

(All of the information in this factsheet is based on evidence which was presented at trial or on information which was reported in the media)

Yassin Aref

Yassin Aref is 37 and is a refugee from Kurdistan in northern Iraq. He is a highly religious man who is deeply intelligent and extremely sensitive to the suffering of others. Yassin's grandfather was a famous imam in that area of Kurdistan, and Yassin grew up steeped in that tradition, starting to preach at a very young age.

During Yassin's formative years, Saddam Hussein was the dictator of Iraq and his brutality was visited most harshly on the Kurds. In an ostensibly Muslim country, Yassin was not allowed to openly practice his religion. His younger brother died as a young child because Saddam had imposed a curfew, and it was not possible to take the boy to a hospital until it was too late.

In 1991, a few years after the Halabja massacre, when Saddam had gassed an entire village, there was an uprising and Saddam was briefly pushed out of Kurdistan. He returned a few months later and nearly the entire population of the region fled into the mountains near the Iranian border. Finally, the UN forced Saddam to permanently stay out of most of Kurdistan, though he was allowed to control oil-rich Kirkuk. Kurdistan was now semi-autonomous but the people had long been physically and emotionally brutalized, and the region was economically devastated. Different Kurdish independence groups began fighting among themselves, and the dream of Kurdish autonomy was in ruins. Yassin was deeply affected by all of these experiences.

Somehow, despite all that he and his people had been through, Yassin managed to cross the border to Syria to attend college. He was voracious for knowledge, traveling for days to attend classes for a couple weeks at a time, always forced to return due to visa restrictions. Yassin managed to complete several courses and also was asked to speak and read poetry a few times at some local Kurdish youth gatherings. At that time, and still, Yassin inhaled books as if they were air or food or water, and would always be searching for anyone who had a book he could read. It did not matter what the books were about, Yassin simply soaked up all kinds of knowledge and ideas.

In 1995 Yassin Aref married, and he and his new wife, Zuhur, decided to permanently leave Kurdistan to seek a better life for their children. Though it was heartbreaking to Yassin to leave his homeland, the couple traveled to Syria and were accepted as refugees in a United Nations program which would at some point send them to a third country. While in Syria Yassin found work as a gardener and caretaker of an estate on the outskirts of Damascus. He worked there for several years and was very well liked by his employer, a rich Syrian businessman. Yassin and Zuhur's two oldest children were born during this time period. Eventually, though, the employer's wife tried to force Zuhur to work for her, even though she already had two other servants. Because Zuhur had two young babies at the time, Yassin told his boss she would not work for his wife, and the result was that Yassin had to look for another job.

It was very difficult to find work in Syria, especially for foreigners, and Yassin looked unsuccessfully for quite a while, while he and his family barely scraped by on the meager

assistance provided by the UN. Finally, Yassin ran into a college friend who said he could work with him at the Islamic Movement of Kurdistan (IMK) Office in Damascus. The IMK is the third largest Kurdish opposition group, and was one of seven such groups chosen to receive US aid through the Iraqi Liberation Act, passed by Congress in 1998.

Yassin Aref worked in the IMK Office for approximately 10 months, until the UN sent him to the United States in October, 1999. The main activities of the IMK were helping Kurds to travel into and out of Kurdistan through Syria, since the no fly zones made it impossible to fly directly into Kurdistan. The IMK also served as a conduit for news of loved ones in Kurdistan – this was crucial, as there was no mail service or any other way to get messages through beyond the travelers themselves. The IMK also helped galvanize opposition to Saddam, and met with many groups to try to convince them to support full Kurdish independence. Unlike some radical Islamic groups, the IMK believes in working with and participating in secular parliamentary governments, and was never considered a terrorist organization. Although Yassin worked there, mostly doing office work and driving, he never became an actual member of the IMK, feeling strongly that as a religious man he didn't want to limit himself to any particular political organization.

In October 1999, Yassin, Zuhur, and their 3 children, the youngest of whom was 8 months old, boarded an airplane and flew to Albany, NY, via Frankfurt and Chicago. Once in Albany, though he spoke almost no English, Yassin soon found work as a janitor at Albany Medical Center, where he cleaned toilets full time. Then Yassin was offered the position of part-time Imam at the Masjid al Salam Mosque on Central Avenue in Albany. As his English gradually improved, he was given the Imam position full-time. This was the situation Yassin Aref found himself in at the time the government sting operation began in 2003.

Yassin had never been in any trouble with the law until his arrest in this case.

Mohammed Hussain

Mohammed Musharraf Hossain, 51, is an immigrant from Bangladesh who has been in this country for approximately 30 years. He is a United States citizen and deeply values the opportunities he has been given here, and the principles for which this country is supposed to stand. Like many immigrants, Musharraf worked very hard and eventually managed to own his own business, the Little Italy pizza shop on lower Central Avenue in Albany. He lived in an apartment above the pizza shop along with his wife, four children, and some older relatives he had helped to bring here from Bangladesh. Not only did Musharraf run the pizza business, he also managed to buy and rehab several broken down buildings, which he then rented out. Despite all his hard work, Musharraf was struggling financially when he was approached by Malik in the summer of 2003.

Like Yassin, Musharraf had never been in trouble with the law before.

Malik

Malik, (which means “king of kings” in Arabic), whose real name is apparently Shahed Hussain, though he has also used many aliases, is a Pakistani immigrant and failed businessman who learned to make money by committing fraud at the Department of Motor Vehicles. Malik would tell people that, for a fee, he would take the written permit test for them, under the guise of translating it. For an extra fee, he would make sure they passed the road test – this involved bribing DMV employees. For another fee, Malik would obtain driver’s licenses for certain individuals under false names. All in all, he did this over 80 times, according to the government, and those are just the ones they know about. Finally, Malik was caught and faced felony charges which would likely have resulted in a long prison term followed by certain deportation. Not wanting that to happen, Malik became a government informant, turning on the very people he had been working with and bribing shortly before.

Sometime in the spring or summer of 2003, Malik was asked by FBI agent Tim Coll if he would go undercover in another case, this one targeting the imam of a local mosque – Yassin Aref. Coll testified at trial that he chose Malik because he was very good at being deceptive. Malik was paid \$32,000 in “expenses” in this case.

We do not really know why the FBI wanted to go after Yassin Aref., though we can speculate, and some of those speculations are discussed below. Whatever the reason, they certainly went to a lot of trouble and expense to convict two innocent men.

THE STING

The idea was that Malik would secretly record conversations with his targets and try to draw them into supporting money laundering and terrorism, in the guise of a particular loan. He would approach Mohammed Hossain first. Tim Coll told Malik: Get to know him, impress him with your riches, give presents to his children, tell him what a great guy he is, and how you want to learn about Islam from him. Malik did that. Tell him you’re interested in buying his pizza business. Then offer him money. \$5000 - you’ll give him \$50,000 and he only has to give back \$45000. Malik did that. At some point let him know that the money comes from arms smuggling. That was much more vague.

Tim Coll had it all planned out and instructed Malik in what to say and do to try and catch some “terrorists,” which would be a great coup for the Albany FBI. (Giving him the benefit of the doubt, Coll probably actually believed the men were predisposed to support terrorism, and probably still does, despite all the evidence to the contrary.)

Malik followed some of the instructions, but ad-libbed greatly, and also lied profusely to his handler, especially about what was said on the tapes recorded in Urdu. Malik convinced Coll that he should speak Urdu to Musharraf, even though it was not Musharraf’s first language, and it

would have been easier for him to have spoken English. But then Malik couldn't have gotten away with his lies for so long, since it took months for Coll to get those tapes translated.

Urdu Tapes (Malik and Musharraf)

In one of the Urdu tapes, for example, Malik told Coll that Musharraf had said he believed in terrorist attacks aimed at Americans, but what he really had said was that Islam would be spread by example and good deeds, and there was no need for killing. When Coll heard Malik's lies, he decided to go ahead immediately with the sting, and that same day ordered a deactivated SAM missile, which he intended to use as a prop, though it was NEVER shown to Yassin Aref.

A few days later the missile arrived, and Malik showed it to Musharraf on November 20, 2003. Musharraf laughed nervously and said he had never seen anything like that before. He should have backed out, but he could use the money, and there had never been any real connection made between the promised loan and the missile. Malik was always very vague and contradictory, at one point saying he was doing nothing illegal and selling nothing which could harm a man. Musharraf's response: "What you're telling me now – this is good."

Even though it took many months to get them, there were serious problems with many of the government's Urdu translations. Musharraf's attorney, Kevin Luibrand, hired another translator who came up with competing transcripts. The Court appointed a referee who in many cases simply adopted the defense translations. Still, for some of the tapes, there were two competing transcripts presented at trial – of course the jury, not speaking Urdu, had no way to know which was correct.

In any event, Musharraf's defense was that he, a hard working law abiding man, was entrapped by the government, and was not predisposed to support money laundering or terrorism. The evidence showed that it was Malik who was pushing the whole thing, and Musharraf was the pawn he used to get to Yassin Aref.. Musharraf is the collateral damage of this case.

But the point was to get to Aref. So when Musharraf said (showing that he didn't think this was particularly illegal) that they needed to have the loan witnessed and recorded under Islamic law, Tim Coll told Malik to say that they didn't want any Pakistanis or Bangladeshis – it turns out then that the obvious choice was Yassin Aref. Musharraf fell right into the trap and suggested Yassin. Malik said that was a wonderful choice. Yes, says Musharraf, on December 5, 2003, because Yassin is very honest and would never break his word.

Later, on February 3, 2004, in another Urdu meeting between Malik and Musharraf, when Malik told Musharraf that he had told Yassin of the illegality of the money (though he didn't really, just hinted and used words Yassin didn't know), Musharraf was really very surprised. This

shows that not only did he never discuss that with Yassin, but also that he didn't think Yassin would support whatever it was that was supposedly going on.

At one point Malik had been told to tell Musharraf that he worked with the group JEM, a group fighting for Kashmir's independence from India, and which had been designated a "Foreign Terrorist Organization" by the US. It turned out that Musharraf had never heard of the group, and believed that it was a musical act. Malik never actually told him it was a terrorist group, just that it was fighting in India.

The English Tapes (when Yassin was present)

12/10/03

December 12, 2003 was the first day Malik was introduced to Yassin Aref, who had, indeed, been brought in to witness and record the promised loan, as is required under Islamic law. In fact, according to a particular chapter of the Koran, when a Muslim, particularly an imam, is asked to do this duty, he cannot refuse. Yassin thought that Malik would simply give Musharraf the \$50,000 that day, and terms would be set up for repayment. Little did he know that the money would be handed over (and repaid) in small increments over many months, giving Malik lots of opportunities to spin his web.

So Malik met Yassin, and immediately told him how much he admired him because of his knowledge about Islam. He begged Yassin to teach him about the religion, and advise him if he were committing any sins. This of course is also required of Yassin Aref as an imam. Yassin explained to Malik why it was so important to write everything down, which Malik did not want to do. Yassin said that the loan amount and the repayment terms must be clear and must be in writing in case there was a later dispute. He never focused on the source of the money, as that was not important to his role as a witness. And, of course, he never received a penny himself.

When Malik hinted about "black money," Yassin said he didn't think there was anything illegal here. Malik responded that he didn't pay taxes on the money, so Yassin thought that was the illegality. Later, when Malik talked of "legalizing" the money - a way of describing money laundering - Yassin, coming from Kurdistan where there were no banks, and knowing nothing of the vagaries of the US financial system, actually believed that meant that Malik was giving cash to Musharraf and taking back checks *in order to pay taxes on the money*. This fit with Malik's pretense of telling Yassin he wanted to be a good person and do the right thing, and needed spiritual advice to that effect. Yassin also believed that Malik was, as he claimed, giving the \$5000 to Musharraf in order to help a struggling brother Muslim, and because he was so rich he could easily afford it. If Yassin ever had money, he would not hesitate for a moment to share it in that manner, so it didn't seem strange to him.

Yassin also explained to Malik on that day, and again on later dates, how important it was for Muslims to keep their promises, and to tell the truth at all times.

1/2/04

On January 2nd, 2004 there was a videotaped meeting between Malik, Musharraf and Yassin at Malik's business. This was the first day any money was exchanged. When Malik handed over \$5000 in cash, Yassin counted it, which took a few minutes. While Yassin was looking down to count the money, Malik pulled out the trigger mechanism for the SAM missile, which looked like a staple gun or pricing gun. Malik said to Musharraf, This is part of the missILE (Malik always put the emphasis on the final syllable, with a hard "i" sound, so it sounded almost like "messiah.") I showed you before. That was all that was said about it, and Yassin just kept counting the money, having had no reaction to this statement because it was not directed at him, and he did not know the word "missile" in any event. Malik held the device for a couple minutes while Yassin finished counting the money, then he put it down.

This was the day when Malik told Yassin he had to "legalize" the money, and Yassin thought that meant that Malik wanted to pay taxes on it.

It was clear that the jury did not believe Yassin knew what Malik meant by "legalize," or knew the word missile, or had any idea what the trigger mechanism was, as he was acquitted for all the dates until July 1, six months later.

1/14/04

On this day Malik again said he was trying to "legalize" the money and Yassin clearly thought that meant he wanted to pay tax on it. This is also the only day there was any discussion of the group JEM with Yassin. Malik tried really hard to get Yassin to say he supports that group, which is fighting in India for Kashmir's independence, and which the US has designated a foreign terrorist group. But Yassin says over and over and over again (he is very consistent) that he cannot support that group, he does not know enough about them. The most he can say is that if Malik knows about them and supports them, then it is up to him, he should support them if he believes they are doing the right thing. But that he, Yassin, cannot do so. He also points out that it is generally better to give money to service groups who help orphans and women who are hungry and cold in the mountains, etc.. He says with many political groups money ends up going to the wrong people or for the wrong purpose.

Malik keeps trying though, and, still under the guise of being "taught about Islam" draws Yassin into political conversations. Yassin says that while he supports the right of peoples to self-determination, such as the Palestinians, the people of Kashmir and the people of Kurdistan, all of

whom have been occupied and oppressed by others, he does not support suicide bombing or really any kind of bombings. And that for him it is irrelevant anyway, since he, though sympathetic to the plight of, say, a Palestinian child, is simply not in that situation. He is an imam, and his duties are to lead prayers, counsel people, etc...

Yassin also says here that, as he had said before, it is very important for Muslims to keep their word, and that when he came to this country he promised to obey American laws, so he must do so.

This is also the day when Malik inserts the phrase “I send the missile” into the middle of an unrelated conversation. Yassin appears not even to have heard him, and just keeps making his points.

Yassin was acquitted for this date and for every subsequent date until July 1.

1/21/04

On this date Malik asks if it is right to kill a snake if you see one (apparently referring to a famous speech by Osama bin Laden), and Yassin says no, better to let the snake sleep or you’ll wake it and it will kill innocent people. And Yassin also says, “is better to leave it and to go, ‘cause it has nothing with me to fight with that snake.”

Yassin was acquitted for this date and for every subsequent date until July 1.

2/12/04

This is the date when Malik ridiculously claimed that the recorder had “fallen off” on the only day when he mentioned that there was to be an attack in New York City. He blurted this out at Yassin’s house in front of at least one person he had never seen before, Kassim Shaar, who was visiting Yassin. Kassim testified that he was worried until Yassin told him that Malik was joking. Yassin testified that he was quite certain that Malik was joking, because no one who was serious would say something like that in front of a total stranger.

Yassin was acquitted for this date and for every subsequent date until July 1.

3/2/04

On this date Malik and Yassin discuss what had happened on February 12 - Malik says that he didn’t want other people, such as Kassim, to know how much money he has or everyone would be asking him for money. Yassin also implied that he thought Malik was joking when he spoke about the attack in New York City.

Yassin was acquitted for this date and for every subsequent date until July 1.

4/16/04

Nothing of substance was discussed on this date, though money was exchanged. Yassin was acquitted for this date and for every subsequent date until July 1.

6/9/04

Nothing of substance was discussed on this date, though money was exchanged. Yassin was acquitted for this date and for every subsequent date until July 1.

****6/10/04**

Here Malik mentioned the word ammunition again, and the word “chaudry,” (the code word Yassin had clearly never been taught) in reference to New York. He never used the word “missile” and there had never been any indication that Yassin had learned the word “ammunition” (which is not illegal anyway) since the last time Malik had used that word. Also, on this date Yassin said even if the FBI was listening to him, he knew he had nothing to worry about since he wasn’t doing anything wrong.

THE CHARGES

The first indictment, filed in August, 2004, charges both men with 27 counts, all arising out of the sting operation. The way the laws are written, they specifically include sting operations so there is no *legal* question as to whether such a government tactic is acceptable in situations like this, where the defendants were clearly not involved in anything illegal prior to being approached by the government informant. Of course there are moral questions, and there are legal defenses, such as entrapment (in Mr. Hossain’s case) and lack of understanding (in both cases, but especially with Mr. Aref). However, Musharraf was convicted on all counts. Yassin, on the other hand, was acquitted of 18 of the 27 sting counts, and was only convicted on the 9 counts for the last two dates, 7/1/04 and 8/3/04 (3 counts for each date, plus three conspiracy counts).

In September, 2005 a superceding indictment was filed, which contained all the counts in the first indictment, along with three new counts charging only Yassin with having made false statements in February, 2002 and August, 2004.

Inconsistent Verdict for Yassin

In Yassin's case, the verdict just doesn't make sense because the jury acquitted him of all the dates where there had been *any* discussion of "legalizing money," JEM, the alleged NYC plot, etc. Between the latest date for which he was acquitted (6/1) and the first date for which he was convicted (7/1) there were only two meetings with Malik and at one of those absolutely nothing was discussed. At the other one, June 10, Malik did mention the word "ammunition," and the word "chaudry." (the code word for the missile which it was very clear that Yassin never knew) The words had been said by Malik on prior dates too, for which Yassin was acquitted, and there was absolutely no evidence that he had learned those meanings in the mean time. Many of those prior dates, such as January 14, contained much more discussion than June 10. Finally, it was on June 10 when Yassin said that even if the FBI was listening to them (since they had already interviewed him at least twice) he had no problem, since he knew he wasn't doing anything wrong.

Somehow the jury must have convinced themselves that Yassin should have figured out what was going on by that time. But why would he figure anything out when he was never provided with any more information? It seems very likely that this was a conviction borne of fear – the fear generated by 911 and the "war on terror." Not really knowing what to make of this, not knowing what Yassin really thought, the jurors were just *too afraid to acquit him*. Of course, that fear-based verdict completely reverses the standard they were *supposed to* use – not to convict unless they were convinced of guilt *beyond a reasonable doubt*. Here, the *doubt of innocence*, reasonable or not, resulted in the convictions. The same was probably true with Musharraf and his entrapment defense.

Money Laundering

The first 11 counts of the indictment charged basic money laundering. The government had to prove that the defendants knew that the source of the money was illegal, that they intended to conceal that illegal source through certain financial transactions, and that they actually took certain steps in an attempt to do so. Count 1 charged conspiracy to engage in money laundering – to prove that the government had to prove that the two men agreed with each other to launder money, as defined above. Counts 2-11 alleged specific money dates on which checks were provided to Malik as repayment for the loan.

Yassin was acquitted of Counts 2-9 and convicted of Count 1 (conspiracy) and Counts 10 and 11 – only the last two dates.

NYC Plot

Counts 12-19 charged what are probably the most far-fetched allegations – that the men believed Malik was somehow involved in a plot to attack the Pakistani Ambassador in New York City with the SAM missile (which had of course been provided by the government). The actual charges are attempting to provide material support to a particular terrorist plot involving a weapon of mass destruction. (Conveniently, the missile provided by the government, which of course Yassin never even saw, meets the legal definition of a weapon of mass destruction. In fact the defense stipulated to this, in an attempt to keep the government from parading the missile before the jury. But this was far too tempting for the government to pass up, and so, even though it served absolutely no *legal* purpose, they were allowed to put someone on the stand who held the missile up and explained how it could be used to shoot down airplanes. In fact, he was their very first witness, so the trial started out with the jury being terrorized by the missile.)

In a similar pattern to the money laundering counts, Count 12 charged conspiracy – an agreement to provide material support to the fake terrorist plot – and Counts 13-19 charged the specific dates on which it is alleged that the men engaged in the money laundering transactions which were claimed to constitute the material support. In other words, the very same check payments to Malik were charged as basic money laundering in Counts 2-11, material support for a particular terror plot in Counts 13-19 and, as seen below, support for a designated “Foreign Terrorist Organization” (JEM) in Counts 21-27. (The reason why there are less counts for the material support charges is because even the government realized that, based on the tapes, there was absolutely no basis for charging the NYC or JEM related charges until after a few of the check payments had already been made)

Again, Yassin was acquitted of Counts 13-17, and was convicted of Count 12 (conspiracy) and Counts 18 and 19 for those same last two dates. He was acquitted for the only date when the alleged plot was discussed – and this was on February 12 (the day Malike claimed the recorder “fell off”) – when Malik blurted it out *in front of a man he’d never seen before*. Apparently the jury believed Yassin when he said he was sure Malik was joking because, for one thing, he didn’t think he’d be crazy enough to say something like that in front of a total stranger. They acquitted

him for that date and several subsequent dates – why, then convict him of supporting this alleged plot when there was no more real mention of it after the dates on which he was acquitted?

JEM

Counts 20-27 charged the men with attempting to provide material aid to JEM, a Kashmiri independence group which is classified by the US as a Foreign Terrorist Organization. These charges, like the NYC charges, seem very weak, because Musharraf thought the group was a musical act (and was never actually told it engaged in terrorism), and Yassin told Malik over and over and over that he could not support the group.

However, once again Yassin was acquitted of Counts 21-25, and convicted of Count 20 (the JEM conspiracy) and Counts 26-27, relating to those same last 2 dates. The *only* discussion of JEM with Yassin occurred on January 14, and he was acquitted for that date and many subsequent dates, making the legal basis for the verdict as to these counts completely incomprehensible.

Superceding Indictment – False Statements Charges – Yassin

In September, 2005, a superceding indictment was filed, charging Yassin alone with three additional “false statements” violations. These are more minor charges which are often used by federal prosecutors to convict people when they fear they may be acquitted on the more serious charges. For non-citizens, these charges are often used to justify deportation.

Count 28 charged that in February, 2002 Yassin had failed to list the IMK in his application for permanent residency in this country. The form, which was in English, asked Yassin to list every organization of which he had been a member, or with which he had been affiliated, since his 16th birthday. Yassin received assistance completing the form from the now-defunct International Center, but it was never translated for him. His English was still quite poor at that time and he did not know the meaning of the word “affiliated” – in fact, he still did not know the meaning of that word when he testified at trial. Yassin was acquitted of this count.

Count 29 charged that Yassin had falsely told the FBI, when he was interrogated after his arrest in this case, that he was not a member of the IMK. It was clear that he *had* told the FBI that

he had worked for the IMK for several months in 1999 while living in Damascus, so the question was whether there was proof that he had been a *member* of the organization, which he had always denied. Yassin Aref was acquitted of Count 29.

Count 30 charged that Yassin, again during his interrogation after his arrest, with falsely denying that he personally knew a man named Mullah Krekar. Mullah Krekar had been an IMK official who later, in the end of 2001, left the group and founded Ansar al Islam, which is a designated “Foreign Terrorist Organization.” Yassin has consistently said that he did not personally know Mullah Krekar, a well-known figure, even though he had crossed paths with him a few times through his work in the IMK Office – for instance, he had picked him up at the airport, and had answered the phone twice when Mullah Krekar had called in regard to IMK business. (In fact, Yassin testified that according to Islamic principles he could not claim to personally know someone until he had traveled with him, eaten with him, and had financial dealings with him.) Yassin was convicted of Count 30.

Language Issues (Yassin’s English and the Arabic mistranslations)

In addition to the problems with the Urdu tapes, discussed above, there were other language issues. Yassin’s English was still pretty poor during the sting operation, which is clear from listening to the tapes which were played at trial. There was a great deal which he did not understand, including the words “ammunition,” “missile,” and other key words. While he was locked up in solitary for a year prior to trial, Yassin had the chance to do a lot of reading and writing in English - he also needed to learn to write in English in order to write letters to his children, who cannot read any other language. However, there are still many English words he does not understand, which was clear from his trial testimony. Not only did Malik use many crucial words Yassin did not understand, but he also spoke very quickly and jumped from subject to subject. Malik would at times throw incriminating phrases randomly into the middle of an unrelated conversation.

In addition, government translators were allowed to translate certain Arabic terms in a very misleading manner at trial. The word “jihad” was translated as a violent struggle, when the word really has *many* different meanings, like the English word “crusade,” and can refer also to a peaceful struggle and an internal spiritual struggle. The word “mushrik” was basically defined as any non-Muslim, while the more accurate definition is “polytheist,” which would not include

most Christians and Jews. The word “madrassa,” which means school, was basically defined as a terrorist propaganda center. While the translators did acknowledge the less ominous definitions for these words, they basically said that the meaning depends on the context, and they clearly *assumed* that in the context of this trial, the words were intended to be used as they have been used by radical Islamic extremists. This was very upsetting to many people attending the trial, especially those who have any knowledge of Arabic, or who are Muslims.

Wiretapping and Classified Evidence

In January, 2006, defense attorneys learned, through a New York Times article, that the NSA warrantless wiretapping program had been used in this case. The defense filed a motion to suppress any illegally obtained evidence, and to dismiss the charges if the whole sting operation would never have occurred without the previous illegal wiretapping. The Court denied the motion in what seemed to be an unprecedented classified order, and the defense filed a petition with the Second Circuit Court of Appeals to challenge that process. The NYCLU joined in. The Appeals Court denied the petition on procedural grounds, stating that nothing could be done while the case was still pending in the trial court.

Although it is hard to see precisely how the wiretapping evidence (which the defense has still never seen), and the other classified evidence (99 percent of which the defense has never seen, despite the security clearances obtained by the two lead attorneys) affected the trial, but there are certain things we do know.

The Court gave the jury an instruction that “the FBI had good and valid suspicions for investigating Yassin Aref.” This was apparently a reference to the classified evidence in the case. If the prosecution had introduced any of that evidence, in a very truncated and declassified form, at trial, the defense attorneys would not have been allowed to ask any questions about it or attack its validity, due to the classified nature of the underlying information. That placed the defense in a very difficult position. It is also disturbing that the defense attorneys were never allowed to see the vast majority of the classified evidence in the case, even though both lead attorneys had obtained top secret security clearances.

