

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X		Docket#
UNITED STATES OF AMERICA,	:	05-cr-845 (ERK)
	:	
- versus -	:	U.S. Courthouse
	:	Brooklyn, New York
NOUREDDINE MALKI,	:	
Defendant	:	December 20, 2005
-----X		

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES CHIEF DISTRICT JUDGE

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U.S. DISTRICT COURT
BROOKLYN, N.Y.
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1 THE CLERK: Criminal Cause for Pleading, United
2 States v. Nouredine Malki.

3 Counsel, please note your appearances for the
4 record.

5 MR. BURETTA: John Buretta for the government,
6 your Honor.

7 Good afternoon, your Honor.

8 MS. WHALEN: Federal Defender of New York for
9 Mr. Malki, good afternoon, by Mildred Whalen.

10 THE COURT: Good afternoon.

11 MS. WHALEN: Your Honor, I have discussed this
12 case with my client. At this point, he would like to
13 offer a plea to the three charges contained in the
14 indictment.

15 THE COURT: Okay. And what is his name that I
16 address him by?

17 MS. WHALEN: Nouredine Malki.

18 THE COURT: Nouredine Malki?

19 MS. WHALEN: Yes, the second name on the
20 indictment.

21 THE COURT: So, should we amend the caption to
22 reflect that's not his true name?

23 MS. WHALEN: Your Honor, that is his true name,
24 so the caption -- that's what --

25 MR. BURETTA: That's fine, Judge.

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1 THE COURT: All right. So, we'll deem the
2 caption -- the caption is amended to reflect that the
3 defendant's true name is Nouredine Malki. And we could
4 leave in the other also known as. And so we're just
5 replacing FNU, LNU with the name Nouredine Malki.

6 Mr. Malki, before I can accept your plea of
7 guilty, there are a number of questions I have to ask you
8 to be sure that you are guilty of the crime to which you
9 are pleading guilty, that you understand what rights you
10 are giving up by pleading guilty, and that you are, in
11 fact, guilty of the crime with which you're charged.

12 It's also important for you to understand what
13 the penalties are that you face, as a result of your plea
14 of guilty. If as we go along, there's something you
15 don't understand, there are any questions that you have,
16 don't hesitate to interrupt me and I'll be happy to
17 answer any questions that you may have.

18 Did you understand what I have just said to
19 you?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Could you tell me how old you are?

22 THE DEFENDANT: I was born in November 7, 1959,
23 sir.

24 THE COURT: And are you now or have you
25 recently been under the care of a doctor or a

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1 psychiatrist?

2 THE DEFENDANT: I have been -- I have visits,
3 doctor's visits. I'm taking medication for headaches and
4 for arthritis pain because I have pain --

5 THE COURT: Okay.

6 THE DEFENDANT: -- all over.

7 THE COURT: And -- I'm sorry, my case manager
8 has reminded me that you have to -- she's going to
9 administer an oath in which you swear to answer my
10 questions truthfully. That means if you should lie or
11 make any false statement, you could be prosecuted for
12 perjury.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 **N O U R E D D I N E M A L K I ,**

16 **having been first duly sworn, was examined and**
17 **testified as follows:**

18 THE COURT: So, what medications are you
19 taking?

20 THE DEFENDANT: I'm taking Ibuprofen for
21 headaches and I'm taking Tylenol for arthritis pain.

22 THE COURT: And when did you last take the
23 medication?

24 THE DEFENDANT: Last night.

25 THE COURT: Do those medications effect your

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1 ability to think, to reason, to understand what's going
2 on here now?

3 THE DEFENDANT: No.

4 THE COURT: Is your mind clear?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand what's going on
7 here?

8 THE DEFENDANT: Yes.

9 THE COURT: And have you had an opportunity to
10 discuss this matter with your client?

11 MS. WHALEN: Yes, I have.

12 THE COURT: And does he understand the rights
13 he would be waiving by pleading guilty?

14 MS. WHALEN: Yes, he does.

15 THE COURT: And he's capable of understanding
16 the nature of these proceedings?

17 MS. WHALEN: Yes, he is.

18 THE COURT: And in your judgment, is he
19 competent to plead at this time?

20 MS. WHALEN: Yes, he is.

21 THE COURT: And have you gone over with him the
22 sentencing scheme that's applicable in this case
23 including the guidelines?

24 MS. WHALEN: Yes, I have.

25 THE COURT: Mr. Malki, have you had an

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1 opportunity to discuss this matter with your lawyer?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And are you satisfied to have her
4 represent you here?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you received a copy of this
7 document called an indictment which contains the charges
8 to which --

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: -- you intend to enter a plea of
11 guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: And have you read it?

14 THE DEFENDANT: No.

15 THE COURT: Do you understand it?

16 THE DEFENDANT: Yes.

17 THE COURT: Count One of the indictment reads
18 as follows. In or about and between 2003 and 2004, both
19 dates being approximate and inclusive within the Eastern
20 District of New York, the defendant Nouredine Malki, did
21 knowingly and willfully make false, fictitious and
22 fraudulent statements and representations in a matter
23 within the jurisdiction of the executive branch of the
24 government of the United States, to wit, the Department
25 of the Defense, in that the defendant stated on Form 86

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1 Security Clearance Application, that his true name was
2 Almaliki Nour. He never used or had been known by any
3 other name than Almaliki Nour. His true date of birth
4 was December 8, 1960. He was born in Beirut, Lebanon.
5 He was never married. His mother's place of birth was
6 Lebanon. His mother was a citizen of Lebanon. His
7 father was a citizen of Lebanon. And his father was
8 deceased when, in fact, as the defendant then and there
9 well knew and believed, his true name was not Almalik
10 Nour. He had used and been known by a name other than
11 Almaliki Nour. His true date of birth was not December
12 8, 1960. He was not born in Beirut, Lebanon. He was
13 married. His mother's place of birth was not Lebanon.
14 His mother was a citizen of a Lebanon. His father was
15 not a citizen of Lebanon. And his father was not
16 deceased.

17 Essentially, this is a very simply charge. It
18 accuses you of making these various false statements that
19 I have read to you in a form 86 that you filed for a
20 security clearance with the Department of Defense.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: And if you went to trial, the
24 government will have to prove beyond a reasonable doubt
25 that, in fact, you made all of those false statements.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And they have to show that you knew
4 it was false, that it wasn't because of some mistake or
5 accident.

6 Do you understand that?

7 THE DEFENDANT: It was based on my -- yes,
8 your Honor.

9 THE COURT: And Count Two of the indictment
10 reads as follows. On or about September 30, 2005, within
11 the Eastern District of New York and elsewhere, the
12 defendant Nouredine Malki did knowingly and willfully
13 make materially false, fictitious and fraudulent
14 statements and representations in a manner within the
15 jurisdiction of the executive branch of the United
16 States, to wit, the Federal Bureau of Investigation and
17 the Department of Defense, in that the defendant stated
18 to the agents of the Federal Bureau of Investigation and
19 the Department of Defense, that his true name was
20 Almaliki Nour. His true date of birth was December 8,
21 1960. He was born in Beirut, Lebanon. He was never
22 married. His parents and siblings were killed when their
23 family house in Beirut, Lebanon was shelled when, in
24 fact, as the defendant then and there well knew and
25 believed his true name was not Almaliki Nour. His true

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1 date of birth was not December 8, 1960. He was not born
2 in Beirut, Lebanon. He was married and his parents and
3 siblings were not killed due to a shelling of their
4 family house in Beirut.

5 Do you understand this charge?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: It's very similar to the first
8 charge. There were some minor differences in the false
9 statements but basically, you're accused of making false
10 statements to the FBI and the Department of Defense.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Again, the government -- if you
14 went to trial, the government would have to prove you
15 made those statements, that you knew that they were
16 false. And that it wasn't because of any mistake or
17 accident.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And then Count Three reads in or
21 about and between 1998 and 2000 both dates being
22 approximate and inclusive within the Eastern District of
23 New York and elsewhere, the defendant Nouredine Malki
24 knowingly and intentionally procured contrary to law, his
25 naturalization and the defendant in seeking in obtaining

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1 his United States citizenship provided to the United
2 States Immigration and Naturalization Service a false
3 name, false date of birth and false place of birth.

4 And also falsely stated to the INS that the
5 defendant had never been married and that he had never
6 previously given false testimony for the purpose of
7 obtaining an immigration benefit.

8 Do you understand this charge?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Again, it accuses you of making
11 various false statements. In this instance, to the
12 Immigration and Naturalization Service, knowing that the
13 statements were false. And so, if you went to trial, the
14 government would have to prove beyond a reasonable doubt
15 that you made these statements knowing that they were
16 false.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I am now going to go through with
20 you the rights that you would have if you pled not
21 guilty. These are the rights that you give up by pleading
22 guilty.

23 The first and most important thing that you
24 must understand is that you do not have to plead guilty
25 even if you are guilty. Under our system of law in every

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1 case, the prosecutor has the burden of proving a
2 defendant guilty beyond a reasonable doubt.

3 The defendant never has to prove that he's
4 innocent and if the government is unable to meet its
5 burden of proving that a defendant is guilty beyond a
6 reasonable doubt, the jury has the duty to find that
7 defendant not guilty.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: So that's why I say to you that
11 even if you are guilty, you have a choice. The choice is
12 to plead guilty as you apparently wish to do or to say to
13 the government prove it, meet your burden of proving my
14 guilt beyond a reasonable doubt.

15 Do you understand that?

16 THE DEFENDANT: (inaudible).

17 THE COURT: And I want to tell you that
18 sometimes it happens in American courtrooms after a trial
19 by jury, that the jury has returned a verdict finding the
20 defendant not guilty even though everybody in the
21 courtroom knew that the defendant was guilty.

22 What the jury was saying in such a case was not
23 that the defendant was innocent, but rather that the
24 government had failed to meet its burden of proving that
25 the defendant was guilty.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So again, you have a choice, even
4 if you are guilty.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And if you were to plead not guilty
8 and go to trial, you would be entitled to a speedy and
9 public trial by jury with the assistance of counsel on
10 the charges contained in this indictment.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And as I have indicated to you, at
14 that trial, you would be presumed to be innocent. The
15 government will have to overcome that presumption and
16 prove you guilty by competent evidence and beyond a
17 reasonable doubt. And you would not have to prove that
18 you were innocent.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: At the trial, if you went to trial,
22 the witnesses for the government would have to come to
23 this courtroom or a similar one. They would testify from
24 that witness box. And your lawyer would have the right
25 to ask questions of these witnesses, what we call

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1 cross-examination. She would have the right to offer
2 evidence on your behalf and she would have the right to
3 object to evidence offered by the government.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: And if you were to go to trial and
7 not plead guilty, you too would have the right to take
8 the witness stand on your own behalf --

9 THE DEFENDANT: Yes.

10 THE COURT: -- speak to the jury, tell the
11 jurors whatever it is you wish to tell them about your --
12 about the charges contained in this indictment. And that
13 would be your constitutional right to testify.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: On the other hand, if you did not
17 wish to testify as a witness on your own behalf, you
18 could not be forced by the government, the prosecutor, to
19 take the witness stand at your own trial and say anything
20 that could be used to show that you're guilty of the
21 crime with which you're charged.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And if you were to exercise this
25 right, this right not to testify, I would instruct the

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1 jury that they could not hold that against you.

2 Do you understand that?

3 THE DEFENDANT: (inaudible)

4 THE COURT: In other words -- you have to
5 speak.

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: In other words, I would tell them
8 that you cannot infer that the defendant is guilty
9 because he did not take the witness stand to offer a
10 defense.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: In a few minutes, I am going to ask
14 you to tell me in your own words what it is that you did
15 so that I can be sure that you are guilty of the crime to
16 which you are pleading guilt. When you answer my
17 questions, you will be saying things that show you are
18 guilty of that crime and you'll be giving up the right
19 that I just described to you, which is the right not to
20 say anything that can be used to show that you're guilty
21 of the crime with which you're charged.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And if you plead guilty and I
25 accept your plea, there will be no further trial of any

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1 kind and I will simply enter a judgment of guilty on the
2 basis of your guilty plea.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Is there any plea agreement in this
6 case?

7 MR. BURETTA: No, your Honor.

8 THE COURT: Okay. I want to go through the
9 penalties that you face as a result of your plea of
10 guilty. The maximum term -- it's a complicated system.
11 So, let me go through it with you step by step. The
12 maximum term of imprisonment on Count One is -- could be
13 zero to five years.

14 The term of imprisonment on Count Two could be
15 zero to five years and the term of imprisonment on Count
16 Three could be zero to ten years.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: So that theoretically, if all of
20 these sentences run consecutively you could face a term
21 of anywhere from zero to 20 years.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: There are, however, in effect what
25 we call sentencing guidelines that were once intended to

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1 provide a legal limit on the sentence that a judge could
2 impose within that zero to 20 years because Congress
3 didn't trust judges with the discretion to impose
4 sentences in any way they chose.

5 So, there was once a time when I could have
6 given zero, five, 10, 15, 20 years, whatever number came
7 into my head. The sentencing guidelines, while they're
8 not now legally binding on me are guidelines that are
9 promulgated by the sentencing commission, approved by
10 Congress and I've got to consult with them carefully in
11 deciding on what sentence is reasonable and just under
12 all of the circumstances.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: In this case, the sentencing
16 guidelines, I am told are zero to six months.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Of course as I explained to you, I
20 am not legally bound by the guidelines. I could give
21 more than the guidelines or less than the guidelines
22 require and if either side is unhappy and they think that
23 the sentence that I have given is not a reasonable and
24 just sentence, then they could appeal.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: In addition to whatever term of
3 imprisonment I impose, I have to impose a period of
4 supervised release of three years. And that means after
5 you're released from jail, if you violate the conditions
6 of your supervised release, if you do one of the many
7 things that they tell you you're not supposed to do, you
8 could go back to jail for up to two years and you would
9 not get any credit by virtue of any time that you had
10 been in jail.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: The maximum fine in this case is
14 \$250,000 on each of the three counts of the indictment.
15 Like your prison sentence, it too is subject to the
16 operation of the sentencing guidelines and your ability
17 to pay.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And finally, I must impose a
21 special assessment of \$300. I have no discretion. It
22 goes into a victim's compensation fund.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And I don't know what your

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1 immigration status is in this country but if you're here
2 illegally, you will simply be deported after you finish
3 your sentence because you have no legal right to remain
4 here.

5 THE DEFENDANT: Yes.

6 THE COURT: If you are here legally, that is
7 you have a green card or a visa, which is not expired,
8 you could be removed or deported as a result of your plea
9 of guilty.

10 MS. WHALEN: Your Honor, I think that the Court
11 would just want to clarify, Count Three, when an
12 individual is charged with making a false statement to
13 gain citizenship and, in fact, has received citizenship,
14 the penalty upon conviction is that the Court has to
15 strip him of his citizenship.

16 THE COURT: Okay.

17 Did you understand what your lawyer just said?
18 It's not -- I mean, you will be stripped of your
19 citizenship as a result of your plea of guilty to Count
20 Three and that will result in your deportation.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: To where? Where is he going to be
24 deported to?

25 MS. WHALEN: Morocco.

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1 THE COURT: Morocco.

2 Do you have any questions you would like to ask
3 me about this charge, your rights or anything else
4 relating to this matter? Do you have any questions?

5 THE DEFENDANT: (inaudible).

6 THE COURT: Are you ready to plead?

7 THE DEFENDANT: I have questions concerning the
8 status.

9 MS. WHALEN: Your Honor, my client does have a
10 question about the conditions of his detention. When he
11 went back to the prison, he was told that he was now
12 subject to SAMS.

13 THE COURT: I don't know what SAMS is.

14 MS. WHALEN: The prosecutor hasn't --

15 THE COURT: What is SAMS?

16 MS. WHALEN: -- told me about that. So, I am
17 going to investigate that and I will --

18 THE COURT: What is SAMS?

19 MS. WHALEN: It's the Special Administrative
20 Measures that they put into place but I believe that I
21 have to be notified about that, as well. So, I don't
22 know if that is in effect or whether I just need to speak
23 to the bureau of prisons about it. But that's his only
24 question. He has no question about the charge or his
25 sentence or the penalties he faces.

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1 THE COURT: Okay.

2 Do you know of any reason why the defendant

3 should not plead guilty?

4 MS. WHALEN: No, I don't.

5 THE COURT: Are you aware of any legal defense

6 that he would have to the charges contained in this

7 indictment?

8 MS. WHALEN: No, I am not.

9 THE COURT: All right.

10 Mr. Nouredine Malki, how do you plead to this

11 Count One of indictment 05-cr-845; guilty or not guilty?

12 THE DEFENDANT: Guilty, your Honor.

13 THE COURT: How do you plead to Count Two of

14 the indictment; guilty or not guilty?

15 THE DEFENDANT: Guilty, your Honor.

16 THE COURT: How do you plead to Count Three of

17 the indictment; guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Could you tell me in your own words

20 first what it is that you did with respect to the

21 information that you provided to the Department of

22 Defense in Form 86, the Security Clearance Application?

23 MS. WHALEN: Could he start -- everything is

24 related to Count Three.

25 THE COURT: Okay.

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1 MS. WHALEN: It might be easier for him to just
2 start with Count Three.

3 THE COURT: Sure, let's start with Count Three.

4 MS. WHALEN: Thank you, Judge.

5 THE COURT: Could you tell me in your own words
6 what it is that you did with respect to the charge that
7 in seeking and obtaining United States citizenship you
8 provided false information to the Immigration and
9 Naturalization Service including a false name, false date
10 of birth, false place of birth and that you had never
11 previously given any false testimony.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: What did you do?

14 THE DEFENDANT: Your Honor, we all make
15 mistakes somehow and I made a mistake. That was back 17
16 and a half years ago, almost 18 years ago now. When I
17 came here to this country, I came because I loved the
18 country. I was given a chance to live in France after
19 getting my bachelor's degree. I went to France, my
20 sisters who live there, they gave me -- they supported me
21 to become a permanent citizen and then to apply for
22 citizenship in France.

23 I also was -- I was accepted in La Cerbon
24 University (phonetic) but I didn't like it there. I came
25 to this country because my bachelor's degree was in

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1 American Literature and I wanted to be here in this
2 country. So, I came here on a legal visa. My visa was
3 like one year. I stayed here for legal stay of six
4 months. Then I went back home, stayed there for one
5 month and then I came back. So, I decided to stay.

6 I was working in a Jewish store on Coney Island
7 Avenue in Brooklyn when some Lebanese came and they were
8 talking about their case, that they got their green card.
9 So, I asked them while I was working there. They said
10 that because they're Lebanese, they applied for a green
11 card. They applied for asylum and they got it. And they
12 told me that you can do the same thing. I told them I am
13 not Lebanese. I'm from Morocco. They said well, there
14 is nothing for Morocco but there is for Lebanon if you
15 want to do it right now. And we're going to charge you.
16 So, everything that was on that application wasn't
17 basically mine. So, I -- my purpose is to get a green
18 card, to be legal in this country. That's what I did.

19 THE COURT: But this says to obtain United
20 States citizen, so was that to get a green card or did
21 you make false statement to get United States
22 citizenship? The charge that you're accused of is that
23 you made false statements in seeking an obtaining United
24 States citizenship.

25 THE DEFENDANT: I continued to use the same

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1 thing that is on my green card because I was given a
2 green card with that name. And then comes the period of
3 becoming a citizen. And I applied based on what's on the
4 green card because there is no way that I can become a
5 citizen if I don't use the same name that is on my green
6 card.

7 THE COURT: Right. So, on your application for
8 United States citizenship, you told the Immigration and
9 Naturalization Service you gave them a false name, a
10 false date of birth, a false place of birth. Did you do
11 all of that?

12 THE DEFENDANT: Yes, your Honor, with the help
13 of these people that --

14 THE COURT: Okay.

15 THE DEFENDANT: They did provide me with
16 everything. I was new. I didn't know what to do.

17 THE COURT: And you also told them that you had
18 never been married and that was false?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And you told them that you had
21 never previously given false testimony for the purpose of
22 obtaining an immigration benefit when, in fact, you gave
23 false testimony in order to get the green card.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Okay.

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1 Which count should I go to next?

2 MS. WHALEN: Either one. It's the continuation
3 of the same false statements.

4 THE COURT: Okay. So, let's go back to Count
5 One. You applied for a security clearance from the
6 Department of Defense?

7 THE DEFENDANT: Your Honor, I applied for a job
8 and they asked me to go to Iraq and I responded with
9 pride and courage, of course, to put my life on the line
10 to go there. And my intention was to go and work with
11 the army and be with the army. I never knew that I am
12 going to have to file and fill out an application that is
13 86. So, I was confronted with this after passing the
14 test of -- the language test and the medical test and the
15 CI screening. So, they told me that you have to have this
16 form. So, I filled the form based on what I have on my
17 citizenship.

18 THE COURT: I see. So you basically made false
19 applications about your name, your date of birth, and
20 your place of birth and various other aspects of your
21 background.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you ever get this clearance?
24 Did you ever go to Iraq?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And what did you do there? I am
2 just curious. What did you do in Iraq?

3 THE DEFENDANT: I was doing translation. I was
4 going on missions. I was teaching cultural wars classes.
5 I was teaching Arabic language to the troops. I was
6 basically doing everything with the army. I was on base
7 24 hours for the first period of six months. Then I was
8 on base 24 hours for another period of four months in the
9 south. Then I broke my shoulder and I had to come back
10 here for surgery. After the surgery and the physical
11 therapy, I went back again and this time they sent me to
12 the north where I stayed for four months until FBI agents
13 came to me and started interrogating me. And I was
14 confused, afraid. I didn't know what happened.

15 And basically that's what happened.

16 THE COURT: Okay.

17 MS. WHALEN: That leads us to Count Two.

18 THE COURT: And so Count Two deals with making
19 false statements on September 30, 2005, to the FBI and to
20 the Defense Department.

21 THE DEFENDANT: Your Honor, I was put in --

22 THE COURT: And you basically told them similar
23 false statements about your true name, your date of
24 birth, where you were born and other aspects of your
25 personal background.

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And you knew that these were all --
3 you knew that you were making false statements. This was
4 not because of an accident.

5 THE DEFENDANT: I was stuck with it,
6 your Honor, since the beginning, since the -- when I
7 first applied for the citizenship and for the green card.
8 There is -- I have no other choice.

9 THE COURT: So, what is all of this security
10 about?

11 MR. BURETTA: I'm sorry, your Honor?

12 THE COURT: What is all of this security about?

13 MR. BURETTA: Your Honor, I am happy to address
14 that now if you would like me to.

15 THE COURT: I am just curious. You don't have
16 to.

17 MR. BURETTA: There are a couple of reasons,
18 Judge. First, the defendant had -- these are not part of
19 the instant charges. The defendant had several
20 classified documents in his apartment here in Brooklyn
21 that were sensitive documents regarding combating the
22 insurgency in Iraq. There were also phone analysis that
23 indicates the defendant was speaking from Brooklyn. This
24 was all the subject of a detention hearing. So, I am
25 just really repeating what was said there. But the phone

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1 analysis indicated the defendant was in contact with
2 several known insurgent numbers frequently in Iraq while
3 he was in Brooklyn.

4 THE COURT: All right. Based on the
5 information given to me, I find the defendant is acting
6 knowing and voluntary, that he fully understands his
7 rights and the consequences of the plea and there's a
8 factual basis for the plea. I, therefore, accept the
9 plea of guilty and probation will set a date for
10 sentencing.

11 MS. WHALEN: Your Honor, I am just going to ask
12 that we have an expedited date for the end of January,
13 given the nature of the guidelines in this case, if we
14 could have something the last week in January. I can
15 call Ms. Susi and schedule it.

16 THE COURT: Call Paula and tell her to tell
17 probation to do an expedited --

18 MS. WHALEN: Yes.

19 **(Counsel and client confer)**

20 MS. WHALEN: Your Honor, my client just wants
21 me to address what Mr. Buretta has said and again, I
22 addressed this at his detention hearing. He
23 categorically denies having any knowing or intentional
24 contact with anyone who was acting against the interests
25 of the United States.

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1 With respect to the material that was found in
2 his possession in his computer in Brooklyn, we'll be
3 discussing that in sentencing but it was more an accident
4 than any deliberate attempt to take classified
5 information.

6 THE COURT: Okay.

7 MS. WHALEN: Thank you.

8 MR. BURETTA: Thank you.

9 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 13th day of April, 2006.

Rosalie Lombardi

Rosalie Lombardi
Transcription Plus II