

PUBLIC VERSION

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 03 CR 978
)	
MOUSA MOHAMMED ABU MARZOOK,)	
MUHAMMAD HAMID KHALIL)	
SALAH, and ABDELHALEM)	
HASAN ABDELRAZIQ ASHQAR,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

AMY J. ST. EVE, District Court Judge:

On August 19, 2004, a Grand Jury returned a multiple-count, second superseding indictment (the "Indictment") against Defendant Muhammad Hamid Khalil Salah ("Defendant" or "Salah"), also known as Abu Ahmad, and his co-defendants, Mousa Mohammed Abu Marzook and Abdelhaleem Hasan Abdelraziq Ashqar. Defendant Salah has filed a motion to suppress statements he allegedly made to Israeli authorities in 1993 on the basis that he did not voluntarily make any of the statements which the government seeks to admit at trial. Defendant Salah argues that Israeli authorities coerced and tortured him into making any such statements. The Court conducted an extensive hearing on the issue. Because the Court finds that the government has met its burden of proving by a preponderance of the evidence that Defendant voluntarily made the majority of the statements at issue, the Court denies Defendant's motion in

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large part. The Court further finds that the government has not met its burden of proving Defendant's purported statements to Officer Suleiman on January 27, 1993 and February 21, 1993 were voluntary, and therefore, the Court grants Defendant's motion as to these statements. The Court's reasoning is set forth in detail below.

BACKGROUND

I. Defendant's Arrest in Israel

On approximately January 25, 1993, Defendant Salah was arrested by Israeli authorities at a checkpoint between the Gaza Strip and Israel¹. From Salah's arrest through March 1993, Salah allegedly made various incriminating statements – both orally and in writing – to Israeli authorities while he remained in their custody. Although he made statements through May 18, 1993, his questioning was essentially completed two months earlier on March 18, 1993. Salah allegedly made such statements to agents of the Israel Security Agency (“ISA”) – also known as the General Security Service (“GSS”) and “Shin Bet” – the Israeli National Police (“INP”), and others working for these Israeli authorities. The government seeks to admit these statements during trial.

¹ The testimony during the hearing reflected that the Israeli authorities arrested Salah at a Gaza checkpoint. According to the American Consulate General documents, both Salah and his brother had reported that the authorities arrested Salah at a YMCA, but “YMCA employees have indicated that Salah was not present at the ‘Y’ when Israeli National Police and Israel General Security Services Officers arrived there with a court order to conduct a search of his room.” (Gov. Ex. Consulate Documents at 009; Def. Ex. Salah Con. Docs. at 13, 16, 44.) Even Defendant Salah avers in his affidavit that the Israeli soldiers arrested him at a Gaza checkpoint.

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II. The Statements at Issue

The statements at issue are as follows:

1. Oral statements that Salah allegedly made to agents of the ISA after his arrest and while in custody which are memorialized in the ISA's activity logs;
2. Salah's alleged statements on January 27, 1993, and February 21, 1993 to INP Officer Meron Suleiman;
3. Salah's alleged January 30, 1993 statement to INP Officer Hezi Eliyahu;
4. A handwritten signed agreement allegedly entered into between Salah and his GSS interrogators;
5. A handwritten map allegedly made by Salah;
6. A handwritten statement allegedly authored by Salah between approximately March 1, 1993 and March 4, 1993; and
7. Salah's oral statements allegedly made and tape recorded at a March 18, 1993 session with an ISA interrogator.

Defendant allegedly made the majority of these statements to two ISA interrogators – Nadav and Haim. Both Nadav and Haim testified in court at the suppression hearing. In addition, Officer Eliyahu testified, but Officer Suleiman did not. Salah's interrogation primarily took place at the Ramallah interrogation facility in the West Bank.

III. The Indictment

The Indictment charges Defendant Salah with conspiring to violate the Racketeer Influenced and Corrupt Organizations Act ("RICO"), in violation of 18 U.S.C. § 1962(d) (Count I); knowingly providing and attempting to provide material support and resources to a Foreign Terrorist Organization, namely, Hamas, in violation of 18 U.S.C. § 2339B (Count II); and

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obstructing justice, in violation of 18 U.S.C. § 1503 (Count III). (R. 59-1.) Each charge is premised upon and related to Salah's alleged support of the Hamas terrorist organization, both prior to and after the United States designated Hamas as a Specially Designated Terrorist Organization and a Foreign Terrorist Organization. The Indictment alleges that Hamas has called for violent terrorist attacks, and engaged in numerous terrorist attacks aimed at Israeli military personnel, police officers, and civilians. It alleges that Defendant Salah has provided material support to Hamas, including recruiting and training new Hamas members in the United States and disbursing money from the United States to support Hamas activities and members. It further alleges that Salah was a member of a United States-based Hamas security committee that identified Palestinian men in the United States to assess "their capacity to participate in terrorist activities against Israel."

In furtherance of the conspiracy, the Indictment alleges that Defendant Salah traveled to Israel in January 1993 to further the objectives of Hamas. During this trip, Israeli authorities arrested him as described above.

The government seeks to admit the statements set forth above as evidence at the trial of this matter. The government bears the burden of proving the voluntariness of these statements by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489, 92 S.Ct. 619, 627, 30 L.Ed.2d 618 (1972). The trial is scheduled to commence in October, 2006.

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IV. The Hearing²

Commencing with opening statements on March 3, 2006, the Court heard extensive testimony over thirteen days³. During the hearing, two interrogators from the ISA testified, including Nadav, the interrogator who primarily questioned Defendant Salah during the time period in question. The Court heard over six days of testimony from these two witnesses, including approximately four days of cross examination. Defendant Salah called multiple witnesses at the hearing, but did not testify himself. Both sides admitted extensive documentation for the Court to consider. To the extent it is relevant, the Court will address it below⁴.

² The Court repeatedly held during the hearing, over Defendant's strenuous objections, that the Federal Rules of Evidence do not apply during suppression hearings. *See United States v. Raddatz*, 447 U.S. 667, 679, 100 S.Ct. 2406, 2414, 65 L.Ed.2d 424 (1980) ("At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial."); *United States v. Matlock*, 415 U.S. 164, 172-73, 94 S.Ct. 988, 994, 39 L.Ed.2d 242 (1974) ("[T]he rules of evidence normally applicable in criminal trials do not operate with full force at hearings before the judge to determine the admissibility of evidence"); *United States v. Ienco*, 92 F.3d 564, 568 (7th Cir. 1996) ("But when, as in a suppression hearing, a jury is not involved, there is no reason for the judge to become preoccupied with the niceties of the rules of evidence.") *See also* Fed.R.Evid. 104(a) (a court is "not bound by the rules of evidence except those with respect to privileges" in deciding "[p]reliminary questions concerning ... the admissibility of evidence").

³ In order to accommodate witnesses' schedules, including Defendant's witness Mr. Jonathan Kuttab, the Court extended the hours of some of the suppression hearing days.

⁴ Over Defendant's objection, the Court admitted the English translations of his alleged statements. *See United States v. Watson*, 87 F.3d 927, 930 (7th Cir. 1996) (the totality of the circumstances "[b]y definition . . . includes the confession itself."). The Court did not, however, consider the truthfulness of these statements in reaching its holding. *See Lego*, 404 U.S. at 485 n.12, 92 S.Ct. at 624 n.12; *Rogers v. Richmond*, 365 U.S. 534, 544, 81 S. Ct. 735, 741, 5 L.Ed.2d 760 (1961).

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Defendant Salah submitted an affidavit in connection with his motion to suppress in which he averred that he only made the statements at issue after months of “an on-going nightmare of unmitigated and unbearable terror, threats, physical and psychological abuse, and sensory and sleep deprivation carried out by numerous Israeli interrogators, soldiers, police officers, jail guards and others working with the Israeli authorities.” (R. 310-2 at ¶ 5.) Salah’s affidavit provided details of the conditions he claims he endured during his interrogations by Israeli authorities. (*Id.* at ¶¶ 7-29.) Because his affidavit made a preliminary showing that a significant, disputed factual issue exists, the Court held an evidentiary hearing. *See United States v. Wilson*, 169 F.3d 418, 426 (7th Cir. 1999).

Prior to the hearing, the Court granted the government’s motion to conduct certain portions of the suppression hearing in a closed courtroom because the anticipated testimony was classified under the Classified Information Procedures Act (“CIPA”), 18 U.S.C. app. 3. *United States v. Salah*, 412 F.Supp.2d 913, 919 (N.D. Ill. 2006). Specifically, the Court ordered the testimony closed to the public for two ISA witnesses – Nadav and Haim. *Id.* The government agreed to waive the majority of the classification designation as to Defendant Salah and his attorneys thus they were present for the majority of the hearing. *Id.* at 917. Pursuant to the Court’s order, significant portions of the transcripts from the suppression hearing containing either non-classified information or information to which the government agreed to waive its classification designation were subsequently filed in the public docket. *Id.* at 924. (R. 465-1, 485-1, 502-1, 509-1, 510-1, 512-1.)

Because the government refused to waive the classification designation regarding certain

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limited areas of the ISA testimony, the Court conducted a limited portion of the hearing *ex parte*, *in camera*. The Court also reviewed various documents *ex parte*, *in camera* pursuant to Section 4 of CIPA, to determine whether disclosure is appropriate and, if so, in what form. The remainder of the proceeding was open to the public.

V. Testimony Elicited During the Hearing

The government called the following witnesses during the suppression hearing: ISA Interrogator Haim, ISA Interrogator Nadav, Israel National Police Officer Hezi Eliyahu, and Federal Bureau of Investigation (“FBI”) Special Agent Priestap. The government also called FBI Special Agent David Bray in its rebuttal case. Defendant Salah called the following witnesses at the hearing: Jonathan Kuttub, Yuval Ginbar, Avigdor Feldman, Eyad El Sarraj, Ahmed Al-Batsh, and Ribhi Qatamesh.⁵ Defendant Salah submitted an affidavit, but did not testify at the hearing. A summary of the pertinent portions of each witness’s testimony is set forth below. Because a portion of the testimony was classified and thus covered by CIPA, limited portions of this opinion are filed under seal.

In addition, both sides introduced exhibits during the hearing. To the extent such exhibits are relevant and material to the Court’s ruling, they are discussed below.

A. ISA Agent Haim

ISA Interrogator Haim testified for 3 full days of testimony – over 20 hours of testimony

⁵ Both Al-Batsh and Qatamesh testified via video conference.

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in total, including 11 hours⁶ of extensive cross-examination by Defendant's counsel. Haim testified regarding the ISA and its organizational objectives. Haim testified that the ISA – whose motto is “defend but not be seen” (Transcript of Suppression Hearing (“Tr.”) at 836) – has an overall agency mission aimed at preventing the acts of terrorists and terrorist organizations, as well as acts aimed at harming Israel's state security generally. (*Id.* at 218.) To this end, the ISA collects and receives intelligence information for safeguarding and promoting state security interests (*id.*), preserves Israel's state secrets (*id.* at 219), and insists that the true identities of ISA agents remain secret⁷ (*id.* at 836). Incidental to preventing terrorist activities, the ISA also develops evidence for the prosecution of criminal cases. (*Id.* at 227.)

Haim also described the role of the Israeli police. (*Id.* at 227-29.) The Israeli police, not the ISA, determine what criminal charges are brought against an individual. (*Id.* at 227.) The Israeli police also have the principal authority for investigating criminal cases. (*Id.*) In addition, Haim explained that Israeli police officers – not ISA interrogators – take testimony or written statements from detainees. (*Id.* at 228.) Haim stated that he had no authority over the police, other than requesting that they come to the ISA facility to take testimony from an individual in custody. (*Id.* at 228.)

During the relevant time period, Haim worked as an interrogator at the Ramallah ISA

⁶ The time periods refer to actual testimony time – breaks and attorney argument are excluded.

⁷ Indeed, Haim and Nadav are pseudonyms. The Court did not require them to disclose their true identities at the suppression hearing because their names are classified under Executive Order 12958. *See Salah*, 412 F. Supp. 2d at 923.

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facility. (*Id.* at 215.) In January 1993, Haim served as the head of the investigating “interrogation team” at that facility. (*Id.*) Interrogation teams had “the responsibility for investigating terrorist activities, to prevent terrorist activities in the geographical area where it is in charge.” (*Id.* at 219-220.) Haim described his job as “protecting the State of Israel and its democratic regime from terror threats, sabotage, espionage and political sabotage ... and treason.” (*Id.* at 833.) Haim’s responsibilities in 1993 included “starting reviewing the files for interrogation, deciding whether to accept an interrogated – that is, an arrest; later, planning the interrogation; division of labor among the members of the team regarding the investigation; deciding some central decisions during the interrogations; and deciding to end an interrogation, of course.” (*Id.* at 224.)

Ramallah is located in the area referred to as the West Bank. (*Id.* at 224.) Haim explained that the Ramallah facility was part of a military base. (*Id.* at 264.)

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Haim testified regarding the importance of obtaining accurate information from an interrogee in order to prevent future terrorist activities. (*Id.* at 220-23.) If the ISA interrogators did not obtain accurate information and focused on the wrong people, Haim said that it “makes [them] lose twice, so to speak. First, the true terrorists continue with their activities and kill innocent people. And the second thing, concentrating on the wrong people is, of course,

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concentrating on the wrong people, but it also brings about more hatred towards us; and we don't wish to do that." (*Id.* at 223.) Significantly, "1993 was a turning point in the actions carried out by Hamas, and 1993 was the first time that it started carrying out suicide bombers." (*Id.* at 219.)

Haim further testified regarding the four "wait" designations employed during interrogations – "cell," "wait," "cell wait," and "rest." (*Id.* at 288-300.) Haim testified that "cell" referred to the ISA sending the detainee to a prison cell under jurisdiction of the Israeli Prison Authority, not the ISA interrogators. (*Id.* at 288.) "Wait," according to Haim, has two states. (*Id.* at 288-89.) The first wait state is in the interrogation room. The second state is in the hallways of the interrogation area. (*Id.* at 288-89, 733, 807.) The designation "cell wait" refers to the ISA placing a detainee inside a cell at the ISA interrogation facility, which has a bench where the detainee can sit down. (*Id.* at 297-98, 732.) It also contains a light and air conditioning. Salah was held in "cell wait" once, on February 21, 2006. He was there for 3 ½ hours, uncuffed and with no head cover. (*Id.* at 299.) The fourth category is "rest." (*Id.*) Haim explained rest:

When we decide to let the interrogee rest during the interrogation, and for some reason or another, we cannot transfer him back to the cell that is under the supervision of the prison's authority, we are obligated to provide the detainee with a mattress and two blankets in the interrogation room when he can sleep. Of course, under those circumstances, he's uncuffed and without any **REDACTED PURSUANT TO CIPA**

I want to conclude by saying that this gives the detainee the ability to sleep and rest not inside the cell, but within the interrogation facility.

(*Id.* at 299-300.)

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1. The Landau Commission

Haim testified regarding the Landau Commission. Haim testified that the Landau Commission was “convened or appointed by the president of the supreme court ... in order to look into the investigation methods of the ISA regarding terrorism and in order to establish the rules for the ISA’s methods of interrogations regarding terrorism.” (*Id.* at 590.) After the Commission investigated the ISA methods, it issued a written report in 1987. (*Id.* at 633.) A portion of that report is public and a portion of it – the Annex 2 – is classified. (*Id.* at 545, 589.) The report set forth certain types of methods that the ISA could use during the questioning of detainees. (*Id.* at 633.) The Commission found that some ISA officials lied at mini-trials (the procedural mechanism equivalent to a suppression hearing), and had done so for many years. (*Id.* at 590.) It further found that supervisors at the ISA knew that such lying took place and allowed it to continue. (*Id.* at 591.)

2. Salah’s Arrest

On January 25, 1993, Salah was arrested pursuant to a warrant at the Erez Crossing – the main entry point between the Gaza Strip and Israel. (*Id.* at 257.) Pursuant to Haim’s instructions, Salah came to the Ramallah facility within hours of his arrest. (*Id.* at 245, 258.) Haim did not participate in Salah’s arrest. He did, however, consistent with Israeli law, request an arrest warrant from a police officer in Ramallah for Defendant Salah’s arrest based on his suspected terrorist activities. (*Id.* at 245-46.) Such a warrant was not necessitated under Israeli law, according to Haim, because the military had the authority to arrest individuals whom they suspected of terrorist activities. (*Id.* at 246.)

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After being processed and having a medical examination, Salah was transferred to the Ramallah interrogation facility around 10:00 p.m. in the evening. (*Id.* at 301.) Haim then had him detained “because of his terrorist activities, because of intelligence regarding his terrorist activities.” (*Id.* at 850.)

3. Haim Met Salah on January 25, 1993

Haim first saw Salah around 10:30 p.m. the evening of January 25, 1993, the day the Israelis arrested Salah. He described Salah as “a mature person dressed with a suit, and I think he even had an overcoat.” (*Id.* at 310, 778.) Haim described Salah as “a wise, sophisticated man; and I realized that he wanted to check out to see what we know about him, what we don’t know about him, so that he could consider his steps ... in order to decide what to admit to and what to conceal.” (*Id.* at 322.) Haim testified that Salah’s clothing was not dirty, ruffled or torn in any way. He was “very respectably dressed.” (*Id.* at 310.) Furthermore, Haim testified that he did not observe any bruises or cuts on Salah, although he acknowledged that he did not see the parts of his body that were covered by his clothes. (*Id.* at 311, 779.) Haim did not observe any signs of mistreatment, nor did Salah complain to him of any such mistreatment. (*Id.* at 311-12.) Moreover, Haim never heard from Israeli authorities that Salah had been mistreated during his arrest. (*Id.* at 312.) Haim also testified that, contrary to statements in Salah’s affidavit, Salah was not placed in a cold, dark isolated cell at the interrogation facility after his arrest. (*Id.* at 312-13.) Haim also denied that Salah was cuffed to a small child’s chair, hooded, or that any interrogator slapped him. (*Id.* at 316, 778.) During this first meeting, Haim introduced himself to Salah as Major Haim, the head of the interrogation team in Ramallah. According to Haim, he

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explained to Defendant Salah that he was “under interrogation by the ISA.” (*Id.* at 318, 769-70.)

Haim assigned Nadav as the case officer for Defendant Salah because he “was the best interrogator on the team,” and “from the standpoint of his character, he was suitable for Muhammed Salah.” (*Id.* at 342.) Specifically, “Nadav in his character is a very quiet person. He is very logical.” (*Id.*) Based on the information provided by Salah at the first meetings, Haim understood Salah to have a significant rank within the Hamas organization and to be a “senior activist in the Hamas.” (*Id.* at 347-48.)

4. Order from Head of ISA

Haim testified that he received a direct order regarding Salah from the head of the ISA – Ya’akov Perry – directing Haim to “treat Muhammad Salah differently than other detainees.... We were not allowed to use covering the head, a small chair, nor waiting. And the only thing we could do was frontal interrogation.” (*Id.* at 265.) Frontal interrogation, according to Haim, is “a conversation between the interrogator and the interrogee that takes place in the interrogation room.” (*Id.* at 307, 341.) Haim stated on cross examination that he did not speak directly to Perry, but received the Perry directive from Abu Hasan and possibly Abu Daoud, both of whom were Haim’s supervisors. (*Id.* at 666-68.) Because of these instructions, Haim was present when Salah first arrived at the Ramallah interrogation facility on January 25, 1993 to ensure that the interrogation team followed these instructions. (*Id.* at 313.)

Furthermore, Haim testified that it was unusual to detain an American citizen and “even then, in ‘93, the U.S. was a power.” (*Id.*) Because Salah was a United States citizen the ISA treated Salah differently. (*Id.* at 343-44.) Also, Haim said that the ISA treated Salah differently

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because he was older (40 years old) than most of the alleged terrorists whom the ISA questioned.

(*Id.* at 344.)

5. Salah's Treatment While At ISA Interrogation Facility

Haim testified about Salah's treatment during the time the ISA questioned him from January 25, 1993 through March 18, 1993. He testified that because of Salah's age and his American citizenship, the ISA treated him more favorably than other detainees. (*Id.* at 343-44.) He also testified that the ISA realized that Salah was high up in the Hamas organization and they wanted information from him to prevent future terrorist attacks. According to Haim's testimony, Salah ate food prepared for the prison staff rather than the food prepared for prisoners, (*id.* at 434), and was permitted to use the restroom whenever he wanted to do so. (*Id.* at 864.)

Haim denied that Defendant Salah was subjected to any of the allegations of abuse put forth in Salah's affidavit. Specifically, Haim denied that Salah was ever beaten, subjected to physical pressure, stripped naked, handcuffed in an interrogation room for long periods of time, threatened with taking pictures of him naked, forced to sit in a low child's chair, slapped, left for long periods of time in a tiny freezing cell, denied sleep for long periods of time, subjected to having a foul smelling sack placed on his head for long periods of time, subjected to deafening loud music, forced to sleep on a cold floor for long periods without a mattress or blanket, placed in dark cells, threatened with violence, threatened with murder, threatened with harm to his family through the FBI, threatened with long detention without being brought before a judge, threatened with long prison sentences, denied food, clothing, or worship, or subjected to extreme heat and cold. Haim denied that he ever personally did any of these things, directed anyone to do

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them, observed anyone doing them, or heard of anyone doing them. (*Id.* at 236-244.) Although Haim testified that he never kept Salah in wait with a hood on his head, he noted that it was possible for security reasons during transfer that his head was covered. Haim testified that he never saw that happen, but he acknowledged that it could have happened. (*Id.* at 295-96, 306-08.)

Haim further testified that Salah was never forced to sit in a child-like chair. (*Id.* at 295-96.) The Interrogators were forbidden, pursuant to Haim's order, from placing Salah in small child-like chair. (*Id.* at 343.) Haim admitted, however, that, in general, ISA

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Haim testified that Salah requested to remain at the ISA interrogation facility during the evenings to sleep, rather than return to the prison facility at Ramallah. (*Id.* at 434, 854, 869.) According to Haim, the ISA accommodated Salah's request and provided him with a mattress and two blankets in the ISA interrogation room so he could sleep at night. (*Id.* at 239, 434, 854,

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869.) Haim testified that Salah “wanted to remain in the investigating room or in interrogation room.” (*Id.* at 239.)

During his testimony, Haim admitted that at times, the ISA interrogated Defendant Salah into the night “according to the need of the investigation or the interrogation.” (*Id.* at 238.) He added, however, that they proceeded in this manner with Salah’s agreement. (*Id.* at 239.) Haim also stated that during Salah’s interview sessions, they took breaks to enable Defendant Salah to rest, eat and drink. (*Id.* at 239.)

6. Right to An Attorney and Visits from the American Consulate

Haim testified that Israeli laws differ from those in the United States regarding a detainee’s right to an attorney. Under Israeli law, Defendant Salah did not have the right to see a lawyer immediately, even if he requested one. (*Id.* at 243, 319.) Haim testified that the head of the ISA interrogation team could prevent a detainee from seeing a lawyer for 15 days, and could further extend that period for an additional 15 days. (*Id.* at 243, 431.) A military judge could then extend that period for an additional 30 days. (*Id.* at 431-32.) The president of the military court, according to Haim, could extend the time period by yet another 30 days, but Haim testified that such an extension rarely occurs. (*Id.* at 432.)

Haim denied laughing at Defendant Salah when he asked for an attorney, but he explained to him that he was not permitted one immediately under Israeli law. (*Id.* at 243.) On January 27, 1993, Haim issued an order – as permitted under Israeli law – that Salah could not meet with an attorney for 13 days. (*Id.* at 819-26.) He testified that he exercised this authority for the benefit of the ISA’s investigation. (*Id.* at 820-24; Def. Ex. 6.) Haim testified that he

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subsequently shortened that period and permitted an attorney to see Defendant Salah, although Haim could not specifically recall by how much he shortened it. (Tr. at 827-28.)

In addition, Haim testified regarding the access of American citizens to American Consulate General Officials. Haim explained that the head of the ISA determines whether a foreign citizen is permitted to have visits with a consulate official. (*Id.* at 363-64.) Haim further testified that he recommended to his supervisors that they permit Salah to meet with the American Consulate. (*Id.* at 365.) On January 29, 1993, according to Haim, the ISA agreed to a consular visit for Defendant Salah on January 31, 1993. (*Id.* at 362-65, 843, 845.) On January 31, 1993, Salah met with an official from the American Consulate at the Ramallah prison facility. (*Id.* at 365.) Haim testified that ISA officials were not present in the room during consular visits, including the January 31, 1993 visit. (*Id.* at 368.) He further testified that the consulate officials did not provide the ISA with any details of what the detainee informed them. (*Id.*)

7. Access to the Military Court

Under Israeli military law, the ISA could wait 18 days before taking a detainee before a military court. (*Id.* at 419.) Haim testified that Defendant Salah had his first court appearance on February 2, 1993 – the seventh full day of his interrogation. (*Id.*) Haim testified that he had Defendant Salah brought before a judge before the law required him to do so because he was an American citizen and “we wanted a judge to see him as early as possible and to show that he’s not being detained for a prolonged period of time.” (*Id.* at 420-21.) Haim testified that police officer Meron Suleiman walked Defendant Salah from the Ramallah facility to the courthouse for his February 2, 1993 appearance. (*Id.* at 423-27; Gov. Ex. Newspaper Photographs Group; Gov.

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Exs. Salah Video Photo 1 & Salah Video Photo 2.) Haim further testified that on February 2, 1993, Defendant Salah did not complain to the judge regarding his treatment. (Tr. at 430.)

8. Sa'doan

Haim testified at length regarding his discussions with Defendant Salah about the burial site of Ilan Sa'doan. (*Id.* at 385-419.) Sa'doan was an Israeli soldier from the Israeli Defense Forces whom Haim testified was kidnaped and murdered. (*Id.* at 385.) Israeli officials did not know where his body was buried. Haim testified that Salah told Nadav that he had information that could lead the ISA to the burial place of Sa'doan. This information was very significant to the ISA, according to Haim, because "according to Judaism, you have to recover people that are taken as prisoners. It's a matter of life and death And for us, discovering the burial place of the soldier and bringing him – and giving him a Jewish ceremony burial, for us it's – it's a very fundamental principle. Supreme – supreme principle." (*Id.* at 386.)

According to Haim, Salah told them that he had a map at home in the United States reflecting Sa'doan's burial location. Salah told Haim that he would attempt to obtain the map from the United States to assist them in locating Sa'doan's body. In return, Salah "demanded that we release a number of prisoners and that we give him his money back, the money that we took from him." (*Id.* at 387.) Haim described his negotiations with Salah and testified that they ultimately agreed to release female prisoners in exchange for the map of Sa'doan's burial site. (*Id.* at 388-392.) Haim testified that they only reached this agreement after Prime Minister Rabin approved it. (*Id.* at 390-91, 397.) Once they reached an agreement, Defendant Salah wrote out the terms of the agreement on January 31, 1993. (*Id.* at 391-92; Gov. Ex. Sa'doan Agreement.)

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The agreement, written by Salah, was signed by Nadav, Haim and Defendant Salah. (Tr. at 392.)

Under the terms of the written agreement, if Salah provided the ISA with information of the burial site and the ISA recovered the body and confirmed that it was the body of Sa'doan, Israel would release female prisoners who had not engaged in military operations or activity and return the approximate \$96,000 in cash they had seized from Salah at the time of his arrest. (*Id.* at 396-99.) Haim further testified that he and Salah had a "gentleman's agreement" that the ISA would release Salah and send him home if they located the body of Sa'doan. (*Id.* at 397-98.) He added that "Muhammad Salah did not want to write it in the agreement. He said that he understood, he got the understanding that he didn't want it written. That when the Hamas people found out about it, they wouldn't think that he did it in order to release himself." (*Id.* at 398.)

Salah told Haim that he had initially obtained the map in London, memorized it, then sent it to his home in the United States. (*Id.* at 402-03.) For security purposes, Salah did not want to travel to Israel with the map. (*Id.* at 403.) Haim testified that the ISA permitted Salah to call his wife in the United States to attempt to obtain the map. (*Id.* at 402-03.) He further testified that according to Salah, his wife informed him that she had "destroyed a lot of things" after she learned that the Israeli authorities had arrested Salah. (*Id.* at 403.) Accordingly, Salah never obtained the map from his wife. (*Id.*) Instead, Haim testified that Salah drew a map from memory. (*Id.* at 404; Gov. Ex. Salah Handwritten Map 1.) Salah also accompanied Haim, Nadav, and others to the location drawn on the map to assist them in locating the body. (Tr. at 404-410, 413-415.) Although the Israeli authorities did not locate the body based on Salah's map, when they ultimately located the body in July 1996, Haim testified that he realized Salah

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had made a mistake on the map regarding the location of one of the roads. (*Id.* at 415-18.) As Haim stated, “I am convinced that Muhammad Salah was seriously willing to help us find the body. He just made a mistake with regards to the junction, that’s all.” (*Id.* at 416-17.)

9. Judith Miller

Haim also testified about a visit from *New York Times* Reporter Judith Miller to the ISA interrogation facility at Ramallah during Salah’s custodial interrogation in February 1993. (*Id.* at 440-48, 461-62.) She came with an interpreter, although Haim testified that he thought Ms. Miller understood Arabic. (*Id.* at 446-47, 539.) Haim further testified that he received an order from his superiors that Ms. Miller was coming to observe an interview of Defendant Salah. (*Id.* at 441-42.) Haim admitted that this procedure was unusual, and in fact, had not occurred before or after Ms. Miller’s visit. (*Id.* at 530-34.) One of the reasons his supervisors permitted this visit was because the government of Isarel wanted to convince the FBI that terrorist activities were taking place in America of which they were unaware. (*Id.* at 441-42, 462.)

REDACTED PURSUANT TO CIPA

According to Haim, Salah initially refused to allow Ms. Miller to observe an interview, but subsequently, Salah agreed to it. (*Id.* at 443.) Haim “received Ms. Judy Miller to the facility” and he “explained to her the rules of the game.” (*Id.*) The ISA allowed Ms. Miller to observe and hear Nadav questioning Salah through a monitor – which provided for direct, live feed – without recording the conversation. (*Id.* at 444, 446, 554.) When Nadav finished his questioning, Ms. Miller met with Nadav to “ask him the question that she wanted to be asked.”

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(*Id.* at 444, 543.) Haim stated that Ms. Miller did, in fact, dictate some questions for Nadav to pose to Salah, and that Nadav thereafter asked Salah these questions. Haim testified that “[s]he again asked to ask a few more questions. She heard everything. She understands Arabic. And that is how we ended it.” (*Id.* at 446.)

10. The “Birds”

Because the ISA did not believe that Defendant Salah was providing them with complete and truthful information, they decided to temporarily cease their questioning of him and instead planned a “bird drill.” (*Id.* at 477-78.) Haim described a “bird drill:”

It is a group of collaborators with the ISA who are located in prisons, not in the interrogation facilities; and they simulate terrorist command centers in prisons....

REDACTED PURSUANT TO CIPA

From approximately February 28, 1993 through approximately March 5, 1993, Salah’s bird operation took place. (*Id.* at 488-94.)

REDACTED PURSUANT TO CIPA

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REDACTED PURSUANT TO CIPA

During his time with the birds, Haim testified that Salah wrote a long statement regarding his activities and knowledge of Hamas activities, including new information that he had not previously provided to the ISA interrogators. (*Id.* at 494-95; Gov. Ex. Salah Handwritten Statement.)

REDACTED PURSUANT TO CIPA

On March 4, 1993 – in the middle of the bird operation – Salah had a court appearance before the military court. Haim testified that after that appearance, Haim received a protocol

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from the judge lodging a complaint against him. Salah complained to the judge that Haim had stripped him naked and threatened him with a long detention. (Tr. at 499-500.) The allegations were subsequently investigated and, according to Haim, they were never substantiated. (*Id.* at 500.) In fact, Haim testified that Salah retracted the allegations during the investigation and told the birds that he had lied to the judge about Haim. (*Id.* at 501-02.)

11. Salah's March 18, 1993 Statements to Nadav

The ISA resumed questioning Salah after the bird operation. Haim testified that they eventually informed Salah that they had the handwritten statement that he had provided to the birds. (*Id.* at 509.) According to Haim, Salah agreed to let Nadav question him about that statement on March 18, 1993. (*Id.* at 510.) The ISA recorded that conversation. (*Id.*) Haim testified that he authorized the tape recording of that session because Salah indicated that he would talk to Nadav regarding the contents of his handwritten statement, but he would not give any testimony to the Israeli police officers on the subject. (*Id.*) March 18, 1993 was the last lengthy interview session of Salah by the ISA.

B. ISA Agent Nadav

ISA Interrogator Nadav also testified during the hearing for a full 3 days. Specifically, he testified for approximately 8 ½ hours on direct and over 11 hours on cross examination.

1. Nadav Was the Primary Questioner of Defendant Salah

Nadav is a former interrogator for the ISA who served as the deputy head of the team of interrogators. (*Id.* at 958.) Nadav explained – and contemporaneous ISA interview logs confirm – that he had the primary responsibility at the ISA for questioning Defendant Salah. (*Id.* at

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1571.) Indeed, Nadav spoke with Salah in over 30 separate sessions. Nadav interviewed Salah during these sessions regarding Salah's Hamas activities and his role in and knowledge of such activities. He also identified Salah in court. (*Id.* at 1010.) Nadav testified that on January 26, 1993, Haim selected him to question Salah. (*Id.* at 1259.) Prior to interviewing him, Nadav testified that he was told that Salah "is a senior Hamas activist that was meeting with senior Hamas activists; and, that already that night he started to admit to it in a connection with – in a connection to the Hamas, any kind of connection to the Hamas." (*Id.* at 1252-53.) Haim directed Nadav to question Salah about his Hamas activities and "about his encounters or meetings with Hamas activists." (*Id.* at 1370.) According to Nadav, his objective in questioning Salah was to have Salah tell him "as much as he could about his activities." (*Id.* at 974.) Nadav said that he wanted the truth from Salah in order to prevent future attacks by Hamas on Israelis. (*Id.* at 1646.)

Nadav admitted that even though he questioned Salah in 1993 – over 13 years ago – he had some independent recollection of the events due to their unique nature, but he also needed to refresh his recollection with his Interview Logs that he completed contemporaneously with each interview of Salah in 1993. (*Id.* at 979-80, 1398.) He contemporaneously completed interview log sheets to "reflect what the interrogee said during his interview" and to "remind the interrogator of what took place." (*Id.* at 1392-93.) Nadav described the ISA interview logs as follows: "the memo reflects the exact hour of when the interview started and when it ended. And, in those memos, I write bullets about what the interrogee said." (*Id.* at 1398.)

Nadav testified that he first met with Defendant Salah on January 26, 1993 at 11:30 a.m.,

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and their interview session lasted approximately an hour and a half. (*Id.* at 959, 966, 969, 1238.) Nadav described Salah as alert and not overly tired during this session. (*Id.* at 968.) He further testified that Salah did not have a hood on his head and his clothes were not dirty or torn during this meeting. (*Id.* at 967.) Nadav did not observe any bruises on Salah at this initial meeting, although Nadav admitted that he could not observe those portions of his body that were covered with Salah's clothing. (*Id.* at 1286-87.) Salah was handcuffed at the beginning of this meeting, and Nadav uncuffed him immediately upon entering the room. (*Id.* at 966-67.)

Nadav testified that from this initial encounter with Salah, they had "good chemistry" between them which "impacted the relationship we had and it was a very good relationship." (*Id.* at 960.) He further testified that "the relationship between us is based on friendship." (*Id.* at 1114-15.) Nadav described Salah as highly intelligent and polite. (*Id.* at 967-68.) Salah's interrogation sessions took place at the ISA facility in Ramallah and Nadav never had a gun or weapon with him when he questioned Salah. (*Id.* at 968.)

2. Treatment of Salah

Both sides extensively questioned Nadav about Defendant Salah's treatment while he was in custody and while Nadav and others questioned him. In the course of this testimony, Nadav directly denied the averments in Salah's affidavit.

Nadav described the interrogation rooms where he typically questioned Defendant Salah. According to Nadav, Salah asked to remain in these interrogation rooms at the end of each session, including the evenings, rather than being transferred to the prison facility at Ramallah, "because of the good atmosphere during the interrogation." (*Id.* at 963, 1570.) Nadav explained

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that the ISA, including himself, granted Salah's request and permitted him to remain in the interrogation rooms at the Ramallah facility at night during the week. (*Id.* at 962.) They also provided him with blankets and a mattress in the room so he could sleep. (*Id.*) When the interrogation facility at Ramallah closed on Friday and Saturday, the ISA transferred Salah to the prison facility for the weekend. (*Id.* at 1033.)

Nadav testified that Salah received special treatment such as spending the nights in the interrogation rooms at his request for three reasons: 1) Salah was an American citizen; 2) he had started cooperating from the beginning; and 3) "the click that we had since the outset of the interrogation." (*Id.* at 1370, 1502.) Nadav could not, however, recall if Haim gave him a specific instruction to treat Salah differently because he was an American citizen. (*Id.* at 1370.)

Nadav testified that they took breaks throughout their interrogation sessions. (*Id.* at 972-73, 1053.) He said that his conversation with Salah was "flowing," and he was able to communicate with him effectively. (*Id.* at 973, 994, 996.) According to Nadav, their relationship was a good one. (*Id.* at 1027.)

Nadav testified that Salah was alert every time Nadav spoke to him. (*Id.* at 992, 994, 996, 1009, 1027, 1033, 1045, 1067, 1069, 1396-97, 1658-60.) He further testified that Salah was rested every time he questioned him as well. (*Id.* at 1009, 1033, 1045, 1046, 1053-54, 1065, 1069, 1396.) According to Nadav, he never intended to deprive Salah of sleep, and in fact, never deprived Salah of sleep. (*Id.* at 1411, 1483, 1489, 1524, 1612.) Nadav explained that he sometimes questioned Salah in the middle of the night "because of severe terrorist activity, because of the nature of that activity, it was very important to receive information as soon as

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possible in order to prevent another act of killing.” (*Id.* at 1489.) Salah was alert when such questioning took place. (*Id.*)

Nadav testified that the ISA provided Salah with meals three times a day unless Salah was fasting for religious purposes. (*Id.* at 963-64.) When Salah wanted food, Nadav said that they gave it to him. (*Id.* at 1484.) In fact, Nadav often ate meals with him. Salah also received food from the kitchen of the interrogators, rather than from the prison kitchen, including fresh salads. (*Id.* at 964, 995.) In addition, Nadav testified that he gave Salah coffee and tea when he asked for such drinks, and even offered drinks to him when he did not ask for them. (*Id.* at 1484.) Nadav testified that he brought coffee for both himself and Defendant so frequently that he knew how Salah liked his coffee – with two spoons of sugar. (*Id.* at 1050, 1106 1178-79.) Further, Nadav said that he permitted Defendant Salah to go to the bathroom whenever he wanted to do so; Salah never had to beg to go to the bathroom. (*Id.* at 1198-99, 1483.) Nadav also gave Defendant Salah a copy of the Koran. (*Id.* at 964.) Nadav said that he treated Salah “quite nicely” while he was in custody. (*Id.* at 1485.)

According to Nadav, Salah did not complain to him about his treatment while he was in custody. Nadav further testified that he never observed any signs of physical or mental abuse during his questioning of Defendant Salah. (*Id.* at 992, 1009, 1027, 1033, 1067, 1069, 1222, 1484, 1486-87, 1534.) Salah never complained to Nadav that Haim had mistreated him. (*Id.* at 1486.) Nadav added that “I can say that judging on the relationship that we had, if something of this had happened to him or could have happened to him or something even close or similar to that, he would tell me about it.” (*Id.* at 1225.) Also, Nadav testified that other ISA agents would

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have told him if any such things happened because “we don’t hide information one from the other.” (*Id.* at 1225.) Salah did tell Nadav that other prisoners in custody cursed the ISA. (*Id.* at 1486.)

Nadav testified that he never left Salah handcuffed in the interrogation room, and he never left Salah outside of the interrogation room handcuffed or sitting in a small chair. (*Id.* at 1006, 1221.) Furthermore, Nadav never saw Salah sitting in a small chair. (*Id.* at 1006, 1221, 1428, 1483, 1693.) In addition, Nadav testified that the ISA did not use a small chair like Defendant’s Exhibit 5. (*Id.* at 1427-28.)

Nadav further testified that he never exposed Salah to deafening music. (*Id.* at 1221, 1462.) He testified that he never threatened Salah. (*Id.* at 1223, 1483.) Nadav said that he never threatened Salah that he would spend the rest of his life in jail if he did not confess. (*Id.* at 1223.) In fact, Nadav said that he did not tell Salah that they would release him if he confessed. (*Id.* at 1224.) Instead, he told Salah that his sentence was up to the judge in the case. (*Id.*) Salah wanted to know what his sentence would be, but Nadav did not give him an answer regarding the extent of the sentence that he would get. (*Id.* at 1666.)

Nadav testified that he never threatened to have the FBI kill Salah’s family. (*Id.* at 1221.) He said further that he never heard any such threats made to Salah. (*Id.* at 1222.) Moreover, Nadav never threatened Salah’s family. (*Id.* at 1484.) He testified that he never threatened or heard anyone threaten to have Salah sexually assaulted. (*Id.* at 1222.)

Similarly, Nadav said that he never physically abused Salah, nor did he personally observe others do so or hear of others physically abusing him. (*Id.* at 1222, 1483.) Salah never

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told Nadav that he had been physically abused. (*Id.* at 1223.) Nadav testified that he never personally photographed or threatened to photograph Salah without his clothes on, and he was not aware of anyone else doing so or making such threats. (*Id.* at 1120.) Neither Nadav nor anyone else to his knowledge ever put Defendant into a cell or room with freezing temperatures. (*Id.* at 1220.) Nadav added that Defendant Salah could adjust the thermostat in the interrogation room himself if he wanted to. (*Id.* at 1533.)

Further, Nadav strongly denied ever putting a hood over Salah's head, (*id.* at 1483, 1448-52), or placing him in a cold or hot room. (*Id.* at 1483.) He testified that he never observed Salah's head covered with a hood, and never asked anyone to cover Salah's head with a hood. Similarly, Nadav testified that no other ISA interrogators told Nadav that they had covered Salah's head with a hood. (*Id.* at 1448-52.) Nadav also denied that he or anyone else threatened to blind or poison Defendant Salah if he did not confess or cooperate with the ISA. (*Id.* at 1223.)

Regarding Salah's access to an attorney, Nadav testified that Israeli law does not provide a detainee with immediate access to an attorney. (*Id.* at 1528-29.) In Defendant Salah's case, Haim had the authority to determine, within the time constraints provided by law, when Salah could see an attorney. (*Id.* at 1529.) Although Nadav could not remember the exact time frame, he testified that Salah was permitted access to an attorney before the ISA had to give him such access under the law. (*Id.*)

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3. Sa'doan

Nadav also testified extensively on his discussions with Salah regarding the burial site of Sa'doan's body. (*See, e.g., id.* at 1016-1031, 1036-37, 1046, 1076.) On approximately January 31, 1993, Salah informed Nadav that he had "at his disposal the map that describes the location of the body of Sa'doan." (*Id.* at 1018.) Nadav testified that it was very important to find the body "because we have a custom that it is our obligation to bring soldiers – and, in general, people, to be buried according to the custom of our religion of Israel." (*Id.* at 1019.)

Nadav testified regarding Salah's negotiations with the ISA over the burial location. Nadav stated, "What he said is he told us he has the map in Chicago at his house and he was willing to negotiate with us about the finding of the body, and only afterwards he would ask his wife to send the map." (*Id.* at 1019.) Nadav explained that Salah and the ISA then negotiated and reached an agreement on this issue. (*Id.* at 1019; Government Exhibit Sa'doan Agreement.) According to Nadav, Salah handwrote their agreement, setting forth the terms of their agreement regarding the map and finding Sa'doan's body. (Government Exhibit Sa'doan Agreement.) Nadav testified that Prime Minister Rabin ultimately had to agree to the terms in the agreement before the ISA could commit to them. (Tr. at 1021-22.)

In an effort to obtain the map which Salah said he had at home, he called his wife in the United States. (*Id.* at 1017-18.) Salah reported that his wife said that she either destroyed or burned the map. (*Id.* at 1023.) Nadav testified that Salah attempted to re-create the map to reflect where the body was buried. (*Id.* at 1024; Gov. Ex. Salah Handwritten Map 1.) After drawing the map, the ISA took Defendant Salah out into the field with them to assist the ISA in

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locating the body. (Tr. at 1024-25.) When Salah was out in the field, the ISA had him handcuffed. (*Id.* at 1031.)

Nadav testified that Salah again called his wife in an attempt to obtain the map from her. (*Id.* at 1037; Gov. Ex. 2-8-93 Log.) He explained that Salah indicated a hesitancy on his wife's part regarding the map, but Salah attempted to explain to her that he was trying to get the map on his own initiative. (*Id.* at 1038.) During the conversation, Nadav said that Salah informed his wife that his condition in the prison was fine and that he was getting his necessary medication. (*Id.*)

Nadav testified that Salah again called his wife on both March 17, 1993 and March 18, 1993, and that Nadav remained present in the room. (*Id.* at 1097-98; Gov. Ex. 3/17/93 Log Translation SH; Gov. Ex. 3/17/93 Log Translation SH.) During both conversations, Salah discussed locating the map reflecting the burial site of Sa'doan's body. (Tr. at 1097-98.) He also spoke with his children on March 17, 1993, and inquired about their studies. (*Id.* at 1097.)

4. Judith Miller

Nadav testified regarding his interactions in February 1993 with *New York Times* reporter Judith Miller. Haim asked Nadav to inquire of Salah if he would meet a journalist from the *New York Times*. (*Id.* at 1048.) Initially, Salah told Nadav that he was not interested in such an interview. (*Id.*) Subsequently, he agreed to the interview, and Ms. Miller thereafter observed Nadav interview Salah. (*Id.* at 1048-50.) She observed the interview through a monitor. (*Id.* at 1049.) After she saw the interview session, Ms. Miller asked Nadav to ask several questions for clarification, and Nadav went back into the interrogation area and asked Salah the questions. (*Id.*)

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at 1051.)

5. Birds

Nadav also testified about Salah's experience with the birds.

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(*Id.* at 1084.)

During the time that Defendant was with the birds, Nadav was on personal leave for 10 days because his father had passed away. (*Id.* at 1084-85.) When Nadav returned from his leave, he learned that Salah had authored a lengthy hand written statement in Arabic while with the birds. (*Id.* at 1085, 1576.) Nadav testified that March 11, 1993 was the first date that he saw Defendant Salah since his return from personal leave. (*Id.* at 1088-89.) According to Nadav, Salah stood up when Nadav entered the room and shook his hand. (*Id.* at 1089.) Nadav described Salah as alert and well rested. (*Id.*) Nadav also said that Salah did not complain to him about his time with the birds or anything else. (*Id.* at 1089-90.) Nadav testified that Defendant Salah never told him that the birds had threatened him. (*Id.* at 1223.) Instead, Nadav said that Salah was "really taking interest in what I've been through." (*Id.* at 1090.) Nadav testified:

In general, I would like to say that the type of relationship that I developed with him throughout the interrogation was very deep. We used to talk about personal matters. He used to tell me things, I would tell him things. I can say if it wasn't in the framework of an interrogation, we could have been good friends.

(*Id.* at 1089.)

6. March 18, 1993

Nadav testified that Salah did not know as of March 16, 1993 that Nadav had a copy of

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the handwritten statement he gave to the birds. (*Id.* at 1094.) As of March 18, 1993, however, Salah knew that he had this statement. (*Id.* at 1098.) Nadav testified that Salah agreed to meet with him and discuss the contents of the written statement that he gave to the birds. (*Id.* at 1098-99.) Salah told Nadav that he would “sit with [him] and tell [him] everything, but [Salah’s] condition is that [he] tell today everything and we will no longer sit and talk about this report.” (*Id.* at 1099.)

Accordingly, on March 18, 1993, Salah began talking to Nadav about his written statement to the birds. (*Id.*) Nadav received Haim’s permission to record the statement, and he recorded it in its entirety. (*Id.* at 1099, 1102-03; Gov. Exs. 3/18/93 Tapes 1-5; Gov. Exs. Tape English Translations SH 1-5.) Nadav did not disclose to Salah that he was recording the session. (Tr. at 1100.) Nadav also admitted that this is the only session between Salah and an ISA interrogator that the ISA recorded. (*Id.* at 1250-01.) The session lasted approximately 5 hours. (*Id.* at 1100.) Nadav testified that Defendant Salah “insisted on completing the report on that day.” (*Id.*) At various times during the session, Salah told Nadav that he wanted to complete their discussion that day and thereafter not talk further about the matters. (*Id.* at 1179-80, 1193-94, 1202-03.) Nadav testified that Salah told him to “[f]orget about interrogation after this.” (*Id.* at 1203.)

Nadav testified that Salah admitted that he had written the statement and further admitted to Nadav that “all that I have written here is true.” (*Id.* at 1101, 1145-47.) Nadav said that Salah never complained that he had been forced to write the report or threatened with violence or acts of violence if he did not write it. (*Id.* at 1101.) Salah told Nadav that “I trust you personally.”

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(*Id.* at 1106.) Nadav described Salah as “very respectful when he spoke, and he made very good contact with people he came in touch with.” (*Id.* at 1165.) With respect to Haim, Salah told Nadav, “if I wanted to be defiant with Haim, I would have done so.” (*Id.* at 1106.)

During the March 18, 1993 session, Salah reviewed the contents of his handwritten statement in detail. They had a copy of the report with them during the session and went through it. (*Id.* at 1146-47.) According to Nadav, Salah discussed the topics and admitted areas where he previously had not been truthful with Nadav or had given him false information. (*Id.* at 1163, 1181, 1200-02, 1204-05.) Nadav testified that Salah told him about his Hamas activities both inside and outside the United States.

Nadav testified that Salah did not know how he had obtained a copy of his handwritten statement to the birds. (*Id.* at 1146-48, 1207-08.) Salah inquired about how he had obtained it, and asked if they had “spies” in the prison. (*Id.* at 1147.) Nadav testified that Salah “didn’t understand if I went to the prison and had – and I just took it from the detainees or did I have spies that they brought me these reports.” (*Id.* at 1148.) Nadav added, “from my experience, it indicates in the prison – that in the prison it was like regular detainees and his treatment was good. That in such a situation, from my previous experience, if there was any problem at that moment, he would have told me in which way he delivered the reports. From my standpoint, it’s another indication that his treatment during the exercise was good.” (*Id.*)

According to Nadav, Salah refused to provide Nadav with certain information during this session on March 18, 1993. (*Id.* at 1144-46, 1204-06.) Nadav did not push the issue. (*Id.* at 1093, 1108-09.) He also corrected statements in the handwritten document that were incorrectly

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written. (*Id.* at 1177-78.) Salah told Nadav that he was talking, in part, to help himself – he hoped to get a reduced sentence. (*Id.* at 1210.)

Nadav testified that he and Defendant Salah again discussed the map of the location of the body of Sa'doan during this session. He said that Salah “suggested that he would go out of the facility for five hours, reach a public phone and make a collect call to his wife in the United States. That way she would feel that he was free.” (*Id.* at 1175.) Nadav further testified that Salah discussed a conversation that he had had with his attorney, Ahlam Haddad, after he provided her with a copy of the handwritten agreement he entered with the ISA regarding Sa'doan's burial location. (*Id.* at 1184-85.) The attorney told Salah that the ISA would not abide by the written agreement they had entered regarding the Sa'doan map, and that the ISA would “tear it apart.” (*Id.* at 1185.) Salah told Nadav that he was afraid they would tear it up after he spoke with her, but he came to understand that he could trust Nadav and “therefore, I don't listen to the female attorney.” (*Id.* at 1184-85.) Nadav added, “he was trying to tell me that he does not trust the lawyer regarding this subject. But I told him that this is none of my business.” (*Id.* at 1185.)

Nadav testified that Defendant Salah told him that because no one knew most of the information that he was providing to Nadav but himself, that “his commanders in the Hamas will understand that he was the one who gave it up, who gave it away, and that will create problems for him in dealing with them.” (*Id.* at 1114-15.)

During the March 18, 1993 session, Nadav testified that Salah joked with him, even suggesting that Nadav should pay him for the significant information he was providing. (*Id.* at

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1130-31; *see also id.* at 1140-42, 1193-94, 1204-05.) Nadav said that he offered Salah drinks throughout the session, and never denied him the use of the bathroom. (*Id.* at 1124-25, 1163-65, 1198-99.)

Nadav also testified regarding several of Salah's statements to Nadav. Regarding his release, Salah told Nadav "it all depends on how you release me. It depends on how I get out. If I leave here with the state of mind that you have screwed me, I will leave here seeking vengeance and I will start all over again. Do you want better than this honesty." (*Id.* at 1112.) Nadav testified that Salah added that if the Israeli authorities gave him a severe penalty, he would "dedicate [himself] to Palestinian action ... and train a hundred" soldiers. (*Id.* at 1113.)

During the session, ISA Interrogator Benny briefly came into the room. (*Id.* at 1172-74.) Salah did not complain to Nadav about Benny once he left the room. Nadav testified that Salah joked with Benny. (*Id.* at 1173-74.)

7. ISA Guidelines

Nadav also testified that he followed the ISA's internal guidelines when questioning detainees. (*Id.* at 1341, 1658.) When he began working for the ISA, they provided him with these written guidelines. (*Id.* at 1343.)

C. Israel National Police Officer Hezi Eliyahu

Officer Eliyahu, a senior investigator with the Israeli police, testified at the hearing regarding his interaction with Defendant on January 30, 1993. Officer Eliyahu explained that the "Israeli police [department] only works under its own orders, under its own rules. We do not work under the orders of the ISA. We are a totally independent unit." (*Id.* at 1801.)