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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 Cr. 304 (MGC)

5 AHMED ABASSI,

6 Defendant.

7 -----x

8 July 17, 2013

9 2:55 p.m.

10 Before:

11 HON. MIRIAM GOLDMAN CEDARBAUM,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
16 Southern District of New York

17 BY: JOHN CRONAN

18 MICHAEL FERRARA  
19 BENJAMIN NAFTALIS

Assistant United States Attorneys

20 SABRINA SHROFF

JERROD THOMPSON-HICKS

Attorneys for Defendant

21 ALSO PRESENT:

22 Marwan Abdel-Rahman, Interpreter

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1 (In open court)

2 THE COURT: Good afternoon. Please be seated.

3 What is the status of this matter?

4 MR. CRONAN: Good afternoon, your Honor. John Cronan,  
5 Ben Naftalis and Michael Ferrara for the government.

6 Since our last appearance we have produced a  
7 substantial amount of discovery. The majority of it consists  
8 of about 112 hours of recordings with an undercover law  
9 enforcement officer. A lot of these recordings are in Arabic.

10 THE COURT: That is what I was going to ask. Are any  
11 of them in English?

12 MR. CRONAN: Not a full recording. There may be  
13 English words here and there interspersed, but the majority is  
14 in Arabic.

15 We have produced either draft or verbatim translations  
16 from about 11 days of these recordings that cover March to  
17 April 2013. In particular, we have about, I would say, around  
18 three hours, two to three hours -- about three hours of  
19 verbatim recordings of some of the more important  
20 conversations. We are continuing to get the important  
21 conversations translated and as we do that we will be producing  
22 that to the defense on a rolling basis.

23 THE COURT: Thank you.

24 I see we have two counsel from the Federal Defenders.  
25 Is that right?

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1 MS. SHROFF: Yes, your Honor. Good afternoon.  
2 Sabrina Shroff and my colleague Jerrod Thompson-Hicks on behalf  
3 of Mr. Abassi, who is seated to my left.

4 THE COURT: Do you call yourself Mr. Thompson-Hicks or  
5 Mr. Hicks?

6 MR. THOMPSON-HICKS: Mr. Thompson-Hicks, your Honor.

7 THE COURT: Mr. Thompson-Hicks. Thank you.

8 Now, Mr. Abassi, your native language is Tunisian  
9 Arabic?

10 THE DEFENDANT: Yes.

11 THE COURT: Very well. And you have no difficulty  
12 understanding the interpreter, is that right?

13 THE DEFENDANT: No, I have no difficulty.

14 THE COURT: Good. You may be seated.

15 All right.

16 THE INTERPRETER: Your Honor, since your Honor said  
17 Tunisian Arabic, I would like to indicate I am not Tunisian. I  
18 am speaking to Mr. Abassi in standard Arabic.

19 THE COURT: I didn't realize there was standard  
20 Arabic. That is, I understand that it is all Arabic, but there  
21 are dialects in every country, as you know. You ask an  
22 Egyptian what he speaks, he won't say Arabic. He will say  
23 Egyptian Arabic.

24 Is your Arabic learned here or from your native  
25 country?

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1 THE INTERPRETER: I was born in Egypt and I graduated  
2 from Cairo University.

3 THE COURT: Then you know there are a lot of Egyptians  
4 who say I speak Egyptian even though it is Arabic.

5 THE INTERPRETER: I do speak Egyptian, but I  
6 communicate with Mr. Abassi in standard Arabic.

7 THE COURT: I see. Thank you. Very well.

8 I have been requested, to assist counsel for  
9 Mr. Abassi, by appointing an additional lawyer to assist with  
10 the legal defense of Mr. Abassi, and I understand that the  
11 lawyer on duty today is Lou Freeman. I will appoint him. So  
12 either Mr. Daniels or government counsel should go down to the  
13 magistrate judge's court and bring up Mr. Freeman. I want  
14 Mr. Abassi to have an opportunity to talk to him for a few  
15 minutes and then I will ask if I should appoint him.

16 MR. FERRARA: Your Honor, Michael Ferrara for the  
17 government. With the court's permission, will the court excuse  
18 me to run downstairs?

19 THE COURT: Go ahead.

20 MS. SHROFF: Your Honor, may we use the interpreter to  
21 speak --

22 THE COURT: Yes, of course.

23 MS. SHROFF: Thank you, your Honor.

24 THE COURT: That is a good idea. In fact, why don't  
25 you assist counsel in talking to her client while we are

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1 waiting for the new lawyer.

2 (Pause)

3 MS. SHROFF: My client was worried that I was in  
4 trouble because I was in the back. I was explaining to him --

5 THE COURT: I see.

6 Mr. Freeman.

7 MR. FREEMAN: Yes, your Honor. I have been grabbed.

8 THE COURT: The Federal Defenders have applied for me  
9 to appoint additional counsel, that is, additional cocounsel,  
10 because there are two Federal Defenders representing this  
11 defendant and they asked me to appoint from the CJA list, and  
12 of course I followed the CJA rules and you are the one on call  
13 today.

14 Now, is there any reason, number one, why I should not  
15 appoint you?

16 MR. FREEMAN: Not to my knowledge.

17 THE COURT: Very well, then.

18 MR. FREEMAN: It has been a minute since I heard about  
19 the case. I don't think there is a conflict. I haven't had a  
20 chance to consider that.

21 THE COURT: I am going to give you an opportunity  
22 before you answer fully to talk to your client for a few  
23 minutes. There is an interpreter in the courtroom who  
24 interprets for his Arabic and I want to ask both you and he  
25 whether he wishes to have you and you wish to be his counsel

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1 before I appoint you. So you may have a little private  
2 conversation.

3 (Pause)

4 THE COURT: Mr. Abassi, do you wish to have  
5 Mr. Freeman represent you along with your other counsel?

6 THE DEFENDANT: First of all, I would like to thank  
7 the court for this suggestion, and I have been working with  
8 Sabrina and Jerrod for the last three months on this case.

9 THE COURT: Yes, and Ms. Shroff tells me that they  
10 need additional assistance.

11 THE DEFENDANT: Like I said to the court, I have been  
12 working with them for three months. I have developed a great  
13 deal of trust in them.

14 THE COURT: Good.

15 THE DEFENDANT: And I am sure that they will make the  
16 best decision. I defer the decision to them.

17 THE COURT: But you are the one who is being  
18 represented and you must make your own decision.

19 MR. FREEMAN: Your Honor, if I may speak for a moment.  
20 Mr. Abassi expressed to me a concern that the relationship he  
21 has with his two counsel not be disturbed, and I explained to  
22 him that I will work with them, will not disturb that  
23 relationship, and he seemed satisfied with that explanation of  
24 how I would enter the case and what role I would play. So I am  
25 not seeing any conflict, and realizing my obligation to be an

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1 attorney on the panel, it is my duty to take this case and I am  
2 happy to do so. I explained that to Mr. Abassi.

3 I understand his concern. I am coming in from the  
4 outside. But I was a Federal Defender once myself and I know  
5 Ms. Shroff. We worked together on other cases, both while she  
6 was a Federal Defender and while she was a private attorney and  
7 I don't expect to have any problems working with current  
8 counsel, and I leave it at that.

9 THE COURT: Very well. Because it is such an  
10 important relationship, Mr. Abassi, that I was asking you in an  
11 excess of caution whether there was something that was  
12 troublesome to you.

13 THE DEFENDANT: Your Honor, I would like to mention to  
14 the court that I'm only 25 years old, 20 of which I have spent  
15 as a student.

16 THE COURT: All right. What you are telling me is you  
17 really have no basis for -- all I was asking you was whether  
18 you have any objection.

19 THE DEFENDANT: I don't have an objection.

20 THE COURT: Very well. Then you will get to know  
21 Mr. Freeman much better as he represents you and assists your  
22 other counsel.

23 THE DEFENDANT: Thank you so much, your Honor.

24 THE COURT: All right. And I do appoint you now,  
25 Mr. Freeman, to be cocounsel for Mr. Abassi.

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1 MR. FREEMAN: Thank you, Judge.

2 THE COURT: Very well.

3 MR. FREEMAN: I accept the assignment.

4 THE COURT: Good.

5 Now the next question is this. Ms. Shroff tells me  
6 that she has been cleared for classified information. Is that  
7 true of Mr. Thompson-Hicks? Have you gotten clearance?

8 MR. THOMPSON-HICKS: I have not gotten clearance.

9 THE COURT: So you will need to do that as well.

10 MR. THOMPSON-HICKS: Yes.

11 THE COURT: How about you, Mr. Freeman, have you been  
12 cleared for classified information?

13 MR. FREEMAN: Many years ago. My clearance expired.  
14 But I understand that because I had clearance it will be easier  
15 getting clearance.

16 THE COURT: Very well. Then you should proceed to get  
17 clearance.

18 MR. FREEMAN: I will.

19 THE COURT: Very well. Now how much discovery has  
20 been turned over?

21 MR. CRONAN: Your Honor, the majority of the discovery  
22 has been the approximately 112 hours of recordings I mentioned  
23 earlier and then the both summary and verbatim translations of  
24 those recordings. Discovery also included reports of  
25 interviews with the defendant and various other, some other



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1 documentary evidence. There is going to be more discovery.  
2 Some of it we expect to be able to turn over very soon. Some  
3 of it requires additional authorization at a higher level  
4 before we can turn that over. We are working on that.

5 THE COURT: What steps are you taking to make that  
6 possible?

7 MR. CRONAN: Sure. We have been meeting with the  
8 relevant people at the FBI, including just earlier this  
9 morning, and we have another meeting scheduled for tomorrow  
10 with individuals in Washington, D.C., who would be necessary to  
11 give that authorization. I would expect that we should be able  
12 to produce that discovery, which will be both, I expect will be  
13 unclassified and classified discovery, within a month and a  
14 half from now. So I would suggest perhaps a date in about two  
15 months from now.

16 THE COURT: So we are going over to the fall now.

17 MR. CRONAN: I think that is accurate, your Honor.

18 THE COURT: All right. So by the end of September you  
19 should complete discovery?

20 MR. CRONAN: Correct, your Honor. That is our  
21 expectation.

22 I would note, your Honor, that there is a possibility  
23 of a filing pursuant to the Classified Information Procedures  
24 Act with the court, which would be an ex parte sealed filing,  
25 but at this point we don't know for sure whether or not there

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1 will be a filing along those lines. But we will of course keep  
2 the court apprised of that.

3 THE COURT: Right. Now the discovery you are turning  
4 over, at least the classified discovery, is going at the moment  
5 to only Ms. Shroff. Is that right?

6 MR. CRONAN: That is right, your Honor.

7 THE COURT: And Mr. Freeman will have access to it as  
8 soon as he renews his clearance and Mr. Thompson-Hicks will  
9 have access to it as soon as he receives clearance.

10 MR. CRONAN: Correct, and we will make sure that  
11 Mr. Freeman and Mr. Thompson-Hicks are in contact with the  
12 classified information security officer, who I believe is  
13 actually in the courtroom right now, so that we can expedite  
14 that process.

15 THE COURT: Good. That is fine.

16 Are there any motions contemplated in this case?

17 MS. SHROFF: Your Honor, without having finished  
18 reviewing all the discovery --

19 THE COURT: You don't know yet.

20 MS. SHROFF: -- I couldn't know, but I certainly can  
21 tell the court that there is at least one motion.

22 THE COURT: Very well. Because what I would like to  
23 do is set September 30th as the deadline for discovery, that  
24 is, for turning over discovery, and I would like to give you a  
25 schedule for motion practice. The only reason I ask if there

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1 are any motions contemplated is to get some sense of how much  
2 time is reasonable for any motions contemplated.

3 MS. SHROFF: Your Honor, at the very least we would  
4 have a motion to suppress postarrest statements.

5 THE COURT: Very well.

6 MS. SHROFF: And of course if the government were to  
7 make an ex parte filing, we would move to have that not be an  
8 ex parte filing and have access to it.

9 I am assuming when the government says that they will  
10 produce discovery to us by September 30th and it will be  
11 complete, I assume they are saying that it would be discovery  
12 both in the original language and fairly decent translations of  
13 the discovery.

14 THE COURT: Let's just pursue that. Do I understand  
15 you really are having everything translated?

16 MR. CRONAN: Your Honor --

17 THE COURT: Because I assume you are not proficient in  
18 Arabic.

19 MR. CRONAN: I am not, and in terms of the 112 hours  
20 or so of recordings, I do not expect us to have verbatim  
21 translations of every minute of those recordings. What we will  
22 be endeavoring to do is get verbatim translations of whichever  
23 portions we have identified as most relevant. Obviously  
24 anything that would come close to Brady, which I am not aware  
25 of anything like that, we would have verbatim translations of,

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1 but also we will be getting verbatim translations of anything  
2 we will be looking to use affirmatively at trial.

3 Whether or not we are going to have all that done by  
4 the end of September, I don't know for sure because it takes a  
5 long time to do verbatim translations, but we do have at the  
6 very least summary translations.

7 THE COURT: Why is that? Why does it take longer?

8 MR. CRONAN: Your Honor --

9 THE COURT: You have to have somebody fluent in Arabic  
10 listening and translating.

11 MR. CRONAN: That's right, your Honor, and it is not a  
12 minute of words spoken to a minute of words written on the  
13 page. It takes quite a bit of time.

14 THE COURT: You are saying these are not interpreters  
15 at the UN who are simultaneous interpreters.

16 MR. CRONAN: Correct, your Honor. What we will  
17 definitely do is we have a fair amount of -- I expect that we  
18 will be able to produce some additional summary translations as  
19 well, which would be a good starting point for the defense.

20 THE COURT: What do you mean by summary translations?  
21 I don't even understand what that means.

22 MR. CRONAN: Sure. That would be someone listening  
23 to, for example, a conversation and maybe in a paragraph  
24 summarize what that conversation was about, as opposed to --

25 THE COURT: I don't understand the purpose of that.

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1 Why would you have somebody summarize rather than translate  
2 directly.

3 MR. CRONAN: Because it takes a fraction of the amount  
4 of time.

5 THE COURT: Well, I understand, but I think that most  
6 things should be translated verbatim.

7 MR. CRONAN: Your Honor, a lot of the 112 hours would  
8 not be stuff that we would be looking to use at trial. I think  
9 I could say with a pretty high level of confidence that  
10 translating all 112 hours will not be possible by then because  
11 the amount of time it will take, the number of available  
12 interpreters and other pressing demands and just whether or not  
13 it is a sensible use of resources to translate verbatim stuff  
14 that won't be used at trial.

15 THE COURT: I don't understand the purpose of having  
16 somebody who is not a lawyer summarize what was said.

17 MR. CRONAN: Well, your Honor, it is a summary of a  
18 conversation, not a legal analysis of the conversation.

19 THE COURT: I understand, but the actual words used  
20 are important.

21 MR. CRONAN: Mr. Naftalis brought up a good point.  
22 For example, a lot of conversations were dinner conversations  
23 and the conversation may not have been about anything at all  
24 relevant to the charges.

25 THE COURT: Why are you using them as discovery?

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1 MR. CRONAN: Well, it is a recorded statement of the  
2 defendant.

3 THE COURT: Once it is not translated verbatim, it is  
4 no longer a recorded statement of the defendant.

5 MR. CRONAN: Your Honor, it is an audio recording of  
6 the defendant that we feel we should produce to the defense  
7 even though it may not be something that we would be  
8 necessarily offering at trial. Like I said, anything we would  
9 be offering at trial we will be getting translations of.

10 THE COURT: Yes, of course.

11 MR. CRONAN: And we will do that as expeditiously as  
12 possible. But just from dealing with Arabic translations in  
13 other cases --

14 THE COURT: But you are saying in any event then the  
15 things that you are not translating verbatim you will turn over  
16 verbatim and perhaps those you can turn over more quickly so  
17 the defendant can translate them.

18 MR. CRONAN: Your Honor, yes. We already have turned  
19 over the actual audio recordings to the defense.

20 THE COURT: Oh, you have.

21 MR. CRONAN: And we have made contact with the jail to  
22 ensure that the defendant will be able to listen to those  
23 recordings in his cell. He won't be limited to having to go to  
24 the prison library.

25 THE COURT: I understand. Then that you can do on a

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1 rolling basis.

2 MR. CRONAN: And we have done that, your Honor.

3 THE COURT: I see. Good.

4 MR. CRONAN: There may be additional recordings and  
5 once we have those, those will be turned over.

6 THE COURT: Those will be turned over in the same way.

7 MR. CRONAN: Correct, your Honor.

8 THE COURT: So you are only summarizing what you have  
9 no intention of using. Is that right?

10 MR. CRONAN: Your Honor, we are giving to the defense  
11 the audio recordings for the defense to listen to of all the  
12 recordings.

13 THE COURT: In their entirety. Those have all been  
14 turned over.

15 MR. CRONAN: Stuff we may use and stuff we may not  
16 use.

17 THE COURT: All right.

18 MR. CRONAN: With respect to stuff we intend to use at  
19 trial, we will be getting verbatim translations.

20 THE COURT: Good. You should turn those over first.

21 MR. CRONAN: Yes, your Honor.

22 THE COURT: And then how much remains?

23 MR. CRONAN: Your Honor, right now we have about three  
24 hours of excerpts of verbatim translations, written out  
25 verbatim translations that have been turned over. We have more

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1 detailed summary translations of many other conversations. The  
2 process right now is to obtain more verbatim translations of  
3 the other materials.

4 THE COURT: Yes.

5 MR. CRONAN: So that is going to be an ongoing process  
6 and we are going to be producing that.

7 THE COURT: As you get it.

8 MR. CRONAN: Correct, your Honor.

9 THE COURT: And on a rolling basis.

10 MR. CRONAN: Absolutely, your Honor.

11 THE COURT: You have reason to think that that will  
12 not be completed by the end of September?

13 MR. CRONAN: Your Honor, we will need to engage and  
14 speak with the translation services we use to figure out what  
15 their timetable would be.

16 THE COURT: I would like the answer.

17 MR. CRONAN: Yes, your Honor.

18 THE COURT: Good. Because then I will set a motion  
19 schedule. So what I will do is set a time for a status report  
20 and at that time I will set a date for motions.

21 If it is agreeable to counsel, I will set Tuesday,  
22 October 1st -- wait just a moment. Monday, September 30 at  
23 10:30 in the morning, if that is agreeable, for a status  
24 conference, at which time we will know very much more clearly  
25 exactly what has been done and what remains to be done.



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1 MR. CRONAN: Yes, your Honor.

2 THE COURT: Very well. I take it counsel have no  
3 problem with that --

4 MS. SHROFF: No, your Honor.

5 THE COURT: -- date and time.

6 MS. SHROFF: I checked with my cocounsel, your Honor,  
7 and it is a fine date and time.

8 THE COURT: Thank you.

9 Is there anything further?

10 MR. CRONAN: Your Honor, the government lastly would  
11 move to exclude time pursuant to the Speedy Trial Act from  
12 today until September 30, 2013. The reason for the exclusion  
13 is that the ends of justice served by the continuance outweigh  
14 the interests of the public and the defendant in a speedy trial  
15 because the additional time will allow the defense to review  
16 the discovery that has been produced, the government to  
17 continue its rolling-basis production of discovery and the  
18 defense to review that discovery, and for the defense to  
19 consider any motions based on the discovery they have received.

20 THE COURT: Mr. Abassi, did you hear what the  
21 prosecutor just said? He is asking me to exclude the time  
22 between now and the end of September when we will have a status  
23 conference from what we call the speedy trial clock, which  
24 means I am asking you, do you agree that the time between now  
25 and the end of September, for your counsel to prepare your

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1 defense, outweighs in the interest of justice both your right  
2 to a speedy trial and the public's right to a speedy trial.

3 THE DEFENDANT: I agree.

4 THE COURT: Very well. I will adopt that finding and  
5 on that basis I will exclude the time between now and September  
6 30th from the speedy trial clock.

7 You may be seated.

8 Is there anything further?

9 MR. CRONAN: Not from the government, your Honor.

10 MS. SHROFF: No, your Honor, not from the defense.

11 THE COURT: Very well. Let me just ask one more  
12 question of the government. You have already said you would  
13 facilitate the arrangement for security clearance for counsel.

14 MR. CRONAN: We will put counsel in contact with the  
15 office that handles it.

16 THE COURT: Thank you very much. Very well.

17 You are all excused.

18 (Adjourned)

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