, may be authenticated by the
10 official in charge of maintaining them in the manner specified
11 by the requesting state, which may include the use of Form B
12 appended to this treaty.

13 There's a blank copy of Form B at the end of
14 Exhibit A which is the treaty, which shows the form that that
15 can appear in, and we have attached to the motion a series of
16 executed forms B which comply with that and which individually
17 authenticate all those records.

18 So authentication I don't think is an issue. The
19 defendant raised arguments about, about Rule of Evidence 901
20 and 902 and about a statute, 28 USC 1738. None of those have
21 applicability here because the authentication is being done
22 pursuant to the treaty as provided for in Rule 27 and the civil
23 rule that it incorporates.

24 So, I think that resolves the authentication
25 issue.

1 The defendant also raises arguments about the
2 translation of the documents and cites Rule of Evidence 604.
3 Rule 604 applies to interpreters providing interpretation in
4 court, such as we have going on here today. Translation of
5 evidence is an expert witness function. It's simply an expert
6 witness testifying to what something says for evidence, not for
7 translating the proceedings, and we've given proper notice of
8 expert translation in docket entry number 91.

9 The defendant goes on to challenge the accuracy of
10 that. Challenging the accuracy of that goes to weight, not
11 admissibility. If defendant wants to challenge those
12 particular documents at trial, they can. And the authorities
13 for that are a case called Teren-Palma from the Ninth Circuit,
14 997 F2nd 525, specifically, at page 531, and a case that is
15 pronounced, I guess, it's Guang, G-U-A-N-G, 511 F3rd 110, page
16 120 from the Second Circuit in 2007.

17 The defendant also says that there are some
18 portions of those pages produced which are missing. I'm not
19 sure that any of the pages that are pertinent here are actually
20 missing and I should note, because I don't think I answered it
21 clearly to the Court before, we are not seeking to offer at
22 trial the defendant's confession. So that is not one of the
23 exhibits that we intend to offer.

24 But, it is certainly the case having looked at
25 that MLAT evidence that there are some cutoff pages and there

1 are some things that are missing from there. It's been a long
2 time since those were created. That doesn't make them
3 inadmissible anymore than incomprehensive portions of a tape
4 recording in a drug case would be inadmissible. As long as
5 the missing portions are not so great as to obscure the
6 meaning, it remains admissible. And it is certainly the case
7 that what is left of the MLAT evidence is more than sufficient
8 to demonstrate the meaning and to prove the points for which
9 they're being offered, which is the defendant was charged, was
10 arrested, was convicted, and was imprisoned.

11 Unless the Court has any questions as to that,
12 that is all I really have as to the motion to admit.

13 THE COURT: No, I don't.

14 All right.

15 MR. DEUTSCH: Judge, it's true we've raised a
16 series of objections to the documents under the federal rules
17 of evidence and what troubles me and which is, I guess, is the
18 subject of a further motion, the government originally provided
19 us with 1400 pages of these documents. Many of them were cut
20 off, pages missing, etcetera, and subsequently they reduced
21 that to, I don't know, maybe hundred pages. It seems to me
22 that assuming the court rules against us on the admissibility
23 of these military documents, they should have three documents
24 that they want to submit: One is a document that shows she was
25 arrested; a second is a document that shows she was convicted,

1 and the third is a document that says she was in prison. Three
2 documents, not a hundred, not fifty, three documents.

3 And it's our position, again, which will come up
4 later, is we don't think it's necessary for them to tell the
5 jury specifically what she was convicted of, because that's
6 really not relevant in this case.

7 THE COURT: Okay. That's your next motion.

8 MR. DEUTSCH: So I'm just going to move off of
9 that.

10 But I just want to highlight to you that the
11 government is involved, in my belief, in overkill here
12 unnecessarily and it's quite prejudicial.

13 What we're saying is that not only, of course,
14 we've already argued that MLAT does not trump the constitution.
15 I've made that argument and that's, and, of course, I'll make
16 the further argument that MLAT does not talk about ad hoc
17 military courts set up in other people's land, occupied
18 territory.

19 So, in my view, MLAT would not apply to these
20 documents.

21 In addition, we submit, we had these documents
22 reviewed by an expert, and he submitted an affidavit as part of
23 our motion and response. Who said that the translation of
24 these documents are not up to quality and now the government is
25 saying they're going to put in different translations from

1 different experts, because we didn't even know who translated
2 these documents when we first got them. The name of the
3 translator was not available to us.

4 If the Court allows three documents, which I think
5 they should be limited to, we should know what these
6 translations are now. They should give us the translations
7 that they're going to put in evidence, rather than us guessing
8 what they are, because the ones that we have are not competent
9 translations.

10 So, I think that now the government realizes that
11 their translations were inadequate so they submitted to us the
12 names of what they called experts who are going to translate
13 these documents, and then testify about their translations.

14 If they have translations now, they should give
15 them to us. We may be able to agree that, okay, they're
16 competent and we don't need to, you know, challenge those, but
17 to wait until the trial itself before we get the translations
18 seems unfair.

19 Thank you.

20 THE COURT: Okay.

21 MR. TUKEL: Your Honor, as to the translations, we
22 have given those. We gave those out in original discovery to
23 the defendant's original counsel and to current counsel, and
24 the affidavit submitted by the defense expert as to the
25 translations don't affect any -- we've given the list of what

1 we intend to offer. Those criticisms of the defense expert
2 don't go to any of the documents that we intend to offer. So I
3 don't think there's any dispute about that.

4 It would be, it would be nice if there was such a
5 thing as a single document that showed that the defendant was
6 convicted and imprisoned, but the documents don't look that
7 way.

8 There is a single document that shows that she was
9 charged, which is an indictment, and that is one of the
10 documents that will be offered.

11 There are -- there's more than one document that
12 go to the imprisonment, and the conviction itself is lengthy
13 because it's a trial proceeding. There's no one particular
14 document that says that.

15 In addition, it's my understanding that the
16 defense still intends to call an expert at trial, obviously, if
17 the Court permits it, to impugn or to impeach the Israeli legal
18 system and the fuller extent of the trial proceedings
19 themselves is relevant to rebut that, because it shows that it
20 was actually a trial, that the defendant was represented by
21 counsel, that there was the equivalent of a motion to suppress
22 brought, that there were witnesses presented, that the
23 defendant presented witnesses, and that the court made a
24 detailed finding as to why it was not accepting that.

25 And, in addition, and it will covered by Mr.

1 Jebson in one of the other motions, additional portions of the
2 documents are relevant for another element of the offense.
3 The charged, convicted, imprisoned is the first element, which
4 is the false statement on the naturalization application, the
5 N-400. There's also a procurement aspect of it, and it's the
6 government's position that the defendant could not have
7 lawfully procured her citizenship because per the statutory
8 term she had, "engaged in terrorist activity" as that is
9 defined in the immigration law, and in the immigration
10 statutes, and the additional documents go directly to that
11 element.

12 Mr. Jebson will talk about that more in connection
13 with our other motion.

14 THE COURT: Okay.

15 All right. The defendant's next motion is to
16 exclude specific charges and convictions emanating from her
17 arrest and prosecution.

18 We're back down to ten minutes now.

19 MR. DEUTSCH: Yeah. Okay.

20 Essentially, the defendant is charged with
21 willfully providing false information when she answered "no"
22 whether she was convicted, imprisoned or arrested. That's the
23 charge. The government wants to somehow present to the jury
24 that she was convicted of placing bombs or involved with
25 placing bombs, that two civilians were killed as a result of

1 that.

2 Now he's saying she'll never get, she never would
3 get citizenship because she's a terrorist and she was involved
4 in terrorism. All of this is irrelevant, judge, and highly
5 prejudicial.

6 If the jury hears that she was convicted, even by
7 the Israeli military court, of being involved with a bombing,
8 if they hear she's a terrorist or involved with terrorism,
9 they're going to be thinking about that. They're not going to
10 be thinking about whether she willfully lied when she filled
11 out her application. I submit to the Court and we have said
12 we're willing to stipulate that she was convicted of a serious
13 offense by the military tribunal, that she was arrested by the
14 Israeli defense forces, and that she was imprisoned in Israel
15 for 10 years. That's not an issue. That's not an issue that
16 we're challenging. That's clear.

17 What they want to do is put in this highly
18 prejudicial specific facts and once you start putting that in,
19 in my view, you open the door to the fact that she was
20 tortured, the fact that the military system is illegitimate,
21 that you can't rely on it and that we're off to the races,
22 because once they put in that she was convicted of bombings and
23 she confessed to it or she was imprisoned for it, we have a
24 right to say that's not true. We have a right to show that
25 she was not guilty of those offenses, that in fact they were

1 the product of confession and torture.

2 So, it seems to me that we should keep our eye on
3 the ball here because otherwise we're going to put in a lot of
4 evidence and argument that's going to be very prejudicial to
5 the defense and it's not relevant. It's not relevant to prove
6 their charge. They can put in a document that says she was
7 convicted of a serious offense.

8 THE COURT: Okay. But, you know, one of the
9 things that the government's got to prove is that it's a
10 material --

11 MR. DEUTSCH: Yes.

12 THE COURT: -- false statement.

13 MR. DEUTSCH: We would --

14 THE COURT: And when you --

15 MR. DEUTSCH: Yeah. Sorry.

16 THE COURT: -- they've got to prove that and you
17 know if it was a jaywalking case or some real minor case, it
18 wouldn't be material and it wouldn't matter, but they've got to
19 prove that it's material enough to affect the decision of
20 immigration services. And, you know, they've got to prove
21 that.

22 MR. DEUTSCH: Yes, I agree. I agree that is an
23 element of the offense.

24 THE COURT: You can't just say it was a serious
25 offense, because, that, I mean, I'm just kind of thinking out

1 loud now, that could leave it open to anything.

2 So, I mean, I just --

3 MR. DEUTSCH: Yeah, I think there's language that
4 we can craft that -- and I also think that, you know, we can
5 also figure out a way to agree that it's material, if it's
6 material. That's not our defense. We're not saying it wasn't
7 material.

8 You know what our defense is is that she didn't
9 intentionally, willfully lie, because she suffered from a
10 condition that would have caused her cognitively not to recall
11 those facts, and so, I just worry about a trial in which the
12 government puts on people who say, she's a terrorist. Who is a
13 terrorist? What is terrorism?

14 THE COURT: And that's another motion.

15 MR. DEUTSCH: Yeah. It's another motion, but it's
16 all tied in. It's all part of trying to figure out what the
17 government, relevant evidence is and what isn't, and I would
18 submit to you that once they start putting in, you know, the
19 issue of bombings and the issue of membership in a terrorist
20 organization, the jury is going to, that's not the issue for
21 the jury, the jury is going to be somehow distracted and
22 prejudiced by it, and I think we should figure out a way to let
23 the government put in what they have to prove, the elements
24 they have to prove, but not do it in a way that makes it
25 impossible for the defendant to have a fair trial.

1 MR. JEBSON: Your Honor, if I could address the
2 stipulation issue first. The government is not willing to
3 accept a stipulation. It desires to put on its evidence in a
4 way that will explain the story to the jury and there's two key
5 circuit cases that I would like to draw the Court's attention
6 to. The first one is U.S. versus Hebeke. It's 25 F3rd 287,
7 Sixth Circuit, 1994.

8 And the other case, your Honor, is U.S. versus
9 Boyd. That's 640 F3rd 657, that's a 2011 case.

10 THE COURT: Are these in your brief?

11 MR. JEBSON: They are not, your Honor, and the
12 reason they're not is that Judge Borman had asked us to get
13 together and do stipulations and we attempted that with Mr.
14 Deutsch, and he didn't want to stipulate to anything. So we
15 didn't think that that was an issue. It's been resurrected
16 here. We anticipated that it may be resurrected, that's why I
17 was prepared to argue here with the stipulations.

18 And the Sixth Circuit, if I could just quote very
19 quickly, just two parts, one with Hebeke. The court says:

20 "The government is not required to accept the
21 defendant's stipulation and the defendant has no right
22 to selectively stipulate to a particular element of the
23 offense. The prosecution is permitted to prove the
24 underlying circumstances which explain motive, intend,
25 and plan."

1 And the Boyd case further held that this, this
2 rule remains so even if the prosecutor is going to introduce
3 sensitive or gruesome evidence. And that case dealt with a
4 carjacking which was extremely gruesome. It involved dead
5 bodies being found in garbage cans, and notwithstanding that,
6 the court found that the prosecution did not have to rely on a
7 stipulation.

8 As to the specific charge, your Honor, it is
9 relevant to actually three elements, to materiality, to
10 procurement, and with the court's ruling on intent with it
11 being a specific intent crime, it's also relevant to that.

12 And, your Honor, if I could just put up a slide
13 showing those elements.

14 It's the last three.

15 Materiality, intent, which is now shown a purpose
16 of obtaining citizenship and procurement. With regard to
17 materiality and procurement, they're almost combined into one
18 and what it deals with is the qualifications from an, a person
19 to become a U.S. Citizen. A lie is material if it relates to
20 the qualifications to become a U.S. Citizen.

21 The procurement is satisfied if taking all the
22 evidence it is a fair inference that the immigration officials
23 could have denied the application had the person not lied on
24 the application.

25 The first qualification, your Honor, to be a U.S.

1 Citizen -- and if I could put the next slide up -- is that the
2 individual obtained their legal permanent resident status
3 legally.

4 So the way that a person because a U.S. Citizen,
5 first, is they have to become a legal permanent resident.
6 After they satisfy that, after five years then they can apply
7 to become a U.S. Citizen. The first element to prove that you
8 are eligible to become a U.S. Citizen, you have to prove that
9 when you obtained your permanent resident status that that was
10 legal, that it was legally done.

11 We are going to have both a fact witness and an
12 expert witness who will testify that defendant's permanent
13 resident status was obtained, was obtained illegally and the
14 reason for that is because when she obtained it, she was not
15 admissible as a legal permanent resident and the reason she was
16 not admissible is because she was excludable from the U.S. and
17 the reason she was excludable is because she had engaged in
18 terrorist activity and the specific crime relates exactly to
19 that.

20 And, your Honor, if I could just put up a slide
21 now discussing the "engage in terrorist activity". This is a
22 term that is defined by the statute. And here we see that an
23 alien who has engaged in terrorist activity is excludable from
24 the United States.

25 So, in other words, you cannot get your permanent

1 residence.

2 And the next slide defines what's "engaged in
3 terrorist activity". It's someone who commits either in
4 individual capacity or as a part of a group a terrorist
5 activity.

6 And then we'll see in a second how congress
7 defines terrorist activity. Someone who prepares or plans a
8 terrorist activity. Someone who gathers information on
9 potential targets of terrorist activity. And then the next
10 slide defines terrorist -- and this is congress, your Honor.
11 They're defining these terms.

12 It's the use of any explosive or firearm other
13 than merely personal monetary gain with the intent to endanger
14 directly or indirectly the safety of one or more individuals
15 that cause substantial damage to property, or a threat, attempt
16 or conspiracy to do it.

17 Your Honor, the next slide is actually the charges
18 that the defendant was charge, was arrested, charged, and
19 convicted and imprisoned for in Israel. And if you see Count
20 One, that deals with the defendant's membership in the PFLP,
21 which by the way, when, when the defendant naturalized, the
22 PFLP was a designated foreign terrorist organization under the
23 Immigration Act.

24 THE COURT: Wait. Say that again.

25 MR. JEBSON: When the defendant naturalized in 2004

1 the PFLP, the organization that the defendant was convicted of
2 being a member of, it is actually in 1995 the U.S. Government
3 officially designated that organization as a foreign terrorist
4 organization. So when she naturalized, that was a foreign
5 terrorist organization under U.S. law, under the Immigration
6 and Nationality Act. I think it's section 219.

7 Count Two, your Honor, deals with the supermarket
8 bombing.

9 And if you go to the next slide.

10 Count Three deals with the supermarket bombing.
11 It is an alternative charge. It was that she committed a crime
12 on behalf of the PFLP.

13 Count Four was, was the February 21st, 21st, 1969
14 consulate bombing.

15 And the next slide deals with Count Seven. That
16 was the February 25th bombing that was successful that
17 destroyed part of the property.

18 And, then, finally, your Honor, the next slide.
19 This is part of the verdict and this describes the basis upon
20 which the court found the defendant guilty.

21 And I know it's small print, and it's hard to
22 read. I have hard copies if the Court wants to see it.

23 But all that is important because our expert
24 witness, Officer Pierce, is going to testify that because of
25 those specific charges, they describe activity that supports a

1 finding that the defendant engaged in terrorist activity and
2 because she engaged in terrorist activity, she was inadmissible
3 when she got her legal permanent resident status and because
4 she got that illegally, she was not eligible to become a U.S.
5 citizen.

6 And if I could just finally, your Honor, just put
7 up the next slide.

8 I have, it's not really a hypothetical, but this
9 shows what our expert witness is going to testify to and in a
10 moment I'm going to show you the next slide, and I'm going to
11 take out what is underlined, which is the specific charges.
12 But this is what our expert, who is also a fact witness, is
13 going to testify to. Defendant's arrest, charge, and
14 conviction and imprisonment for membership in the PFLP, that
15 was Count One, and participation in the bombings that killed
16 two civilians and destroyed part of the British Consulate, were
17 material and satisfied the procurement element because they
18 could have supported a decision by immigration officials that
19 the defendant was not eligible for citizenship because she
20 obtained her permanent resident status illegal given she had
21 engaged in terrorist activity.

22 The next slide takes the specific charge out.
23 It's doing what Mr. Deutsch wants us to do, and it's, and in
24 its place it's including the term "a felony", and you can even
25 put "a serious felony", but if you read this conclusion now,

1 defendant's arrest, charge, conviction, and imprisonment for a
2 felony or a serious felony were material and satisfied the
3 procurement element because they could have supported a
4 decision by immigration officials that defendant was not
5 eligible for citizenship because she had obtained her permanent
6 resident status illegally given she had engaged in terrorist
7 activity.

8 That is an incorrect statement, because a felony,
9 or a serious felony does not necessarily mean that an
10 individual has engaged in terrorist activity and that's what
11 our expert is basing his testimony on, saying that the legal
12 permanent, that the permanent residence was illegal.

13 THE COURT: Okay. Your time is up.

14 MR. JEBSON: Thank you.

15 MR. DEUTSCH: Judge, first of all, I did not
16 disagree to stipulate. I just felt the stipulations that they
17 were asking for were beyond what I could agree to at that time.

18 But here's the problem here. All these things
19 that counsel has argued that she was engaged in terrorist
20 activity, that she's ineligible because she was a terrorist,
21 that she was a member of the PFLP, which, in 1969. They were
22 designated as a terrorist organization in 1995. So, if
23 someone was a member of an organization 25 years prior, does
24 that make them a terrorist?

25 THE COURT: Okay. That's the next motion, isn't

1 it.

2 MR. DEUTSCH: I don't know. That's an interesting
3 question.

4 But the problem is all these facts are facts that
5 are subject to challenge. So once they put an expert on saying
6 she would not have been eligible because she was involved in
7 terrorist activity, what do they base that on? They base it on
8 a determination by an Israeli military court which
9 systematically tortures people and has army officers as judges.
10 That's all going to be open for question. Every issue that
11 they're now saying is a fact is going to be challenged by the
12 defense. She was not involved in any terrorist activity. She
13 was not involved in a bombing. She was not a member of the
14 PFLP. She is not a terrorist, and she is not involved in any
15 terrorist activity.

16 And we intend to put on evidence as to every one
17 of those facts, because we dispute each one of those facts.

18 So they're taking a case which is a one count
19 indictment which simply says that she willfully lied in order
20 to get her --

21 THE COURT: Okay. Mr. Deutsch, let me just tell
22 you this right now, and both sides, we're not going to retry
23 her case that she had back 40 years ago.

24 MR. DEUTSCH: Exactly.

25 THE COURT: We're not retrying that case. We're

1 going to try this case. So a lot of the things that both
2 sides are talking about, I'm not going to let in. Because
3 we're not going to go through everything she went through 40
4 years ago.

5 MR. DEUTSCH: I agree, judge.

6 THE COURT: This is not a chance to --

7 MR. DEUTSCH: So that's why I'm saying, let's
8 figure out a way to limit the evidence that the government
9 seeks to put in so it does not open the door to calling her a
10 terrorist, saying she's involved in bombings, yes, she was
11 convicted by a military tribunal, Israeli tribunal.

12 If they're going to put on that she's a terrorist
13 and involved in terrorist activity and bombings, then we have a
14 right to say it's not true. Just because some occupation court
15 found that 45 years ago, 45 years --

16 THE COURT: Mr. Deutsch, let's move on to that
17 next motion that you have, which is to exclude the reference to
18 the defendant, reference to the defendant as a terrorist, or
19 that she was a member of a terrorist group or involved in
20 terrorist activity. That's docket entry 61.

21 So your 10 minutes starts now.

22 MR. DEUTSCH: Okay. Here's the government's
23 claim, that she was a member of a nationalist organization, one
24 of several that were resisting occupation, which is legal under
25 international law. You have the right to resist an illegal

1 occupation. But she was a member of a nationalist group which
2 30 years later was determined by the U.S. Secretary of State to
3 be a foreign terrorist organization. Thirty years after she
4 was allegedly involved with this group that this group is
5 designated as a terrorist organization.

6 Now it seems to me that that's somewhat of a ex
7 post facto type of finding there. To put on that because in
8 1995 the Secretary of State designated that the Popular Front
9 for Liberation of Palestinian to be a terrorist group, by the
10 way, every one of the nationalist groups that are involved in
11 the Palestinian movement are on the list. The Palestinian
12 liberation organization, Hamas, everyone of them are on that
13 list. They put them all on the list.

14 But her involvement at the age of 22 as a college
15 student was in 1969 according to the government. So how do we
16 now all of a sudden call her a terrorist and say she's part of
17 a terrorist group, which wasn't a terrorist group. Even the
18 Israelis back then didn't call it a terrorist group. They
19 called it an illegal group. She was part of an illegal group
20 and that's what her indictment even by the military court says
21 she was part of an illegal group.

22 If we interject and have a witness come on and say
23 she would have been excludable because she was a member of a
24 terrorist group or involved with terrorist activity, that's got
25 to be challenged. I mean, how as a defense attorney can I not

1 question that. So that puts all that evidence in. What is a
2 terrorist group? Do people have a right to resist occupation?
3 Was she part of the group? Did she resist? Was she a bomber;
4 was she not?

5 I agree with you. We don't want to try a case
6 that's 45 years old. So we have to figure out a way to limit
7 the evidence so it's not prejudicial and it doesn't open the
8 door to a defense that does raise a lot of issues.

9 THE COURT: All right.

10 MR. JEBSON: Your Honor, much of my argument is
11 similar to my argument with relation to the specific crime, but
12 I would like to address the distinction between the PFLP being
13 designated, I believe, is in, '95 or '96, and the statute that
14 makes someone inadmissible.

15 So let's first go to 2004 when the defendant
16 applied and became a U.S. citizen.

17 THE COURT: Okay. Okay. Go ahead, I'll listen
18 to you first.

19 MR. JEBSON: So that is relevant for the issue of
20 materiality. Because when USCIS is determining whether or not
21 a conviction and arrest or whatever is important, they look at
22 their world on that day, and if they saw her conviction for
23 these bombings on behalf of the PFLP at that time they were
24 designated, so that would ring their bell or draw their
25 attention to this issue.

1 And remember for it to be material it has to have
2 a tendency to influence or capable of influencing their
3 decision.

4 THE COURT: Let me just ask you this, though.
5 Mr. Deutsch's point is that even if you say she was convicted
6 of being involved in an illegal organization back in '69 or
7 '70, what proof or evidence do you have that she continued to
8 be a member so as to fall under that destination of terrorist
9 after the United States declared that group a terrorist group?

10 MR. JEBSON: Right. I will go right back to this
11 definition that was enacted in 1990.

12 And what's important about the terrorism term is
13 that it specifically relates to whether or not the defendant
14 obtained her permanent residency status legally. And in 1995
15 when she applied, this law was enacted.

16 And if we go to the next slide.

17 It's someone who had, in the past at some time, so
18 it, in 1995 looking back at that time had someone prepared or
19 planned a terrorist activity? Had someone gathered information
20 of, on potential targets? Had someone committed a terrorist
21 act?

22 At that time this law was in place and the
23 defendant had done that activity. So in 2004 when the
24 immigration officials are making their initial determination,
25 did she obtain her legal permanent resident status legally,

1 they would look at this statute, and, and we have a witness who
2 is going to say she was not eligible for citizenship because
3 she did not obtain her legal permanent resident status legally
4 because she had engaged in terrorist activity, and she had
5 engaged in terrorist activity -- well, proof of that is her
6 conviction that she on behalf of the PFLP or even in an
7 individual capacity had planted these bombs, had prepared for
8 the bombing, and it goes back to the, Mr. Deutsch's request to
9 keep out the term terrorist. Congress created that term. Our
10 expert has to use that term because that, because that's what
11 makes her permanent resident status illegal, which makes her
12 procurement of citizenship illegal.

13 If he cannot use the word terrorist, than he
14 cannot tell the jury that she was, that she obtained her legal
15 permanent resident status illegally, because the way she
16 obtained it illegally was that she had engaged in terrorist
17 activity.

18 Did I answer your question?

19 THE COURT: Well, that might be your best answer.
20 I'm still struggling with how she can be called or fall under
21 this statute when her conduct was 25 years beforehand.

22 MR. JEBSON: Because this, because this statute
23 reaches conduct everything that happened beforehand.

24 THE COURT: And where does it say that?

25 MR. JEBSON: Well, I actually have the statute

1 itself, this is just a quote from it.

2 THE COURT: I'm just curious, because I would
3 like to see it if it has a retroactive application as you say.

4 MR. JEBSON: And it does and I will provide that to
5 you, but as a matter of law it has to. Because this is what
6 happens. Someone applies for an immigrant visa to become a
7 legal permanent resident. So they're knocking on the U.S. door
8 and saying, please let me in. The immigration officials say
9 you can come in as long as you don't fit within any of these
10 categories, and one of these categories is in the past have you
11 engaged in terrorist activity.

12 So it reaches only conduct in the past and in this
13 case the, if the defendant had told the truth, they would have
14 seen when she got her permanent resident status that she had
15 committed an act of terrorist activity. She had prepared or
16 planned, by definition talks about conduct that has already
17 happened.

18 THE COURT: So you're saying the retroactive
19 effect is found in 8 USC 1182.

20 MR. JEBSON: Right.

21 THE COURT: Are there any other sections that you
22 are referencing that talks about retroactive?

23 MR. JEBSON: I can get that to you. I don't have
24 it right now.

25 THE COURT: Is it in that particular statutes, 8

1 USC 1182?

2 MR. JEBSON: 1182 deals with those provisions that
3 make people inadmissible. I don't know if the section where
4 congress says what it applies to is in that specifically, in
5 that section or another part of the Immigration and Nationality
6 Act, but I will provide that to you.

7 But, your Honor, I would just -- in closing I
8 would like to highlight that the term that Mr. Deutsch wants to
9 make taboo is a term that the U.S. Congress said has to be
10 considered when someone is applying to become a legal permanent
11 resident, which is the number one or the first qualification to
12 be a U.S. Citizen. So that kind of relates also to the 403
13 argument. It cannot be prejudicial if congress said it's
14 something that has to be considered.

15 And we don't intend to get up at trial and say and
16 call her a terrorist. The only way that we will use that term
17 is in reference to the immigration laws and that's how
18 immigration would have determined whether or not she was
19 eligible for U.S. Citizenship.

20 Thank you.

21 MR. DEUTSCH: Judge, here's the contradiction.
22 When they say she lied about a conviction or an imprisonment or
23 arrest, the circumstances of the imprisonment or conviction or
24 arrest really aren't relevant. Was she convicted; was she
25 arrested; was she in prison? It doesn't matter whether she was

1 illegally convicted or not. I can see that argument. So we
2 don't get into the facts of her trial, etcetera, but if they
3 then put in that she was ineligible because she engaged in
4 terrorist activity, then we have a right to challenge that
5 because we have a right to say, they're making a factual
6 argument that she, the reason that she was not eligible is that
7 she actually engaged in terrorist activity and that has to be
8 challenge because they're going to say, well, she was found
9 guilty by the, of that by a military tribunal and we're going
10 to say she didn't have a fair hearing and she wasn't involved
11 in that.

12 So that issue is an issue that has to be
13 challenged if they're going to put it in that way.

14 The issue of whether she was in prison in Israel,
15 yeah, she was in prison in Israel and there's no question about
16 that, or even if she was convicted, assuming that the Court
17 decides that that conviction is legitimate and can come in, you
18 don't have the right really to go behind that conviction, but
19 once you say she was engaged in terrorist activity, then we
20 have to challenge that. We have to say, no, she wasn't, and
21 she can say that and we can show that the, that the finding of
22 terrorist activity was illegitimate, that she was tortured and
23 confessed to that, and that the Court is, that the military
24 court really didn't give her a fair chance.

25 So that's why I see a problem with this issue

1 about terrorist.

2 It is a -- this witness is going to come up here
3 and base his determination that she was engaged in terrorist
4 activity on the finding of the military court 45 years ago and
5 he doesn't, if he has other evidence that she's engaged in
6 military, in terrorist activity, they don't, because it's clear
7 that she went to prison and that she's been living here and she
8 hasn't been arrested here for anything.

9 So, I just don't understand how they can -- and
10 that's why I wouldn't stipulate. Because when I said I'd
11 stipulate, then they start saying, but we're going to put in
12 that she was engaged in terrorist activity and she was a member
13 of a terrorist organization, and I said, well, I'm not going to
14 agree to that.

15 THE COURT: Okay. I think we're going to have to
16 stop here, because I did promise Judge Freidman that I would
17 let Mr. Tukel come to his courtroom no later than 12:30 and if
18 we start another argument on another motion, I'll go over and I
19 want to keep my promise to Judge Freidman about letting Mr.
20 Tukel go.

21 So we're going to break for lunch now and we will
22 continue at 2 o'clock.

23 And, I guess, I'm just curious, do you have Ms. --
24 I forget what her name is.

25 MR. DEUTSCH: That's "Fabri", judge.

1 THE COURT: Yes.

2 MR. DEUTSCH: She's here to testify.

3 THE COURT: All right. We'll be in recess until
4 2 o'clock.

5 MR. TUKEL: Thank you, your Honor.

6 MR. DEUTSCH: Thank you, judge.

7 THE CLERK: All rise. Court is in recess.

8 (At 12:19 p.m. to 2:00 p.m. court in recess)

9 THE CLERK: All rise. The United States District
10 Court for the Eastern District of Michigan is now in session.
11 The Honorable Gershwin A. Drain presiding.

12 You may be seated.

13 Recalling Case Number 13-cr-20772. The United
14 States of America versus Rasmieh Odeh.

15 Counsel, place your appearances on the record.

16 MR. TUKEL: May it please the Court, Jonathan Tukul
17 on behalf of the United States.

18 MR. JEBSON: I'm Mark Jebson on behalf of the
19 United States, your Honor.

20 MR. DEUTSCH: Michael Deutsch on behalf of the
21 defendant.

22 MR. FENNERTY: James Fennerty on behalf of the
23 defendant, Rasmieh Odeh.

24 MR. GOODMAN: William Goodman on behalf of the
25 defendant.

1 THE COURT: I think what we have left is two
2 motions by the government.

3 The government's motion to exclude evidence
4 relating to claims of innocence and allegations of terror.

5 So I'm not sure who's arguing that one, but --

6 MR. JEBSON: Thank you, your Honor.

7 THE COURT: -- you're on.

8 MR. JEBSON: If possible, I would like to reserve a
9 couple minutes for rebuttal, please.

10 THE COURT: All right.

11 MR. JEBSON: Thank you, your Honor.

12 Judge, it's the government's position that, and we
13 ask the Court to preclude the defendant from introducing
14 evidence to show that she was innocent of the crimes that she
15 was convicted of in Israel or that she was tortured after
16 arrest in Israel.

17 It is our position, your Honor, that those facts,
18 or that evidence, rather, has no tendency to make a fact of
19 consequence in this case more likely than not.

20 The jury that is going to be impanelled to hear
21 this case is not going to be sitting as an immigration officer
22 to decide whether or not the defendant should be granted U.S.
23 Citizenship. She's already been granted U.S. Citizenship.
24 She's being charged with obtaining that illegally. The jury is
25 going to decide whether or not she did in fact obtain that

1 illegally, and it's the government's theory of the case that
2 she did that by virtue of lying on her application to become a
3 U.S. Citizen, in that she lied that she had never been
4 arrested, that she had never been charged, convicted, or
5 imprisoned.

6 And any evidence to show that she was either
7 innocent of those crimes or that she was tortured after arrest
8 have no bearing on that.

9 An innocent person who's been arrested has still
10 been arrested. An innocent person who has been charged has
11 still been charged. The same with convicted and imprisoned.

12 The issue of innocence or how she was convicted
13 were issues for the immigration officials to consider during
14 the naturalization process.

15 So, in other words, your Honor, if the defendant
16 had revealed that she had been arrested, that she had been
17 charged, convicted or imprisoned, then during those
18 naturalization proceedings she would have had the opportunity
19 to explain to the immigration officials why those facts should
20 not be held against her in that, that it should not make her
21 not eligible for citizenship.

22 And that is how we are going to elicit from our
23 expert witness. We are going to ask our expert a hypothetical:
24 If the defendant had answered truthfully on this application,
25 yes, she had been arrested, convicted, imprisoned, sentenced,

1 what would have happened?

2 And he is going to testify that they would have
3 then embarked on an investigation both getting the defendant's
4 side of the story, as well as her own independent investigation
5 to determine whether or not she was eligible to become a U.S.
6 Citizen.

7 So that is an issue for the immigration officials.
8 It's not for the jury to have a mini trial to determine whether
9 or not the defendant actually did commit these crimes; did
10 plant these bombs.

11 We are not opposed, your Honor, to the defendant
12 raising those hypothetical questions to our witness as well.
13 For instance, what, what would you have done if the defendant
14 had told you that she was innocent of these crimes, that she,
15 that her confession was torture-induced?

16 We're not opposed to that. That keeps the issue
17 narrowed to what effect it would have had on U. S. Immigration
18 in either approving or denying the application. And it does
19 not turn it into some confusing mini trial where the jury is
20 left unsure of what it's supposed to decide. Are they supposed
21 to decide whether or not she actually committed these crimes of
22 the bombing or are they here just to decide whether or not she
23 lied on her application?

24 Well, they're here to decide whether or not she
25 lied on her application, and with that the government has to

1 prove that those lies were material and that they resulted in
2 her procuring her citizenship.

3 And, judge, I would note, and we put this in our
4 memo, that there are, there are questions on the, on the
5 naturalization application that we do not charge as a lie.
6 And it's up on the screen.

7 Question Nine says, have you ever been a member of
8 or associated with, and one of them is a terrorist
9 organization. We did not allege that as a lie on purpose
10 because if we did that we would have to prove that she actually
11 was a member, not that she was arrested for it, that she was
12 convicted for it, but we would actually have to take it one
13 step further and prove that she actually was a member.

14 We intentionally did not charge that because we
15 did not want to turn this into a mini trial and that's why we
16 filed our motion to preclude the introduction into evidence
17 that she was innocent or that she was tortured.

18 THE COURT: Are you going to be admitting
19 evidence of torture?

20 MR. JEBSON: We do not intend to unless it is to
21 rebut some claim. But, no, we do not intend to submit
22 evidence of torture, and Mr. Tukul mentioned this, your Honor,
23 we have no intention of submitting the confessions that the
24 defendant gave to the Israelis. I believe, it is her intention
25 that those were torture-induced. We are not going to

1 introduce those.

2 And based on Mr. Deutsch's statements, he's not
3 contesting that she was arrested, convicted, charged. So we
4 want to keep the trial narrowed on those issues. Did she lie
5 about the arrest, the conviction, charge, or in prison and was
6 it material and did she procure it. As simple as that.

7 Another issue, your Honor, even if the evidence is
8 of innocence and torture is relevant, which we do not believe
9 it is, but even if the Court finds it is, we believe that it's
10 substantially outweighed by prejudice in that it's going to
11 confuse the jury.

12 In our brief we submitted some examples, like,
13 what does the jury do if we all believe that she lied but we
14 also believe that she was innocent of the bombings and was
15 tortured.

16 And then we give some other examples: What if
17 some of us believe that she was, that she lied but all of us
18 believe that she committed the crimes and none of us think she
19 was tortured.

20 And there could be a thousand, not a thousand,
21 many examples of that, and we're trying to avoid that, your
22 Honor, to keep it what the case is about.

23 Did she lie, was it material, and were, and did
24 she procure her citizenship by virtue of that.

25 Thank you.

1 THE COURT: Okay. I think you've got two minutes
2 in rebuttal if you choose.

3 MR. JEBSON: Thank you very much.

4 MR. DEUTSCH: I don't know if the Court sees the
5 contradiction in this argument.

6 The government says they did not charge the
7 defendant with lying as, that she was a member of a terrorist
8 organization, because that would open up a factual dispute as
9 to whether or not she was a member of a terrorist organization.

10 At the same time they tell you this morning that
11 they want to show that she engaged in terrorist activity so
12 they could prove that she would not be eligible to get her
13 green card.

14 So, on one hand they want to keep it narrow and
15 they didn't charge her with being a member of a terrorist
16 organization, and on the other hand they're saying they want,
17 they want to use the conviction by the military court as res
18 judicata that she was involved in terrorist activity. And
19 that's a basic contradiction.

20 The defendant is charged with willfully lying on
21 her citizen, on her citizen application for the purpose of
22 getting citizenship.

23 They somehow want to go back in time and litigate
24 what immigration would have done with her claim if they had
25 known that she was involved with a terrorist organization or

1 terrorist activity.

2 That's not the inquiry in this -- this is a
3 criminal case. It's not an immigration case. The criminal
4 case says did she willfully lie in order to get her
5 citizenship.

6 The issue is what was her state of mind when she
7 answered those questions at the time she applied for
8 citizenship. That's the only issue here. I agree.

9 THE COURT: No, there's some other issuances.
10 There's that issue of materiality.

11 MR. DEUTSCH: Yes, there is an issue of
12 materiality.

13 THE COURT: You want to forget that a little bit.

14 MR. DEUTSCH: Materiality doesn't open the door to
15 saying that she wouldn't have gotten her citizenship because
16 the lie was engaging in terrorist activity, because then that
17 opens the door to innocence and torture. I mean, because how
18 are they going to prove she was engaged in terrorist activity?
19 By using a conviction of the military tribunal? Saying we have
20 to give full faith to that conviction. That can't be. That's
21 not fair.

22 I mean, I can understand where they're showing
23 that she was convicted, but once they start saying what she did
24 and that was terrorist activity, then that opens the door to us
25 challenging that and that's where it goes to innocence. That

1 opens the door to innocence.

2 Secondly, you have to decide whether or not the
3 PTSD expert, and that's coming up next, has testimony relevant
4 to Ms. Odeh's defense.

5 Even under the circumstances that you wouldn't
6 necessarily decide that in our favor, which I think you will,
7 Ms. Odeh has the right to testify in this courtroom as to her
8 defense and she's going to say that she was tortured and that
9 affected her and, of course, I don't see how the government can
10 keep out what happened to her as a result of her arrest and who
11 she is and what her state of mind is. She can testify to that
12 certainly.

13 So, I think it's inevitable that the issue of
14 torture in this case, because that's what happened to Ms. Odeh
15 and if she takes the witness stand, she has the right to talk
16 about who she is and what happened to her.

17 So, I know they want to keep that out and they
18 don't want that to get to light of day, but, in fact, there's
19 no way they can avoid it.

20 And indeed if she suffers from PTSD, which our
21 expert says she most certainly does, then it is relevant to
22 what her state of mind was when she took the, when she answered
23 those questions on the N-400 form.

24 So, if they want to keep out the issue of
25 innocence, then I suggest that they cannot put in that she

1 engaged in terrorist activity, because I think that opens the
2 door to us saying that she was innocent and she never engaged
3 in terrorist activity.

4 MR. JEBSON: Judge, we have no intention to
5 introduce evidence to show that she had engaged in terrorist
6 activity. That term is relevant -- we have to show that it
7 was material and that she procured it. And in order to show
8 she procured it, we have to show that she wasn't eligible for
9 citizenship. The reason she was not eligible for citizenship
10 is because so had engaged in terrorist activity. That's a
11 determination that the immigration officials, our expert, will
12 testify to. He will testify that in his expert opinion she
13 was not entitled to citizenship because she had engaged in
14 terrorist activity.

15 We don't intend to put on the evidence to show how
16 she, how she engaged in terrorist activity. Under Rule 703 the
17 expert can rely on evidence that has not been admitted.

18 So what he will do is he will review other
19 evidence that the jury will not see and he will determine based
20 on that and based on her convictions whether or not she was
21 eligible for citizenship.

22 We have to prove that. That is one of the
23 elements of the crime is procurement. Just because she lies
24 that's not enough. It has to be material and she has to
25 procure it.

1 We don't intend to bring witnesses in to show that
2 she actually committed the bombings, because it's not relevant.
3 What's relevant is did she lie, was it material, and did she
4 procure it. And the way that we show that she procured it is
5 that she was not eligible for citizenship because she engaged
6 in terrorist activity.

7 THE COURT: Okay. I just have a question.

8 MR. JEBSON: Sure.

9 THE COURT: Does she have to be engaged in
10 terrorist activity to be ineligible for citizenship?

11 MR. JEBSON: She -- let's see if I can answer your
12 question, your question this way. Because --

13 THE COURT: Okay.

14 MR. JEBSON: -- unfortunately, it's not a simple
15 yes or no. What makes her not eligible for citizenship is that
16 she was not eligible to immigrate. She was not eligible to
17 immigrate because she had engaged in terrorist activity.
18 There's another provision --

19 THE COURT: Why do you have to say terrorist
20 "activity"? Could you just say she was convicted of being
21 involved in a bombing?

22 MR. JEBSON: Yes. Yes. The -- the -- our expert
23 would -- yes -- that is fine, and as long as our expert is not
24 open to impeachment by saying, well, just because you engage in
25 a bombing doesn't mean you're not eligible to immigrate, but,

1 yes, if it's limited to, our expert could testify to that if
2 you're convicted of a bombing then that would make you not
3 eligible. Yes.

4 Thank you.

5 THE COURT: All right.

6 All right. I think the last motion has been
7 resolved, that's the government's motion to exclude claims of
8 selective prosecution, and now, I think, I already made a
9 decision on that issue, so I would preclude the government
10 from, excuse me, I'd preclude the defendants from making
11 allegations of selective prosecution.

12 THE COURT: Okay. Let's do the evidentiary
13 hearing.

14 MR. DEUTSCH: Judge, I just want to see if I
15 understand that, your idea of the ground rules for this
16 evidence hearing.

17 THE COURT: Okay.

18 MR. DEUTSCH: I know it's a 104 type hearing, a
19 preliminary determination, and I've read your opinion. And I'm
20 wondering whether you want me to qualify the expert, to get the
21 expert's background, her history, her work, or do you want me
22 to get right to the issue of, you know, her work with the
23 defendant in this case?

24 I just -- it seemed like you were saying she, you
25 found she was an expert and PTSD was an area that someone could

1 have expertise on, but what you were concerned about was the
2 link between her testimony, her expert opinion and the defense
3 in this case.

4 But, I mean, I'm happy to put it on and just go
5 through it all or do whatever you want.

6 THE COURT: Well, I think the government asked
7 for an evidentiary hearing challenging the ability to give an
8 opinion on this.

9 So what do you have to say about that, Mr. Tukul?

10 MR. TUKEL: Your Honor, for purposes of this
11 hearing I don't think Mr. Deutsch needs to do that. I would
12 stipulate for purposes of this hearing that the witness is an
13 expert.

14 Although, I would like to be able to ask certain
15 questions about her background just because I think it might
16 become relevant to her opinion.

17 But, in terms of qualifications, I don't think we
18 need to spend time with that.

19 MR. DEUTSCH: Okay.

20 THE COURT: All right. So, I'll go along with
21 that.

22 MR. DEUTSCH: Okay.

23 THE COURT: For purposes of this hearing, she's
24 qualified to give an opinion on PTSD.

25 MR. DEUTSCH: I would call Dr. Mary Fabri to the

1 witness stand.

2 THE COURT: Okay.

3 All right, ma'am, come up to the front here and my
4 case manager will give you an oath.

5 THE CLERK: Raise your right hand. Do you solemnly
6 swear or affirm that the testimony now pending before this
7 court will be the truth, the whole truth, and nothing but the
8 truth so help you God?

9 DR. FABRI: Yes, I do.

10 D R. M A R Y F A B R I,
11 called by the Defendant at 2:19 p.m., sworn by the clerk,
12 testified as follows:

13 THE CLERK: Please state your name for the
14 record.

15 You can have a seat.

16 THE WITNESS: My name is Dr. Mary Fabri.

17 DIRECT EXAMINATION

18 BY MR. DEUTSCH:

19 Q. And could you just tell us your occupation?

20 A. I'm a clinical psychologist.

21 Q. And when did you begin your work as a clinical
22 psychologist?

23 A. Well, I was licensed in 1988 and so that's when I could
24 call myself a clinical psychologist.

25 MR. DEUTSCH: Just so the record is complete, I'm

1 going to just mark her CV and put it in evidence --

2 THE COURT: All right.

3 MR. DEUTSCH: -- as Defendant's 1.

4 (Whereupon Defendant's Proposed Exhibit 1 identified
5 for the record)

6 Q. (By Mr. Deutsch, continuing) Let me show you what's been
7 marked as Defendant's 1 for identification. Could you tell the
8 Court what that is?

9 A. This is a short version of my CV.

10 MR. DEUTSCH: Thank you.

11 Q. (By Mr. Deutsch, continuing) Now is there an area of work
12 that you specialist in as a clinical psychologist?

13 A. Yes. I've specialized in working with survivors of war
14 trauma and torture.

15 Q. And how long have you been doing that work?

16 A. More than 25 years.

17 Q. And does your CV reflect the work that you've done in that
18 area?

19 A. I believe so.

20 Q. And does it also reflect the writings you've done in that
21 area?

22 A. Yes. There's a publications list.

23 Q. Now, in the course of -- did you have occasion to
24 interview and evaluate the defendant, Ms. Odeh, in this case?

25 A. Yes. Mr. Fennerty referred her to the Kovler Center.

1 Q. And what is the Kovler Center?

2 A. The Marjorie Kovler Center is a treatment center for
3 survivors of torture.

4 Q. And how long has that center existed?

5 A. The Kovler Center started in 1987. It was the third
6 center in the U.S.

7 Q. And how long have you been affiliated with the Kovler
8 Center?

9 A. Since the beginning. I was one of the first six clinical
10 psychologists that volunteered to begin to do the work.

11 Q. And could you tell us briefly how many hours and times
12 you've, you interviewed Ms. Odeh?

13 A. Yes. I met with Ms. Odeh six times for approximately
14 three hours each time, and it was over a period of four months.

15 Q. And in addition to yourself and Ms. Odeh was anyone else
16 present during these interviews?

17 A. Yes. Five of the six sessions there was an interpreter
18 present.

19 Q. And can you tell us what the process of your sessions and
20 evaluation was with Ms. Odeh?

21 A. Sure. In the first session we meet to become familiar
22 with each other. I asked Ms. Odeh what she'd like me to know
23 about herself, and we ended up doing a timeline of her life and
24 the experiences she had.

25 The second session an interpreter wasn't

1 available. We still met, because her English is passable, and
2 we continued to talk about those life experiences and about
3 what a structured assessment would entail, and at the end it
4 was up to her to decide whether she wanted to enter that
5 process.

6 She made that decision to enter and so the next
7 four sessions involved a structured assessment process using
8 the clinical, clinician's administered PTSD survey.

9 Q. What does that consist of?

10 A. It included a structured interview asking about past
11 experiences, traumatic experiences. It involves giving a life
12 events checklist. It involves going through possible symptoms
13 and asking about her experiences and what it's related to.

14 So all the symptom that are part of PTSD and does
15 she have them, when they're active, when they're not active,
16 are they severe, are they not severe, and just going through it
17 and asking her also to relate them to different life
18 experiences.

19 It, you know, it's a very detailed -- in a
20 addition to that I gave her the Harvard Trauma Questionnaire
21 and also the Hopkins Symptom Checklist.

22 The Harvard Trauma Questionnaire has been used
23 cross-cultures in many different countries. It asks very
24 specifically about trauma events and also torture events and
25 there's a scale that helps you assess PTSD.

1 The Hopkins Symptom Checklist is related to
2 depression and anxiety symptoms.

3 Q. Now, what was the nature of the trauma that Ms. Odeh
4 discussed with you?

5 A. Well, over her lifetime there were multiple traumatic
6 events, but the focus really was around her arrest and period
7 of detention and questioning.

8 And during that 45-day period that she was
9 detained at one site, she described multiple ongoing
10 experiences of torture. That would included beatings,
11 humiliation, deprivation, sexual violence, electric shock
12 treatment, and also witnessing others being tortured.

13 Q. Now, based on your interviews and testing, do you have an
14 opinion whether Ms. Odeh was truthfully relating her
15 experiences, past traumatic experiences?

16 A. Yes, I do.

17 And part of the reason is the process that we go
18 through as, it, it -- we meet over time because we want to look
19 for consistency in report and so we're looking for credibility:
20 Are the same things being told at different meetings; is it
21 consistent, also, symptomatology, is it consistent with those
22 experiences. We ask the same questions in different ways just
23 to elicit different, see if the responses stay the same.

24 So I found her to be very credible.

25 Q. Any evidence of malingering or exaggerating?

1 A. No, not in my opinion.

2 Q. Based on your interviews and testing, do you have an
3 opinion as to whether or not Ms. Odeh suffers from post
4 traumatic stress disorder?

5 A. Yes. That was my final -- diagnosis was chronic PTSD.

6 PTSD isn't a condition where there's a cure. It
7 can be acute and people recover, but many survivors of severe
8 trauma develop what we call chronic PTSD where there's a
9 vulnerability for it to reoccur at different times when there
10 is stress or reminders of the past trauma.

11 Q. And could you explain how, if at all, PTSD effects the
12 cognitive memory functioning of the brain?

13 A. Sure.

14 Okay. So, when there's a trauma happening, it can
15 be overwhelming and the cognitive part of our brain can become
16 overwhelmed. So if we look at different brain centers, and
17 I'll keep this simple, there is the emotional center, which is
18 the hippocampus. There -- I mean, I'm sorry, the amygdala,
19 which is mediated by work of the hippocampus and the pre medial
20 frontal cortex. They mediate information.

21 So all of us process emotional information through
22 the amygdala and if the hippocampus and the pre medial, the pre
23 frontal medial cortex are functioning well, they'll sensor for
24 us so we don't say or do things that are emotionally reacted.

25 During the traumatic event or, like torture, war

1 trauma, many other things that are intense stress, those
2 mediating parts of the brain become overwhelmed, and so in an
3 experience of torture the memory is encoded in an emotional
4 way, in a very sensory way in the amygdala so that when there
5 are reminders of that past trauma and the memory is recalled,
6 it's recalled in a very emotional intense way without that
7 cognitive processing.

8 Q. Now, when you evaluated Ms. Odeh, was she exhibiting
9 symptoms of PTSD?

10 A. Yes.

11 You know, whether fortunately or unfortunately,
12 during the period I saw her this indictment was very activating
13 for her as well as it was during the Israeli, the most recent
14 Israeli/Gaza conflict.

15 So she was very activated and was having
16 difficulty sleeping, had symptom of anxiety. When we met, she
17 often would break down in tears and we would have to take a
18 break because she was under a lot of distress.

19 She also disassociated at one point where she sort
20 of -- what that means is -- disassociation is like a shutting
21 down of processing current information. And it just meant
22 that she was taking a break from sharing the information, but
23 then would recover and we would decide whether we should
24 continue or wait until the next time to continue.

25 Q. So when somebody is suffering acute symptoms of PTSD, are

1 they more or less likely to cognitively block or filter the
2 past trauma?

3 A. Well, during an acute phase of PTSD the filters, you know,
4 everybody tries to cope. We all try to find ways of coping
5 with our stresses, whether they're extreme or mild.

6 For survivors of severe trauma they work really
7 hard to develop filters that help keep the reminders out so
8 that during acute phases where someone is symptomatic, those
9 filters aren't working very well, and, again, that cognitive
10 processing part is diminished.

11 During periods where someone is not stressed or
12 distressed, those filters work pretty well, and so the filters,
13 what they help do is narrow the focus of someone's
14 consciousness or awareness.

15 So, during relatively good functioning, someone
16 would have effective filters working.

17 Q. Now, the cognitive filtering process, does it involve a
18 lack of conscious self-reflection or a lack of self-awareness?

19 A. No. It's, actually over time it becomes automatic. In
20 the beginning when trauma survivors are trying to learn coping
21 strategy, if they're in therapy, they will get suggestions from
22 their therapist, but even if you don't go into therapy, and
23 obviously, not everyone goes into therapy, you develop your own
24 coping strategies and those coping strategies help you narrow
25 your focus and keep those bad memories at bay.

1 And so, you know, that's what happens.

2 Did I answer your question?

3 Q. Yes. I just want to follow up.

4 So someone suffering from PTSD do they know at
5 some level they are, are they conscious of filtering their
6 memory?

7 A. No, because it's automatic.

8 Q. Now, someone who has the condition of PTSD, do they know
9 what they're doing but they can't control their conduct?

10 A. "Do they know what they're doing but they can't control
11 their conduct?"

12 Q. In other words, is there an irresistible impulse?

13 They know that they're blocking their memory, but
14 they can't help it?

15 A. No, it's automatic. It's not this intentional, I'm not
16 going to do that. It's an automatic. They've taught
17 themselves to narrow their focus to keep the painful memories
18 back.

19 Q. So, it's not a conscious rejection of the memory?

20 A. No.

21 Q. And it's not something that they know that they have the
22 memory but they can't control it?

23 A. No.

24 Q. Now, did Ms. Odeh tell you why she answered "no" to the
25 questions about her arrest, conviction, and imprisonment on her

1 citizenship application?

2 A. Yes. What she told me was that when she read the
3 question, she thought it meant during her time living in the
4 U.S.

5 Q. Now, in your opinion would a person with chronic PTSD
6 typically interpret a question in a way in which your brain
7 would cognitively filter recalling past trauma?

8 A. There's a strong possibility that that would be a
9 protective way that narrowed focus would have them look at the
10 question in a narrow way so that it would be interpreted,
11 during my life in the US, not to include, my life back home
12 where these terrible things happened to me.

13 Q. So, the fact that Ms. Odeh interpreted the questions on
14 her citizenship application to exclude her traumatic past, is
15 that consistent with someone suffering from PTSD?

16 A. Yes, it could be.

17 MR. DEUTSCH: I have no further questions.

18 THE COURT: Okay.

19 CROSS-EXAMINATION

20 BY MR. TUKEL:

21 Q. Ma'am, my name is Jonathan Tukel. I'm going to ask you
22 some questions if I could.

23 A. Sure.

24 Q. You said you met with the defendant a total of six times?

25 A. Correct.

1 Q. Could you tell us the dates during which you met, just the
2 time frame?

3 A. April through July.

4 Q. Of this year?

5 A. Yes.

6 Q. For your meetings, what materials were prepared?

7 What sorts of things did you put together to work
8 with?

9 You talked about a timeline?

10 A. Yes. In our first session one of the techniques to help
11 put people at ease is not to jump right into what bad things
12 happened to you, but to talk about your whole life, you know,
13 it's like a narrative.

14 Q. So what written materials were put together in order for
15 you to do this diagnosis?

16 A. Written materials? I'm sorry.

17 Q. Well, the timeline was written, wasn't it?

18 A. Yeah. It's in my personal notes.

19 Q. Okay. What other types of notes did you make?

20 A. It's -- well, it was my personal notes during our first
21 meeting and then I followed the CAPS, the clinical administered
22 PTSD scale.

23 Q. Did you ultimately write any reports or any memoranda?

24 A. Yes. There's, there's a psychological affidavit that I
25 believe is submitted.

1 Q. The one that was filed with the court?

2 A. Yes. Uh-huh.

3 Q. Other than that, did you write any other diagnostic notes
4 or anything?

5 A. Just the forms that are a part of the CAPS and then my
6 personal notes from the first session.

7 Q. But when you say personal notes, can you explain does that
8 go into a file for each patient; what gets done with those?

9 A. It's handwritten.

10 Q. And then are they -- I mean, is that a business record
11 that you make for each patient or was there -- it's not like
12 something personal. You're doing it as part of your clinical
13 practice, correct?

14 A. Right.

15 But, it was handwritten, and it wasn't part -- so,
16 then there's the intake forms and the information that are in
17 my personal notes are recorded in the intake forms.

18 Q. And then what happens with your personal notes after?

19 A. I keep them in a file that, it's personal, separate
20 because most of the information has been recorded into the
21 intake forms, which I also believe is submitted.

22 Q. So those personal notes are available if we wanted to
23 review those?

24 A. I believe so.

25 Q. Where is that file now, I mean, do you have that?

1 A. Do I have it? It's -- well, it's -- well, I have -- I
2 have the report with me but the personal files are at the
3 Kovler Center.

4 Q. What did you review prior to your testimony today?

5 A. Umm, the CAPS and the psychological evaluation.

6 Q. And those are in the same file, then, I take it?

7 A. Yes.

8 Q. Back at your office?

9 A. Uh-huh, yeah, that I believe has been submitted.

10 Q. You mentioned the intake notes?

11 A. Uh-huh.

12 Q. How are those created; who works on those?

13 Is that something the patient fills out --

14 A. No.

15 Q. -- prior to meeting with you?

16 A. No. No. No. No. No. The way the Kovler Center works,
17 first there's a screening interview to, by a case manager to
18 establish the probability that someone's a torture survivor and
19 then they're referred for an intake.

20 Q. When you say "case manager", can you tell me what that
21 person's background is?

22 A. A bachelor's level.

23 And there's four -- it's either four or five
24 questions they ask and then the person who does the intake is a
25 licensed clinician.

1 So I'm the licensed clinical psychologist and I
2 did the intake and then provided the assessment for Ms. Odeh.

3 Q. Okay.

4 MR. TUKEL: Can you show us Page 1 of the defense
5 exhibit.

6 Q. (By Mr. Tukul, continuing) I'm sorry. We had the screen
7 arranged not to be convenient for a witness today, but you can
8 either --

9 MR. TUKEL: May she step down if she needs to see
10 that, your Honor?

11 THE COURT: Sure.

12 Q. (By Mr. Tukul, continuing) If you can't see that --

13 A. That's the release of information.

14 MR. TUKEL: Can you go to the next page, please.

15 Q. (By Mr. Tukul, continuing) Is this what we're talking
16 about for intake notes?

17 A. No.

18 Q. What is this?

19 THE WITNESS: May I?

20 THE COURT: Yes.

21 THE WITNESS: Oh, okay. Okay.

22 Recently the Kovler Center went for electronic
23 records. These are questions that were asked and then get
24 summarized in a form.

25 MR. TUKEL: And then could we see Page 7.

1 THE WITNESS: Right. Those are my notes.

2 Q. (By Mr. Tukel, continuing) So who's writing is this on --

3 A. Mine.

4 Q. So this is something you filled out?

5 A. With Ms. Odeh and the interpreter.

6 Q. Okay. So, you would ask questions and then this is
7 reflecting the information she gave you?

8 A. Right.

9 Q. Is her writing on any of this or is it all your writing?

10 A. No, it's mine. We were having a conversation.

11 Q. Okay. Thank you.

12 What did you review, if anything, other than
13 information that Ms. Odeh gave you?

14 Did you review any materials as part of your work
15 in this case?

16 A. What do you mean; what kind of material?

17 Q. Well, I don't know, anything about her background,
18 anything about the case, any of the discovery that was given to
19 her attorneys?

20 A. No. Because I'm an objective evaluator, and I don't, you
21 know, I want to meet with the client and find out from her in
22 her own words.

23 Q. I wasn't criticizing. I was just --

24 A. No, I'm just explaining to you how the process goes.

25 Q. So, other than notes -- you reviewed the notes with her, I

1 take it, then, after you wrote them down?

2 A. Yes. Yes. To make sure they're accurate. Absolutely.

3 Q. So you reviewed those.

4 Did you review anything else with her that was
5 written?

6 A. The report. I went through it with her.

7 Q. That was the report that you authored, correct?

8 A. Right.

9 Q. The affidavit?

10 A. Yes. The affidavit.

11 Q. Anything else?

12 A. You know, just, you know, we filled out the forms
13 together, the CAPS, clinician -- you know, it asks for input
14 from the client. So we did this together with the interpreter.

15 Q. All right. Other than those forms, did you review
16 anything else about her background or anything about her
17 history, any other materials?

18 A. Not that I recall.

19 Q. Okay.

20 Can you tell us how many times you've testified as
21 an expert?

22 A. Well, in immigration court multiple times.

23 Q. You said "multiple" is that more than ten?

24 A. Yes.

25 Q. More than 20?

1 A. Yes.

2 Q. More than 50?

3 A. That, you know, over a long period of time --

4 Q. But definitely more than 20?

5 A. Yes.

6 Q. In all parts of the country, or in --

7 A. No. In Chicago.

8 Q. Okay. And is that to testify about PTSD specifically or
9 about other --

10 A. It depends. In immigration court I've done assessments
11 and been present and available for being questioned by the
12 attorneys. Sometimes you're sequestered and never actually
13 give testimony, but I've also been an expert witness about PTSD
14 and memory.

15 Q. That's in immigration court?

16 A. Yes.

17 Then I was also an, I evaluated and was an expert
18 witness in the State of Illinois versus Sundus Balwa, which was
19 an Iraqi woman, and I evaluated her separately from the program
20 where she was receiving services.

21 Q. And what was the evaluation to determine?

22 A. About her state during a period of time where she left a
23 disabled child alone.

24 Q. Was that to determine if she was competent to stand trial
25 or for --

1 A. It was an insane defense.

2 Q. I see. Okay.

3 Other than that, the immigration cases and that
4 case, have you testified on other occasions?

5 A. There -- I don't -- the one time I was questioned in DC,
6 Washington, DC, and I can't remember what the office was, but
7 it was related to a case I worked on.

8 Q. Was it a court or was it --

9 A. No, it was an office. It was Sister Dianna Ortiz.

10 Q. I'm not familiar that, can you tell me what that --

11 A. Okay. She's a torture, Sister Dianna Ortiz is an American
12 Nun tortured in Guatemala.

13 Q. All right.

14 When Ms. Odeh came to you, you knew she had been
15 indicted in this case, correct?

16 A. Yes.

17 Q. You had not seen her prior to that time clinically?

18 A. Oh, no.

19 Q. Had you known her, had you ever met her prior to that?

20 A. No.

21 Q. As part of your diagnosis of her, did you ask her about
22 any previous treatment or diagnoses that she had had?

23 A. It was in -- part of the intake is to get a medical
24 history. Yes.

25 Q. Then had she ever had any --

1 A. No.

2 Q. -- psychological evaluation?

3 A. Not that she reported to me, no.

4 Q. And you have no reason to doubt that, correct?

5 A. No.

6 Q. One of the things that you recommended for her after your
7 diagnosis was that she follow a course of treatment, correct?

8 A. Uh-huh. Uh-huh.

9 Q. Is that a yes?

10 A. Yes. I'm sorry. Yes, it is.

11 Q. They have to be transcribed, so...

12 A. Yes.

13 Q. What is the recommended course of treatment?

14 A. Well, because she was very acutely symptomatic, I thought
15 it would be helpful if she saw the psychiatrist. She declined.
16 She doesn't want to take medications is what she told me.

17 And I told her that it was available, not with me,
18 but with, through the Kovler Center she could see a therapist
19 if she wanted to.

20 Q. So, she saw you six times for the diagnosis for this case,
21 correct?

22 A. Yes.

23 Q. And as far as you know, she has not pursued any further
24 treatment?

25 A. Correct.

1 Q. Is that contrary to your recommendation or is it in
2 accordance with your recommendation?

3 A. Well, it was my recommendation to her and often people
4 don't follow through. I mean, that's not, that's not unique
5 to her. People often don't understand therapy.

6 Q. Your recommendation is to continue with therapy, in other
7 words?

8 A. That it wouldn't be continued, because it wouldn't be with
9 me; that counselling would be available to her, therapy would
10 be available to her, that it might be a source of support
11 during this.

12 But, actually, what Ms. Odeh told me is that her
13 community supported her and she really didn't feel the need,
14 although, I, you know, as a psychologist, I feel like there is
15 benefit.

16 Q. Okay.

17 And for whatever reason she's not following that
18 advice?

19 A. Well, it was a recommendation.

20 Q. Recommendation.

21 Is there a difference between recommendation and
22 advice?

23 A. Yeah. I think there is.

24 Q. What's the distinction?

25 A. A recommendation is an option that -- you know, either way

1 she's free to make a decision on her own. I'm not going to...

2 Q. Can you tell me a little bit more about this insanity
3 defense case that you testified about?

4 What was the charge and what was the defense?

5 A. Okay. So, it was an insanity defense. It was an Iraqi
6 woman who had also a very horrible experience, multiple
7 occurrences of exposure and also her own experience of being
8 tortured in Iraq. A lot of it during Saddam Hussein.

9 She was resettled in the U.S. as a refugee. She
10 had a disabled child. She also was in therapy with someone
11 else at a different program and was getting services, but the
12 lawyers contacted the Kovler Center to see if we would do an
13 objective evaluation.

14 I saw her. I can't tell you how many -- it was
15 extended. I saw her many times over a period of time and
16 collected her history, and she was also a very vulnerable woman
17 to these periods of disassociation and also flashbacks, which
18 are neuropsychological events that happen where someone relives
19 the trauma and are not in the here and now.

20 Q. What was she charged with?

21 A. Criminal neglect.

22 Q. Of the child?

23 A. Yes.

24 Q. And what was then -- what was your conclusion?

25 What was your diagnosis?

1 A. That she was suffering from severe PTSD that included
2 symptoms of disassociation and flashbacks and that at the time
3 she left this child alone that she did not have good judgment
4 at all. That she had very poor judgment.

5 Q. What was this person's name, the defendant?

6 A. Sundus Balwa.

7 THE COURT REPORTER: How do you spell that?

8 THE WITNESS: What?

9 Q. (By Mr. Tukul, continuing) Could you spell the last name?

10 A. Oh, sure. Sundus is S-U-N-D-U-S, and Balwa is B-A-L-W-A.

11 Q. What court was that tried in?

12 A. It was in Chicago in 2004.

13 Q. What was the verdict in that case?

14 A. She was found not guilty of criminal neglect.

15 Q. Mr. Deutsch asked you some questions about malingering.

16 Can you tell us what that is, what that means?

17 A. Malingering is when someone is falsely saying that they're
18 suffering from a condition.

19 Q. And so that's something that you try to screen for,
20 correct?

21 A. Exactly.

22 Q. Essentially trying to control for that?

23 A. Exactly.

24 Q. What's the reason that you're trying to control for that?

25 A. Well, one of the reasons is we want to have honest

1 evaluations and also provide our services to people who really
2 need them.

3 So we want to make sure that someone is a torture
4 survivor.

5 Q. All right. So sometimes people will fabricate or
6 exaggerate?

7 A. That's a possibility.

8 Q. That's what you're trying to figure out anyhow?

9 A. Right.

10 Q. You were involved in a resolution to have Chicago declared
11 a torture free zone, correct?

12 A. Yes.

13 Q. And part of that talks about that on some people there are
14 physical scars or marks --

15 A. Yes.

16 Q. -- that demonstrate they've been tortured?

17 A. Uh-huh.

18 Q. Is that something that you screen for when you meet a
19 patient?

20 A. You know, it depends. In immigration cases we often do
21 refer individuals for medical exams where physicians will
22 examine the body and look for the physical evidence, scars that
23 are consistent with the report of the acts that were committed
24 against them.

25 But psychological torture is also a huge problem

1 in that setting of being tortured.

2 Q. But they're not necessarily distinct, right, people can be
3 physically tortured and psychologically tortured?

4 A. Absolutely. And some people are only -- I mean, usually
5 physically and psychologic -- if you're physically tortured,
6 you're psychologically tortured and sometimes people are just
7 psychologically tortured.

8 Q. So, do you physically examine patients to see if they have
9 signs of the physical part?

10 A. A medical doctor does.

11 Q. And what was the result of that --

12 A. We did not refer her because the torture experience was
13 many years ago and often scars fade.

14 So usually we're seeing survivors who have more
15 acute scars, you know, they're more recent and so that they're
16 visible.

17 Q. So, you didn't think it was even worth looking?

18 A. You know, beatings done, what, 1969, it's 2014, beatings,
19 electric shock doesn't necessarily leave scars.

20 Q. You keep saying "necessarily". I'm asking you didn't look
21 to see if there was --

22 A. No, we did not refer -- we did not.

23 Q. So, your diagnosis ultimately was that Ms. Odeh is
24 suffering from chronic PTSD, correct?

25 A. Correct.

1 Q. And chronic means it doesn't get better, right?

2 A. No. Chronic means it's persistent so that it's recurrent.
3 It's -- it's -- it's a chronic condition with reoccurrences.

4 Q. And based on your diagnosis, when did that first manifest
5 itself?

6 A. In talking with Ms. Odeh, when she was -- after the
7 torture and she was moved to the longer term prison detention
8 center, she was symptomatic.

9 But with time the symptoms -- and also it sounds
10 like from her description the women also organized and so that
11 also helped her.

12 I think as a community it's not unusual to hear
13 people detained in prison for a long time develop community and
14 that community provides a support network.

15 Q. Just so I understand correctly, are you saying rather than
16 itself being a stress-inducing factor, prison can be actually
17 be therapeutic for that type of thing?

18 A. No. I would not use the word therapeutic at all. What
19 I'm saying is detainees often commune -- they form a supportive
20 network among themselves. I've heard this from many different
21 -- especially women, and men also. With long term detention
22 they turn to each other for connection. They're sharing this
23 experience.

24 Q. All right. But, one of the things you're measuring is
25 just PTSD can have many different causes, correct?

1 A. It's a traumatic event. It must be a traumatic event
2 experienced as life threatening.

3 Q. All right. But there's many different possible such
4 events, right?

5 A. Sure. I mean, it's war, torture, it can a traumatic
6 accident. It could be --

7 Q. It could be a life endangering fire. You're in a building
8 and you have trouble getting out?

9 A. Yes.

10 Q. Okay. So, I mean, there's many different causes.

11 Prison is that type of stressing event, isn't it?

12 A. It could be, but not for everybody. It depends on what
13 your experience is in the prison.

14 Q. There are some people that don't find prison to be a
15 stressing event?

16 A. No, not everybody, not every person who's in prison will
17 develop PTSD.

18 Q. I wasn't asking that. I was asking just is some --

19 A. Prison can -- prison is a stress. It's a stressful event.

20 Q. And what your tests really are measuring are the effects
21 of that stress, right?

22 You're then interpreting them to come up with what
23 you believe to be the cause, but what you are actually
24 measuring are the affects, correct?

25 A. Right. What the symptoms are and the severity of the

1 symptoms.

2 Q. And, again, those symptoms can be, have multiple different
3 causes, they can be the fire?

4 A. Right.

5 Q. They can be the life threatening accident?

6 A. Right.

7 Q. So how do you deal with the situation where there are
8 multiple factors like that that cause the stress?

9 A. Uh-huh. You know, it's, if you look at someone's timeline
10 in the CAPS, they ask you to state what is the most distressing
11 event, and one, the event that she selected was during that
12 25-day period. That was like her most distressing event.

13 So that was the event that we started with.

14 Q. Okay.

15 Your form, your intake form does not ask about
16 imprisonment as one of the causes, right, it lists other bases
17 for persecution?

18 A. Yes. Because the most distressing event was during that
19 25-day period.

20 MR. TUKEL: Could we see Page 7 please, question
21 19.

22 Q. (By Mr. Tukul, continuing) This is a form that you use
23 for all your patients, right?

24 A. Right.

25 Q. So, it says reason for persecution. It lists:

1 Religious views.

2 Political views or beliefs.

3 Political party actual or suspected belief.

4 Banned political party.

5 Ethnic minority.

6 Linguistic minority.

7 Racial minority.

8 Or other, correct?

9 A. Uh-huh.

10 Q. So, prison is not even one of the options for people to
11 check?

12 A. No, but they could state it.

13 Q. Okay. But it's not something you're listing as one of
14 the things that you're looking for, correct?

15 A. It's not that we're not looking for it, it's just these
16 are the primary reasons for persecution. The question is about
17 the reason for persecution, not the reason that you have
18 symptoms.

19 Q. That answer of "Israeli occupation of land control" that's
20 what the defendant told to you?

21 A. That's her words, yes.

22 Q. And you're writing her words?

23 A. Yes.

24 Q. Okay. Thank you.

25 All right. Could you tell us based on the

1 diagnosis that you made, do the symptoms of this PTSD change
2 over time?

3 A. Have -- have -- I'm not sure I understand what you're
4 asking.

5 Q. Well, you said that there can be occasions where the
6 effects become more severe and the person shows more --

7 A. Acute.

8 Q. More acute.

9 A. And then -- it's recurrent, so they're not always
10 experienced at the same level.

11 Q. All right. And what can make those become more or less
12 acute?

13 A. Well, I think in Ms. Odeh's case she stated this process
14 had activated her symptoms and then as you saw in this, as we
15 got into July, the situation between Gaza and Israel.

16 Q. Did she list over things that had occurred over the past
17 40 or so years, let say 35 years, start with 1979, that had
18 made it, the symptoms become more acute at times?

19 A. I would have to look. I'm sorry.

20 Q. Where would you have to look?

21 A. I'd have to look at my notes.

22 Q. Do you have those with you?

23 A. In my backpack.

24 MR. TUKEL: May she, your Honor?

25 THE COURT: Okay.

1 THE WITNESS: These are the electronic medical
2 records that I'm looking at.

3 Okay. Would you ask me the --

4 Q. (By Mr. Tukel, continuing) Yeah.

5 I was asking you if she had related to you
6 particular times or events which caused the symptoms to become
7 more acute?

8 A. Let me see if it's -- I'm remembering now she -- let's see
9 if I can find it.

10 I would feel better if I could do this without
11 sitting here.

12 Q. Well, let me ask it this way. Do you think that she
13 related that there were other such events?

14 A. Yes, I'm trying -- yes, I do.

15 Q. Okay.

16 A. But, you know, I'd need to look at this very carefully and
17 I'm feeling --

18 Q. Well, let me ask you this.

19 A. Okay.

20 Q. Do you know when she filled out her naturalization
21 application?

22 A. The exact date, no, I don't.

23 Q. Do you know the approximate time?

24 A. I've been told. I don't remember. I'm sorry. I just
25 don't.

1 Q. Well, what I really need to ask you -- I'll tell you that
2 it was in 2004.

3 A. Okay.

4 Q. And what I really need to ask you is were there events
5 related to you that were taking place in 2004 which made those
6 symptoms more acute?

7 A. No.

8 Q. No, there was not?

9 A. Not that she shared with me.

10 Q. What -- what would it be that would trigger the acute
11 symptoms?

12 A. Well, conditions back home. I think the death of her
13 brother was a possibility. That's what I was looking for.

14 Q. And can you explain to me why the death of a brother would
15 be something that would trigger it?

16 A. Loss.

17 Q. So it's just any sort of --

18 A. Deep loss.

19 Q. Deep loss?

20 A. Sure.

21 I mean, it's a possibility. It does for some
22 people but not for others. It would, you know, we're all
23 different. It's -- can't predict for each of us.

24 Q. And then you use the term "filters". Can tell us what it
25 is that the filters do?

1 A. It's like a lens. I think we, you know, we all develop
2 ways of narrowing our focus so that we can keep painful things
3 at bay.

4 And so, I like the term "filters" because it's
5 like a lens that filters out, help keeps things out.

6 Q. And so is it your testimony that at a conscious level,
7 then, that a person that is filtering doesn't remember the
8 past?

9 A. No. It's not that they don't remember the past, it's that
10 there's this automatic behavior. The automatic, it's an
11 automatic behavior. A narrowing of the focus so that it's not
12 this conscious thought process that, I don't want to think
13 about this. It's just automatically kept out, unless there's
14 a stressor in front of you that weakens that defense.

15 Q. And does the person know what those stressors are?

16 A. For the most part, yeah, they recognize it and they avoid
17 it.

18 Q. Okay. So, in Ms. Odeh's case what are the stressors?

19 A. What are her stressors?

20 Q. Yes.

21 A. You know, things about back home. Talking about what
22 happened to her is stressful.

23 Q. So does that mean that she would then use those filters to
24 avoid talking about what happened?

25 A. It would assist her in not thinking about it.

1 Q. Explain that?

2 A. Okay. So, obviously, she can talk about what happened and
3 if you ask her questions, she can respond to it. But in daily
4 life there can be reminders like uniforms. So you avoid places
5 where there are uniforms.

6 And one of the things I was looking for is Ms.
7 Odeh had related a story of where she was pulled over by a
8 police officer and the fact that this uniformed man was
9 approaching her car made her very anxious and that night she
10 had activated symptoms.

11 Q. And so if she could, if I understand your testimony
12 correctly, those filters would have her try to avoid situations
13 where she sees people with uniforms on; is that correct?

14 A. Right.

15 Q. And, so, then would she also try to avoid situations where
16 people would ask about her past?

17 A. That depends. There's a context there.

18 Sometimes survivors, I've worked with many
19 survivors who have felt an obligation to speak about what
20 happened to them at certain times when they believe that there
21 will be an impact that will help those who didn't survive or
22 who don't have that opportunity to speak out.

23 But on a day-to-day basis people don't volunteer,
24 I'm a torture survivor.

25 And, actually, there was a very interesting study

1 done in West LA by David Eisenman in a medical clinic that
2 served predominately Latinos and Latinos and, you know, one of
3 things that came out of it is a large number of the patient
4 population had traumatic history. Some of them even, because
5 they were from Central America, were torture victims or were
6 family members of torture victims and they said they never told
7 anyone because no one ever asked, their physician, their
8 provider never asked, so they didn't volunteer it.

9 So, you know, there's this context of when do you
10 share; how do you share?

11 Q. Well, in your affidavit one of the things you said on page
12 18 is that it is the intention of the survivor to keep
13 reminders at a distance?

14 A. Yes.

15 Q. Is that, that is correct?

16 A. Right.

17 Q. Okay.

18 And then you say:

19 "Avoidance and sometimes even denial of thoughts,
20 feelings, and activities associated with the trauma is
21 a symptom and is also an attempt to cope with the
22 overwhelming memories of the trauma."

23 A. Yes. You know, there's no Page 18, so I don't know what
24 page you're looking at. I'm sorry. Maybe it's Page 18 in
25 yours.

1 Q. Page 18 as filed.

2 A. Oh, I don't have a filed version.

3 Q. Oh, it's Page 16 on yours?

4 A. That's okay. Okay. So which paragraph are you --

5 Q. Five?

6 A. Page 16 has 67 through 73.

7 Are you on a different one? I'm sorry.

8 Q. Page 16, "referral question and response".

9 A. Okay. That's not --

10 Q. That's not it?

11 A. "PTSD affect". Yeah, it is. I don't know why yours is
12 numbered differently, but it is.

13 Q. Okay. So, looking at yours it would be Number 71?

14 A. Right.

15 Q. Okay.

16 "Avoidance, and sometimes even denial of thoughts,
17 feelings, and activities associated with the trauma is
18 a symptom and is also an attempt to cope with the
19 overwhelming memories of the trauma."

20 Correct?

21 A. Correct. Uh-huh.

22 Q. And it is the intention of the survivor to keep reminders
23 at a distance?

24 A. Yes.

25 MR. TUKEL: Could we see Exhibit 1, page 8,

1 please.

2 Q. (By Mr. Tukel, continuing) So, this is the naturalization
3 application. Have you ever seen this before?

4 A. Hers?

5 Q. Anyones'?

6 A. Yes.

7 Q. Okay. You've seen hers?

8 A. No.

9 Q. So, you have seen this form before, correct?

10 A. Yes.

11 Q. Form N-400.

12 Have you ever read the instructions on this
13 section?

14 A. No.

15 Q. Okay. So, let's read it together:

16 "For the purposes of this application, you must
17 answer "Yes" to the following questions, if applicable,
18 even if your records were sealed or otherwise cleared
19 or if anyone including a judge, law enforcement
20 officer, or attorney, told you that you no longer have
21 a record."

22 Question 15:

23 "Have you EVER -- and 'ever' is in capital letters
24 and in bold -- committed a crime or offense for which
25 you were not arrested?"

1 "Answer: 'No'."

2 Question 16:

3 "Have you EVER -- capital letters and in bold --
4 been arrested, cited, or detained by any law
5 enforcement officer... for any reason?"

6 Can you explain to me how the PTSD would cause
7 someone to read the word "ever" to mean in the United States?

8 A. Okay. So, as a trauma survivor, a torture survivor, you
9 work very hard to cope, right, to develop strategies in your
10 daily life so that you can live it without having to remember
11 and those strategies help you develop the filter that I
12 mentioned so that you don't, you narrow your focus. Okay.
13 You narrow your focus so that you're not remembering the past.

14 So you read this as a survivor and if it was a
15 period of relative calm, so 2004 was a period in your life
16 where you are functioning well, you're, you know, in Ms. Odeh's
17 case, I believe, she was employed and working and feeling
18 successful in her life here in the U.S.

19 So she would look at this with her filters, her
20 defenses, but I like the word filters better, working. That
21 she would look at this and it was narrowed focus of time frame,
22 she could potentially, I mean, I don't know what went on in her
23 mind, right, but in my understanding of PTSD and survivors and
24 how they develop strategies to cope in daily life that she
25 would look at "ever in the U.S.". It's a narrowed focus of

1 time frame.

2 Q. Did she tell you that she had received a law degree before
3 she moved to the United States?

4 A. I believe so. Uh-huh.

5 Q. Okay. And so did you consider that background in terms of
6 her analysis of legal documents?

7 A. No. I mean, I was seeing her at an assessment as a
8 torture survivor.

9 Q. Okay. Mr. Deutsch asked you some questions, and I just
10 want to make sure I understand the answers.

11 Do you say she can or cannot control this
12 filtering conduct?

13 A. Okay. It's not a matter of control. It's a matter of
14 development, and so she has developed, as many survivors do,
15 this capacity to narrow your focus. It's not, it's not this
16 conscious process of I'm going to use this now or I'm not going
17 to use it now.

18 Either it's effective and it's working and the
19 focus is narrowed, or you're activated, you're aroused, you're
20 having many symptoms and your filters are off.

21 Q. And can she exert any control over when the filters are on
22 or when the filters are off?

23 A. It's automatic.

24 Q. So the answer is, "no", she cannot?

25 A. It not, it doesn't work that way. It involves the brain

1 and how, what structures in the brain are working, which are,
2 which are activated and which are diminished and so when the
3 cognitive narrowing of the focus is effective, then that's
4 what's working. If it's the emotional part that's activated,
5 then that's what's working.

6 Q. So, I'm sorry. Can she control that or can't she?

7 A. Okay. No, it's not something that you control. It's
8 like flipping a switch on and off. It's an automatic.

9 Q. So, would you characterize that as an impulse?

10 A. No.

11 Q. Why not? And explain what the difference is.

12 A. Because it's not impulsivity. It has to do with the
13 emotional center and how the memory, the memory is being
14 remembered. Is it in an emotional way or is it in this narrow
15 focused way.

16 Q. And at the conscious level the person doesn't know that
17 this is going on?

18 A. No. It's automatic.

19 You know, one of the examples very simply would be
20 have you ever, if you drive to and from work, have you ever
21 driven home and thought, how did I get there? 'Cause you're
22 preoccupied, you're thinking about other things, but you're on
23 automatic pilot because it's familiar. Your brain got you
24 home. It knew when to stop at a stop sign. You didn't
25 consciously stop at the stop sign, but you stopped.

1 Q. And if someone asked you did you drive home, you would
2 say, "yes"?

3 A. Yes. Because you arrived home in your car.

4 Q. So it doesn't keep you from understanding at that level
5 that that's what you've done?

6 A. After the fact. But during it --

7 Q. If someone asked you, "are you driving"; you would say,
8 "no"?

9 A. That would bring you out of your -- that question doesn't
10 work like that. Because if you are driving home, you're doing
11 it in this automatic way, even though your thoughts are
12 elsewhere. It's just an example for you to try and understand
13 how some things we do are automatic. It's not like you chose
14 not to think about what you were doing, but you had the
15 capacity to be able to do it.

16 Q. In terms of trying to avoid the stressors, can you tell me
17 what sorts of avoidance behaviors you believe the defendant
18 uses?

19 A. Again, she talked about them. So, like, I know at work
20 she talked about sometimes being at work but being more
21 socially isolative in the office. So that's a way. You don't
22 want to talk about what's going on, so you stay -- go to work,
23 you function well, but you sort of stay off by yourself. That
24 would be an avoidant behavior.

25 Q. Okay.

1 You already talked about avoiding talking about
2 the past would also be one of those behaviors as well?

3 A. Yes.

4 Q. Okay. Did Ms. Odeh ever tell you that she had appeared in
5 a video --

6 A. Yeah.

7 Q. -- in which -- she did tell you that?

8 A. Yes. Yes.

9 Q. But you never reviewed that?

10 A. The video?

11 Q. Yeah.

12 A. I watched it.

13 Q. I asked you at the beginning what other materials you had
14 reviewed?

15 A. I'm sorry. I'm sorry.

16 Q. So, tell us about the video?

17 A. Well, I watched the video and, you know, saw her and other
18 women being interviewed.

19 I don't know if we're talking about the same
20 video.

21 Q. Do you know the name of the video you saw?

22 I'm asking if you know, not if Mr. Deutsch knows?

23 A. I know. I'm sorry. I don't remember.

24 Q. Women in Struggle?

25 A. I believe so, you know --

1 MR. TUKEL: Can you show Clip Two?

2 Q. (By Mr. Tukel, continuing) Let me show you this and see
3 if this refreshes your memory.

4 (Playing video)

5 A. Yes, that's the one.

6 Q. That's the video?

7 A. Yes.

8 Q. Okay.

9 She told you that she had appeared in this video?

10 A. Yes.

11 Q. Did she tell you when this video was made?

12 A. I'm sure she did. I don't remember the date, though.

13 Q. Relative to her application for naturalization, did she
14 tell you when she appeared in this video?

15 A. You know, I don't remember.

16 Q. Did you review the video to see if you saw evidence of
17 symptoms of PTSD manifesting themselves from the stress of
18 talking about her experiences?

19 A. Oh, no, and I wouldn't expect to see that. It would be
20 after that she would have them.

21 So survivors like Ms. Odeh will, I have the total
22 capacity to talk about what happened to them. She
23 demonstrated it in her session with me; she demonstrated it in
24 the video, and there are probably other times when she's spoken
25 about it.

1 But it's afterwards that people suffer.

2 You know, one of our assessment questions that I
3 use is a 24-hour clock, that you want to walk someone through a
4 typical 24 hours, because survivors will get up every morning,
5 they'll go to work, they'll function. But if something
6 reminds them of their, their trauma or if at night is more
7 vulnerable when you don't have all the activities distracting
8 you, that's when they can't fall asleep at night, have
9 nightmares, are anxious. So --

10 Q. Did she tell you that she had those experiences as a
11 result of appearing in this video?

12 A. I didn't ask her afterwards. I didn't ask her. I was
13 focusing on doing the structured assessment.

14 THE COURT: All right. Mr. Tukul, how much
15 longer are you going to be?

16 MR. TUKEL: Five minutes, your Honor.

17 THE COURT: Okay. All right. Because I was
18 going to say we need to take a break.

19 MR. TUKEL: We can take it now if that's convenient
20 or I can finish, whatever you'd like.

21 THE COURT: Let's see, Mr. Deutsch, do you have
22 anything else?

23 MR. DEUTSCH: No, I'm not going to have anything,
24 judge.

25 THE COURT: Okay, well, let's go ahead.

1 I'm going to hold you to that five minutes, Mr.
2 Tukul.

3 MR. TUKEL: I'm going to turn on my watch, your
4 Honor.

5 THE COURT: Okay.

6 Q. (By Mr. Tukul, continuing) I'm sorry. You said you didn't
7 ask her. You watched the video but you didn't ask her what her
8 reaction was afterwards, after having appeared in that?

9 A. No.

10 Q. Okay.

11 Did she -- did you watch the entire video?

12 A. I skipped around through it. I mean, I watched all of
13 hers, but some of the other women I fast forwarded through.

14 Q. Okay. So did you listen to the portion where Ayisha Odeh
15 was talking about when she had placed the bombs?

16 A. You know, I watched the video, that part, yes. But it
17 was awhile ago.

18 Q. Okay. Did you watch the part where Ayisha Odeh said:

19 "I placed the bombs, but others were more
20 involved. Rasmieh Odeh scouted the location and chose
21 the targets and went with someone else to look at it
22 before I simply placed the bombs."

23 Did you watch that?

24 A. I recall that.

25 Q. Did you discuss that with the defendant?

1 A. No. No, I wasn't evaluating that. My -- what I was
2 asked to do was evaluate her mental status and how she was
3 psychologically functioning, and that's what I do. I wasn't
4 evaluating her activity.

5 Q. Well, but doesn't her willingness to speak about the
6 event, isn't that part of the background of what you're
7 evaluating?

8 A. I'm following a structured interview. It's the way we
9 assess PTSD. I took the history from her. I look through the
10 consistencies of what she's reporting and symptoms she's
11 having.

12 I'm a clinician. So I'm looking to make a
13 diagnosis.

14 Q. Isn't one of the things she told you that the torture was
15 particularly severe because she had no information to give?

16 A. She did say that they wanted her to -- she didn't know
17 what they wanted, is what she told me.

18 Q. She told you she had no information to give, correct?

19 A. Correct.

20 Q. But the video would seem to indicate that she did have
21 information to give?

22 MR. DEUTSCH: Objection. The video, he's referring
23 to somebody else saying something, not --

24 MR. TUKEL: Well, there's statements by the
25 defendant. I'm simply asking --

1 THE COURT: Overruled.

2 Go ahead.

3 THE WITNESS: What is your question?

4 Q. (By Mr. Tukel, continuing) My question is, she had told
5 you that the torture was particularly severe because she had no
6 information to give, correct?

7 Yes?

8 A. Yes.

9 Q. And did you use the video to evaluate whether that was
10 truthful?

11 A. No.

12 Q. Wasn't one of the things you talked about at the beginning
13 you're trying to determine if the person is being truthful with
14 you?

15 A. Right.

16 But, typically, I wouldn't use a video. I saw
17 this after.

18 Q. You saw this after you made your diagnosis?

19 A. Well, after I had finished meeting with her.

20 Q. How did see this; what was the circumstances?

21 A. The attorneys suggested I look at it.

22 Q. And you had already made your conclusion?

23 A. I had already done my --

24 Q. Your diagnosis?

25 A. Yeah. And I still think she has PTSD regardless of what

1 came out in the video. But I don't know, you know, I don't
2 know because I wasn't there.

3 MR. TUDEL: Thank you.

4 THE COURT: Okay.

5 All right, Mr. Deutsch, you don't have anything?

6 MR. DEUTSCH: I don't have anything further.

7 THE COURT: All right, ma'am, you may step down.

8 THE WITNESS: Thank you.

9 THE COURT: You may be excused.

10 (At 3:23 p.m. witness excused)

11 THE COURT: All right. There's been a lot done
12 today, a lot of motions argued and I'm going to take all of
13 this under advisement and issue an opinion pretty soon.

14 Let me just ask you, Mr. Deutsch, one other thing.

15 MR. DEUTSCH: Okay.

16 THE COURT: The government has filed a motion for
17 reconsideration with regard to the specific intent issue and
18 I'm kind of looking at that and I want to invite you to respond
19 to that. Can you have something to me by Thursday or Friday at
20 the latest?

21 MR. DEUTSCH: If you so order, I will.

22 THE COURT: Okay. Well, let's make it Thursday,
23 then.

24 MR. DEUTSCH: Judge, let me just say one other
25 thing.

1 THE COURT: Okay.

2 MR. DEUTSCH: I don't know if you -- I filed what I
3 entitled an offer of proof yesterday, which was to try and, for
4 you to understand what the testimony of the defendant would be
5 so that you would see the connection between the expert and her
6 testimony. And I thought that was one of the things you were
7 concerned about.

8 And, also, I know you and your clerk will find
9 that there is quite a bit of law in the Sixth Circuit about
10 relevance and how you're supposed to maximum the relevance of
11 the proponent of the evidence.

12 "We must look at the evidence in the light most
13 favorable to its proponent, maximizing its probative
14 value and minimizing its prejudicial effect."

15 THE COURT: Are you reading from a case?

16 MR. DEUTSCH: Yeah. I'm reading from United States
17 versus Clark, which is 377 Federal Appx 451. It's a Sixth
18 Circuit 2010 case.

19 And there's similar language in United States
20 versus Smithers, which is 212 Fed 3rd 306, Sixth Circuit 2000
21 case.

22 It's just kind of a black letter law when you have
23 a proponent you try to maximize the connection and the
24 relevance and minimizing the prejudice.

25 So just in terms of evaluating whether or not the

1 testimony of the expert is relevant to the defense.

2 But I will file something by Thursday.

3 THE COURT: Okay.

4 MR. TUKEL: Your Honor, the Court had indicated
5 this morning, or asked Mr. Jebson a question about
6 retroactivity pertaining to the statute. May we submit an
7 answer to that in writing or a citation of authority? I don't
8 know what mechanism the Court would like.

9 THE COURT: Okay. Yeah, if you've got it, it
10 shouldn't take much. So, you can do that by tomorrow, could
11 you?

12 MR. JEBSON: Yes, your Honor.

13 THE COURT: Okay. Why don't you get it in by
14 tomorrow.

15 MR. TUKEL: Just procedurally, should we file that
16 in the docket?

17 I don't know what we should call that. I don't
18 know if there's something on ECF that has that. I just wanted
19 to know how to proceed properly.

20 And, I guess, we don't need an answer now. We can
21 talk to your case manager.

22 THE COURT: Yes, just file something. Serve Mr.
23 Deutsch with it. Yeah, file it on CM/ECF, too.

24 MR. TUKEL: Thank you.

25 THE COURT: Anything else, gentlemen?

1 MR. DEUTSCH: Yeah, I'm wondering if you've
2 reached any conclusion about the questionnaire issue. I know
3 it's going -- it would delay things, and, obviously, we want to
4 know if we're really set for trial on November 4th or if it's
5 going to --

6 THE COURT: I'm still thinking about that.
7 Still thinking about that.

8 MR. DEUTSCH: Good.

9 THE COURT: I'll leave it at that.

10 MR. DEUTSCH: Okay.

11 THE COURT: Then, we'll be in recess.

12 THE CLERK: All rise. Court is in recess.

13 (At 3:27 p.m. proceedings concluded)

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C E R T I F I C A T E

I, Merilyn J. Jones, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1-114, inclusive, comprise a full, true and correct transcript taken in the matter of the United States of America versus Rasmieh Yousef Odeh, 13-cr-20772 on Tuesday, October 21, 2014.

/s/Merilyn J. Jones
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