

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Mohamed Deria Ali;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	Civil Action No. 1:04cv1360
representative of the estate	.	
of Mustafa Mohamed Deria;	.	
BURALLE SALAH MOHAMOUD;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Abdullahi Salah Mahamoud	.	
(the deceased brother of	.	
Buralle Salah Mohamoud);	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Cawil Salah Mahamoud	.	
(the deceased brother of	.	
Buralle Salah Mohamoud); and	.	
AHMED JAMA GULAID,	.	

Plaintiffs,

vs.

MOHAMED ALI SAMANTAR,

Defendant.

Alexandria, Virginia
February 24, 2012
11:30 a.m.

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

VOLUME 2

(Pages 159 - 203)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

FOR THE PLAINTIFFS:

L. KATHLEEN ROBERTS, ESQ.
Center for Justice and
Accountability
870 Market Street, Suite 680
San Francisco, CA 94102
and
THOMAS P. McLISH, ESQ.
DEBRA D. DRAKE
JOSEPH W. WHITEHEAD, ESQ.
Akin Gump Strauss Hauer &
Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

P R O C E E D I N G S

1
2 THE CLERK: Civil Action 04-1360, Bashe Abdi Yousuf,
3 et al. v. Mohamed Ali Samantar. Would counsel please note
4 their appearances for the record.

5 MR. McLISH: Good morning, Your Honor. Tom McLish
6 for the plaintiffs. With me are Kathy Roberts, Debra Drake,
7 and Joseph Whitehead.

8 THE COURT: Good morning.

9 MR. McLISH: Good morning.

10 THE COURT: All right, my understanding is there's
11 one more witness we're going to hear from?

12 MR. McLISH: Yes, Your Honor.

13 MS. DRAKE: Yes, Your Honor. This is another witness
14 who was supposed to be put in through video. His presentation
15 was over two hours. We have cut it down to just the one point
16 and the appropriate counter-designation.

17 With the Court's permission, we can read it into the
18 record, or if you'd prefer the clerk to read it, we have a
19 marked copy.

20 THE COURT: I'll have Ms. Gassmann sit in the witness
21 box, and she'll read the witness's testimony. You can read the
22 questions. And just when it's Mr. Drennan's questions -- I
23 assume you have a couple of copies of the transcript?

24 MS. DRAKE: I have one, but we're about to get the
25 second copy so we can do that.

1 THE COURT: All right, okay. What's the name of this
2 witness?

3 MS. DRAKE: His name, Your Honor, is Yousuf,
4 Y-o-u-s-u-f, Sharmarke, S-h-a-m-a-r-k-e. The deposition was
5 taken on September 13, 2007. Mr. Drennan was present as was
6 Attorney John Robell from Akin Gump.

7 THE COURT: All right. While we're waiting for that
8 to come in, do you-all have any evidence that you developed
9 during discovery as to the financial assets of Mr. Samantar?
10 Was that investigated at all during discovery?

11 MR. McLISH: It was investigated some.

12 THE COURT: The reason I ask you this is because as
13 you know, one of the requests you have in your case is for
14 punitive damages. A factor which a court is supposed to look
15 at or a jury if the jury were doing this is the ability of a
16 defendant to pay.

17 MR. McLISH: Correct.

18 THE COURT: The only thing I have, and I consider it
19 part of the record of this case because it's a publicly filed
20 document, is the Chapter 7 petition of Mr. Samantar. I would
21 have assumed since you were seeking damages in this case that
22 there would have been discovery into that area, and I just want
23 to know since this is your opportunity to have an evidentiary
24 hearing on the issue of damages what, if any, evidence you
25 developed on that issue.

1 MR. McLISH: We did some investigation. We, we
2 inquired at his deposition. We asked for documents, I don't
3 believe we got any, that relate to his financial assets. We
4 asked him in his deposition. He denied having any assets, but
5 our investigation indicates that there was a time at which he
6 left from Somalia with large amounts of money.

7 He does own a house, we believe, either in his or his
8 wife's name, but in terms of other evidence of his current
9 financial condition, we don't know.

10 THE COURT: All right. Are we ready to proceed?

11 MS. DRAKE: Your Honor, my apologies to the Court.
12 It seems that we do not have a second copy. It was taken back
13 to the law firm last night.

14 Oh, the court reporter has one. She had made one.
15 Can I take her copy?

16 THE COURT: We're going to have to give it up for a
17 while, yes.

18 MS. DRAKE: My apologies.

19 Thank you, Your Honor.

20 THE COURT: All right, go ahead.

21 (Excerpts of the deposition of YOUSUF SHARMARKE read
22 into the record as follows:)

23 MS. DRAKE: It starts on page 86, line 18, and the
24 question:

25 "Q. This communication system that you used to talk to your

1 family through the colonel, were other officials in the
2 government using the same system to communicate?"

3 THE LAW CLERK: I'm sorry, I just need the -- okay.
4 Okay.

5 "A. When there's a peace -- when there's peace, this radar
6 system has another function. That's to detect any enemy
7 aircraft that may come into the air, into our space. In the
8 absence of any other form of communication, it was a way of
9 communication that the Armed Forces used.

10 Q. Did you ever hear President Siad Barre communicate using
11 this radar system?

12 A. Yes.

13 Q. When do you remember hearing him use the radar system to
14 communicate?

15 A. I had 31st May when the SNM invaded Burao. Other time,
16 the commander of the army of the military there was killed
17 there and then -- then the regular communication flopped
18 completely, it wasn't working because of the invasion and all
19 that. Then when the other system collapsed, the radar system
20 was used to communicate to the people of Burao. And the day I
21 had been using, I was there so that I get -- I communicate to
22 my children or get communication from my children, where I was
23 waiting the communication from my friend Warza, who was in
24 Hargeisa.

25 I came to a small building where there was a radar

1 near the airport of Galkayo, and I was waiting for
2 communication from my children, and that was the only means of
3 communication then. Then I had that Mohamed Siad Barre and the
4 President of Somalia and General Mohamed Ali Samantar, he
5 was -- military-wise, he was of higher rank than the
6 President -- that is, General Samantar -- I had them
7 communicating in through the radar. Both of them were in --
8 they were in two radars.

9 Q. Let me stop you and ask you, where was Mohamed Siad Barre?

10 A. He was in Mogadishu.

11 Q. How do you know he was in Mogadishu?

12 A. I knew he's in Mogadishu since he was my president.

13 Q. Where was --

14 A. And I also had his words, words you can -- the kind of
15 order he was giving I heard.

16 Q. Where was General Samantar?

17 A. He was in Mogadishu, also.

18 Q. How do you know he was in Mogadishu?

19 A. I heard it him say in his words, and they're the kind of
20 words that they were exchanging, orders that they were
21 exchanging.

22 Q. They were both in Mogadishu, but they were not in the same
23 exact location in Mogadishu; is that right?

24 A. No, they were not -- yeah, they were not in the same
25 place.

1 Q. Okay. What did you hear --

2 A. I could tell that from the orders they were exchanging.

3 Q. What did you -- what's the substance of the conversation
4 you heard between those two people?

5 A. It was that SNM invaded Burao, and they were fighting
6 while the people -- in town with the people, and they're
7 fighting the government forces inside the town, that General
8 Mohamed Ali Samantar received the communication that the SNM
9 was fighting from within the people, the position -- the
10 decision reached by Mohamed Ali Samantar was to use heavy --
11 artillery to drive the SNM out of town. I heard him say -- I
12 heard three words, him saying Samantar, Samantar, Samantar,"
13 concern with that -- that might not be in order.

14 MS. DRAKE: Does it continue on page 24, marked on
15 the bottom?

16 THE LAW CLERK: The next page I have is 28.

17 MS. DRAKE: Your Honor, may I finish the quote?

18 THE COURT: Go ahead.

19 MS. DRAKE: ". . . Samantar, don't be quick in
20 bombarding the town, and Samantar said, Samantar saying it
21 was -- it is must that we do that. The President saying let us
22 not reach that position -- let us not make that decision very
23 quickly of bombarding the town, then the general replying that,
24 Samantar, it is must that we do that because they're already in
25 town fighting. It is must to use the bombs to drive them out

1 of the town, the SNM troops."

2 The following for the record are the
3 counter-designations submitted by Mr. Drennan. Question by
4 Mr. Drennan: "All right."

5 And for the clerk, page 105, line 11.

6 "Q. All right. Are you here as a witness, as a volunteer" --

7 THE COURT: Wait. Do you not have it?

8 MS. DRAKE: Then I think we're set after this part.
9 I understand the issue. It should be fine on 106.

10 THE LAW CLERK: Okay.

11 MS. DRAKE: And, Your Honor, she'll be fine once I
12 get through this part, which is:

13 "Question: All right. Are you here as a witness, as
14 a volunteer, or were you ordered to be here as a witness by the
15 Government of Somaliland.

16 "Answer: No, I was not ordered -- I don't have an
17 order from the Government.

18 "Question: When were you first contacted in
19 connection with this lawsuit involving Mohamed Ali Samantar, my
20 client?

21 "Answer: I was contacted by an office that deals
22 with the massacres against the masses. The genocide that
23 happened in Hargeisa, an organization that was concerned with
24 that" --

25 And the clerk, that should start on the top of 106.

1 THE LAW CLERK: "Q. When were you contacted first?"
2 Excuse me, that was your question. So --

3 MS. DRAKE: "Q. When were you contacted first?"

4 A. When the decision -- when the decision was reached to be
5 of a different entity as the people of Somaliland, that office
6 was created, and it is the -- an office that -- which work is
7 to track the genocide.

8 Q. So this organization, this office that you've talked about
9 is connected with Somaliland?

10 A. It is an office concerned with humanitarian issues, and
11 that is the work it does, but it's not a government
12 institution.

13 Q. It is a government institution?

14 A. It is not a government institution.

15 Q. So it's what we call -- are you familiar with the term
16 "NGO"?

17 A. No.

18 Q. So it's not a government institution, but where is it
19 located?

20 A. It is in Hargeisa.

21 Q. Okay. You're familiar with the Government of Somaliland?

22 A. Yes, yes. I'm one of the officers -- a government
23 official.

24 Q. All right.

25 A. I am a government worker.

1 Q. You said you're a government official and a government
2 worker. Are you a member of the ruling party?

3 A. I'm not a member of the party, of the party. I'm a
4 soldier."

5 MS. DRAKE: Turning to page 108:

6 "Q. I see. Have you discussed testifying, or the prospect of
7 testifying in this case, with the President of the High Court
8 of the military in Somaliland?

9 A. It is not his work. It's not his duty. Because a witness
10 will not volunteer to be a witness, is just volunteering to say
11 what you witnessed as a person. It was either eyewitness or
12 ear-witness. It is not something to seek permission doing it,
13 or one seeks permission to do it.

14 Q. I want to get back to the name of the organization with
15 its office in Hargeisa that contacted you. What is the name of
16 that organization?

17 A. It is called the office of -- we know it is Somalia, and
18 the translation is the office that traces the genocide of the
19 masses."

20 MS. DRAKE: On page 109:

21 "Q. All right. So this is a group that investigates
22 allegations of genocide involving the Somali people?

23 A. It is an office that works in human rights activities that
24 is concerned -- that concerns itself with human rights
25 activities, and that is now seeking to trace the injustice that

1 happened."

2 MS. DRAKE: The next passage is on page 118:

3 "Q. All right. Let's get back to -- well, how did you get
4 here to Djibouti on this trip, the trip that brought you here?

5 A. I am on leave, and I'm on leave here.

6 Q. How did you reach Djibouti?

7 A. By air.

8 Q. All right. Who paid for your ticket?

9 A. It is paid by the office of -- the Humanitarian Office
10 that traces the genocide that happened, which is in Hargeisa.

11 Q. Okay. But -- all right.

12 And does this Humanitarian Office, as you've
13 characterized it, have a Web site?

14 A. Actually, but I'm not sure. Maybe it has.

15 Q. All right. Before coming here to testify, were you
16 interviewed by -- who interviewed you, if anyone?

17 A. Yeah, there were people who asked me about -- who
18 interviewed me about this."

19 MS. DRAKE: Page 120, line 1:

20 "Q. Let me see if I'm clear about this. This office, this
21 humanitarian organization that you've described based in
22 Hargeisa, did they contact you initially, or did you contact
23 them?

24 A. They were addressing this issue especially on this, and
25 they were -- they identified the officers, the experienced

1 officers, high officer, high-placed officers who were there
2 then, high-placed officers who were there then, and that's how
3 they contacted me.

4 Q. I see.

5 Where are you staying while you're here in Djibouti?

6 A. I stay in this hotel.

7 Q. All right. Do you customarily stay at this hotel when you
8 visit Djibouti?

9 A. This is my first time here. It is my first time here.

10 Q. All right. Who is paying for your hotel room here?

11 A. I'm guided by a person who come from the office in
12 Hargeisa who is with me here. That is the one who directs me.
13 He's the one who brought me to the office, and he settled me
14 here.

15 Q. Who is that person?

16 A. His name is Sulaymaan. I will show you now.

17 Q. What's his name?

18 A. His name is Sulaymaan. His name is Sulaymaan Ismael.

19 Q. How long are you going to be staying here?

20 A. I will go with the next flight. If I get tomorrow --
21 plane leaving, I will go by it.

22 Q. When did you arrive?

23 A. I came yesterday evening."

24 MS. DRAKE: And the next page is on page 162, line
25 20, question by Mr. Drennan:

1 "Q. Had you ever heard the President of Somalia talking to the
2 prime minister of Somalia over the radio or radar before?

3 A. I heard that way day, and that day they were compelled to
4 do so by conference, the northern region, the military that was
5 in the northern region, the whole communication collapsed, was
6 destroyed. Radar was the only way they could reach to the
7 people in the northern region, the military, the northern
8 region in the second week of -- since the start of the war, the
9 communication improved, the communication improved. The
10 channels started working again.

11 Q. I thought you told me or you told us in your testimony
12 this morning that the President was talking to the prime
13 minister and not to anyone else; isn't that true?

14 A. Yes. The words I heard he was telling -- he was talking
15 to Samantar, and Samantar was giving orders to the people who
16 were in Burao, the military commanders in Burao.

17 Q. Colonel Sharmarke, isn't it true that during that period
18 that you claimed to have overheard this conversation between
19 Mohamed Siad Barre and Mohamed Ali Samantar, that Mohamed Siad
20 Barre, the President of Somalia, was in Addis Ababa, Ethiopia,
21 meeting with the Ethiopian government?

22 A. No.

23 Q. How do you know that?

24 A. I was in the country. He was out of hospital, the
25 accident he was involved in 1986, he was a sick man. After

1 that, he went to a meeting in Djibouti -- they met in Djibouti.
2 That ended in 1986. It wasn't in 1988.

3 Q. How can you be certain that Mohamed Siad Barre was in
4 Mogadishu in late May of 1988?

5 A. The only way is to go to Mogadishu and look for the
6 officers who were working there then. I'm ready to go there.
7 Will you go with me, please, if you need to go with me?

8 Q. So the truth of the matter is that when you testified this
9 morning that Mohamed Siad Barre was present in Mogadishu in
10 late May of 1988, that you did not know that to be a fact;
11 isn't that true?

12 A. I am sure of my facts. I ask -- I request you go and get
13 your facts right.

14 Q. Well, beyond your belief that Mohamed Siad Barre was in
15 Mogadishu in May of 1988, what facts, if any, can you tell us
16 about that support your contention that Mohamed Siad Barre was
17 in Mogadishu at that time?

18 A. You told me he was in Ethiopia, and he did not go to
19 Ethiopia."

20 MS. DRAKE: The next question is on page 170.

21 THE LAW CLERK: That is a page I don't have.

22 MS. DRAKE: Page 44, the big one.

23 THE LAW CLERK: No, it goes from 42 to 45.

24 THE COURT: Do you want to read it in? Go ahead.

25 MS. DRAKE: I will. Question by Mr. Drennan:

1 "Isn't it true that Samantar was not the minister of defense in
2 May of 1988? I asked you. We will move on to the next
3 question. I want to --

4 "Answer: I will answer the way I see -- I know, not
5 the way you want it. The ministry of defense was Gabiyow. He
6 was --"

7 THE COURT: Wait. How do you spell that?

8 MS. DRAKE: G-a-b -- as in boy -- i-y-o-w.

9 "He was transferred from that post there afterwards,
10 but Samantar had many other roles to play. He was the deputy
11 of the National Security Committee, which was the biggest post.
12 He was the prime minister, second decision-maker, and he was
13 the expert in the act of war, the only one in Somalia.
14 Whenever there was equipment, he was the one who used to take
15 over that, and most of the time he was successful.

16 "Question: Isn't it true that under the Somali
17 Constitution, it is the President who is the commander-in-chief
18 of the Armed Forces, not the prime minister?

19 "Answer: He was initially, but when he was -- but
20 when he was elected, the chairman of the Socialist Party of
21 Somalia, he gave -- he gave that role -- he passed that to
22 Samantar.

23 "He left -- he no longer used the uniform of the
24 army -- the army uniform. He put aside the army uniform, and
25 from there Samantar took over. And when the war and the

1 conflicts, that was the duty of Samantar.

2 "Question: Isn't it true that Samantar was taken out
3 of the chain of command in 1987?

4 "Answer: There was a time he removed, yes. There
5 was a time he was transferred, that duty was transferred from
6 him, yes. There are two times -- there are two times -- there
7 are two times he was removed from that hierarchy. Then they
8 required him again and they returned him. Once a time was in
9 the '80s. His place was taken by a man named Omar Haji Masale.
10 And the second time he came back, he came back, they required
11 him, then he came back. They needed him. Then he came back.

12 "Then there was a time then Gabooye was met, then
13 Gabooye was removed from that post again, and Samantar came
14 back. That time he was the minister for defense. One of the
15 sons of Mohamed Siad Barre was given that role once toward the
16 end when things were getting haywire. There's a time he wasn't
17 there, but he was returned to his post because of necessity,
18 because of his knowledge in act of war and his experience.

19 "Question: All right. At any point in May of 1988,
20 did Mohamed Ali Samantar assume the portfolio of minister of
21 defense?

22 "Answer: Yes. He used to fulfill his duty -- the
23 duty of the minister of defense, using -- as using his role as
24 the deputy -- his role as the deputy National Committee of
25 Defense, the National Committee of Security.

1 "Question: In fact, he never was renamed to be
2 minister of defense?

3 "Answer: And there is no law that was stopping him
4 from playing that role, to take over the task of the role of
5 the defense minister.

6 "But again, he even played his role in the field and
7 the frontier. There was no law that was standing between him
8 and that. And he had enough experience and knowledge, and
9 because of that, he was very quick. Whatever work can be
10 accomplished, he loved to be on the forefront, whether in
11 Mogadishu making the decision in Mogadishu or going to the
12 battlefield.

13 "Question: If -- strike that.

14 "Answer: Most of the time, he was successful in his
15 ventures before the coming of SNM, but SNM destroyed the Somali
16 Army under the leadership of Mohamed Ali Samantar and his
17 friends.

18 "Another thing, Mohamed Ali Samantar, he said -- he
19 talked to the BBC radio and declared that that was his work.

20 "Question: Again, I'm going to revisit the question:
21 Mohamed Ali Samantar was not the minister of defense in May of
22 1988, was he?

23 "Answer: In 1988, he could play that role, and
24 there's no law that barred him from that, and he had the right,
25 all the right, because he was deputy, deputy of the Security

1 Committee of the nation. He was deputy of the security of
2 the -- there was no law that stood between him and taking that
3 portfolio."

4 MS. DRAKE: Now on page 175:

5 "Q. Mohamed Ali Samantar was not -- strike that.

6 Who was the minister of defense in June of 1988?

7 A. Currently -- I can't tell -- I can't tell whether he was
8 the minister then. At that time, we were at war with the
9 government of that day, and it was -- and it was getting -- it
10 was getting worse by the day. I can't tell the month he came
11 back to that role as the defense minister. There was more --
12 the government was tilting to a side. It was to the right of
13 collapsing. It's not something --

14 Q. I want to be clear about this. You were a colonel in the
15 Somali National Army in June of 1988, were you not? Correct?

16 A. Yes.

17 Q. But you can't tell me who the minister of defense in that
18 same month was?

19 A. This -- there was not any interest I was giving at that
20 time because we were in a fight. We were fighting them.

21 Q. When you say, "We were fighting them," you were still in
22 the Somali National Army at that point, weren't you?

23 A. There was no -- the SNM that we talked about that invaded
24 was the breakaways from the Somali National Army. There's
25 nothing like the National Army that we talk about people were

1 leaving the National Army like nobody's business, and at every
2 point when meant in any better that they were met, they were
3 defeated.

4 Now about minister or who is minister, who is not
5 minister, who cared? But what I want to make it clear to you
6 is that Mohamed Ali Samantar, after the attack that Burao
7 sustained was the order that Mohamed Ali Samantar gave, and he
8 confessed that in a station, in a radio station, the BBC.

9 Q. Who do you contend was ordered in Burao to attack?

10 A. If you want the person Samantar gave the orders, I will
11 tell you.

12 Q. That's my question.

13 A. He was Colonel Kahiye. Colonel Kahiye, who was -- when
14 the commander of the brigade was killed whose name was Ade'ed,
15 in the same night he was sent from Garowe, and he led the
16 attack against Burao. Samantar gave the order to Kahiye.

17 And if you need, I will tell you the exact word he
18 ordered him. I can tell you, the words Kahiye -- Samantar told
19 Kahiye as order, if you need.

20 Q. What are those words?

21 A. Samantar told -- I heard Samantar telling use the
22 artillery, use Gaabo-addey, use Gaabo-addey, use Gaabo-addey,
23 make use of the weapon you have, make use of the weapons you
24 have, use Gaabo-addey, and Gaabo-addey -- Gaabo-addey is the
25 commander of the heavy artillery in Somalia who was a general,

1 and the man who is telling you things now knows Gaabo-addey.
2 He was the commander of the heavy artillery, and that was a
3 court that was used whenever -- the court that was used
4 whenever they want to say -- use the heavy artillery, they used
5 to say use Gaabo-addey, use -- make use of the weapon you have.
6 Those were the words of Samantar."

7 MS. DRAKE: Do you have page 46?

8 THE LAW CLERK: Yes.

9 MS. DRAKE: Question by Mr. Drennan:

10 "Q. Did you ever write down your account of this conversation
11 among Siad Barre, Mohamed Ali Samantar, and Kahiye before you
12 came here to Djibouti to give evidence today?

13 A. I gave -- I kept it in memory, and that day I acquired
14 recorder to record it, but I did not have it, but I kept it in
15 my memory. And it was an indisputable fact that it was the
16 order of Mohamed Ali Samantar that was used to destroy Burao
17 and Hargeisa, Gebiley and Burao, every place of Isaaq area
18 because if you would have ordered people not to bombard the
19 towns, that would have been fulfilled. The way his order to
20 the contrary was fulfilled.

21 Q. So the answer is no, you did not write this down, correct?

22 A. No, I did not write.

23 Q. All right, next question.

24 A. But I recorded.

25 Q. Next question, next question. No, please. Next question.

1 Did you give any interviews to the media about this
2 conversation that you alleged to have overheard between the
3 President and the prime minister?

4 A. No, I did not.

5 Q. Did you give any interview to anybody from "Africa Watch"
6 concerning this conversation you alleged to have overheard
7 between the President and the prime minister?

8 A. What is "Africa Watch"?

9 Q. Did you give this account or give any account of this
10 interview or -- strike that -- this conversation that you
11 alleged to have overheard between Siad Barre and Mohamed Ali
12 Samantar in any human rights organizations?

13 A. Yes, yes, once, once they came to me in Hargeisa, and I
14 gave --"

15 MS. DRAKE: And you have page 47?

16 THE LAW CLERK: Yes.

17 I think you cut me off.

18 MS. DRAKE: That's where his designation ended.

19 So page 182, line 18:

20 "Q. Colonel Sharmarke, just after we broke for your prayers,
21 you told us that Samantar was a good man, didn't you?

22 A. Yeah, he was. In the reign of Mohamed Siad Barre, he was
23 among the best people and men. When it comes to patriotism and
24 in the building of the Armed Forces, and when we were fighting
25 with Ethiopia, the kind of success that came because of his

1 work, that is the aspect of him that we loved. We loved him
2 because of that.

3 But there was a mistake that was made, mistake that
4 was made, a mistake or an injustice was committed against Isaaq
5 and the Majerteen. Unlucky, unfortunately or fortunately,
6 Samantar in the two incidents, he was the saw that was used to
7 cut, because that was his role, the role he performed, because
8 of the role he performed."

9 MS. DRAKE: And, Your Honor, that concludes the
10 introduction of the Sharmarke evidence.

11 THE COURT: All right.

12 MS. DRAKE: Thank you.

13 And thank you to the clerk.

14 THE COURT: All right, is there any other evidence?

15 MR. McLISH: Your Honor, I'd like to move in some
16 more exhibits.

17 THE COURT: All right. What numbers?

18 MR. McLISH: I'd like to start with No. 93.

19 THE COURT: 93?

20 MR. McLISH: Yes, Your Honor, which is a, it's a
21 cable, I think it was one that I left off my list yesterday.
22 It's the cable between the Embassy in Mogadishu, U.S. Embassy
23 to the State Department in Washington.

24 THE COURT: All right, it's in.

25

1 (Plaintiffs' Exhibit No. 93 was received in
2 evidence.)

3 MR. McLISH: Exhibit No. 94 is a copy of the Somali
4 Constitution. That was stipulated as admissible by
5 Mr. Drennan.

6 THE COURT: All right, it's in.

7 (Plaintiffs' Exhibit No. 94 was received in
8 evidence.)

9 MR. McLISH: No. 112, Plaintiffs' Exhibit 112 is a
10 report from the State Department by Robert Gersony, listed as a
11 consultant to the Bureau for Refugee Programs of the United
12 States Department of State, entitled "Why Somalis Flee,
13 Synthesis of Accounts of Conflict Experience in Northern
14 Somalia by Somali Refugees, Displaced Persons and Others,"
15 dated August 1989.

16 THE COURT: Was there an objection filed by
17 Mr. Drennan to that?

18 MR. McLISH: I believe his objection -- he did not
19 stipulate to its authenticity, and he reserved all objections,
20 I believe.

21 Oh, he did stipulate to authenticity. I'm sorry.

22 THE COURT: All right, 112 is in.

23 (Plaintiffs' Exhibit No. 112 was received in
24 evidence.)

25 MR. McLISH: Now, there are two exhibits, 121 and

1 129, which are what are called Country Reports on Human Rights
2 that are submitted by the Department of State to U.S. Congress.

3 THE COURT: Hold on a second.

4 MR. McLISH: Mr. Drennan did stipulate to the
5 authenticity of those two documents.

6 THE COURT: What are the dates on these things?

7 MR. McLISH: Pardon me, Your Honor?

8 THE COURT: What are the dates? I can't tell from
9 looking at them. In other words, what's the time frame for
10 these reports?

11 MR. McLISH: The first one, 121, is the Country
12 Reports on Human Rights Practices for 1982.

13 THE COURT: Well, that's well before the events
14 involved in this case. I don't see what the relevance of '82
15 would be. We're talking about events in the '86 to '89 time
16 period.

17 MR. McLISH: The relevance, Your Honor, is twofold.
18 One is that it's reporting on human rights violations happening
19 that early, well before many of the abuses that our plaintiffs
20 are complaining about, but I would also note that Mr. Yousuf,
21 Bashe Yousuf, his abuse began in 1981.

22 THE COURT: All right, it's in.

23 (Plaintiffs' Exhibit No. 121 was received in
24 evidence.)

25 THE COURT: And 29 is the other one?

1 MR. McLISH: 129 is the Country Reports on Human
2 Rights Practices for 1990.

3 THE COURT: All right, it's in.

4 (Plaintiffs' Exhibit No. 129 was received in
5 evidence.)

6 MR. McLISH: And both of those, I should say, Your
7 Honor, they're excerpts of a larger report that just includes
8 the Somalia portion.

9 THE COURT: All right.

10 MR. McLISH: Plaintiffs' Exhibit 144 --

11 THE COURT: Hold on. I'm sorry, 144?

12 MR. McLISH: Yes.

13 THE COURT: Yeah.

14 MR. McLISH: This is the United Nations report,
15 "Forensic report: preliminary assessment of mass graves in the
16 vicinity of Hargeisa, Somalia," dated 30 November 1988.

17 THE COURT: All right.

18 (Plaintiffs' Exhibit No. 144 was received in
19 evidence.)

20 MR. McLISH: I'm sorry, Your Honor?

21 THE COURT: That's fine. Anything else?

22 MR. McLISH: Oh, Plaintiffs' Exhibit 303 is a report
23 by the GAO. I need to look at it to see whether it was called
24 the Government Accountability Office or the General Accounting
25 Office.

1 That's still when it was called the United States
2 General Accounting Office. May 1989, a report entitled
3 "Somalia, Observations Regarding the Northern Conflict and
4 Resulting Conditions."

5 I believe Mr. Drennan stipulated to the authenticity
6 of that document.

7 THE COURT: All right, it's in.

8 (Plaintiffs' Exhibit No. 303 was received in
9 evidence.)

10 MR. McLISH: Plaintiffs' Exhibit 328 is a report from
11 the National Academy of Sciences Committee on Human Rights
12 titled "Scientists and Human Rights in Somalia." Mr. Drennan
13 did not stipulate to the authenticity of that document.

14 THE COURT: I don't see the need for this. This is
15 again, the case is only involving damages at this point, and
16 this would appear to be somewhat cumulative to what we've
17 already got in this record, and it appears to include all kinds
18 of hearsay. No, it's not going in.

19 MR. McLISH: Very well, Your Honor.

20 Now, the remaining set of exhibits that we would move
21 in are all Amnesty International reports and releases. There's
22 about a dozen of them. They're all more than 20 years old, so
23 I think they fit the ancient document exception to the hearsay
24 rule.

25 THE COURT: No, I'm not going to load up the record

1 with that. No.

2 MR. McLISH: Very well, Your Honor. Then the
3 plaintiffs rest, Your Honor.

4 THE COURT: All right. And we're going to hear
5 closing argument now?

6 MR. McLISH: Yes, Your Honor. Oh, one more thing I
7 should mention, Your Honor: There is a joint stipulation of
8 uncontested facts that is part of the court record, document
9 No. 228, filed October 20, 2011.

10 THE COURT: All right.

11 MR. McLISH: Am I right in assuming that that's part
12 of the record?

13 THE COURT: Absolutely.

14 CLOSING ARGUMENT

15 BY MR. McLISH:

16 Your Honor, it's been a long road for these
17 plaintiffs. When Mr. Gulaid was digging himself out of a pit
18 of corpses 24 years ago in Somalia, he could not have known
19 that he would ever get any justice, that any of these
20 plaintiffs would get any justice, and I'm sure could not
21 believe or would not have imagined that some justice might come
22 24 years later in a courtroom in Alexandria, Virginia.

23 The task of determining damages and meting out some
24 justice in this case falls to this Court primarily for two
25 reasons. One is that General Samantar lives in Fairfax, within

1 this district, and the second is that this country, United
2 States, democratic institutions have decided there should be a
3 remedy in a case like this.

4 The long road to today includes seven years of
5 litigation, which it's interesting that the seven years that
6 this case has been going on matches in length to a certain
7 degree the amount of time that Bashe Yousuf spent in solitary
8 confinement all by himself.

9 For the entire time that this case has been going on,
10 General Samantar has raised every obstacle that he could
11 defending his conduct in this court. When he was prime
12 minister of Somalia, when he was the defense minister of
13 Somalia and the commander of the Armed Forces, he gave the
14 plaintiffs and the other people in Somalia no process at all.

15 Mr. Gulaid had no process. He was lined up in front
16 of a pit and shot with others, but when the time came,
17 Mr. Samantar took advantage of every single opportunity that he
18 had to delay the day that he would defend his actions in this
19 court. When there were no maneuvers left, he came to this
20 court yesterday and personally defaulted and admitted all of
21 the wrongdoing alleged by these plaintiffs.

22 So although it's been a long time in coming, we're
23 grateful that this day has come. So it falls to this Court to
24 assess damages. We submit that a substantial award of
25 compensatory damages and a substantial award of punitive

1 damages is warranted.

2 With respect to compensatory damages, compensatory
3 damages, of course, are to make the plaintiff whole, and I
4 think it may go without saying that money is a grossly
5 inadequate tool for that task in a case like this. No amount
6 of money can make these plaintiffs whole, but it's the only
7 tool in the Court's toolbox, so that's the tool that the Court
8 must use.

9 With respect to Bashe Yousuf, he testified yesterday
10 that he was arrested by General Samantar's military for doing
11 good deeds around Hargeisa, like trying to improve the schools
12 and clean up the hospital. For that he was tortured, the
13 infamous MiG position, waterboarding, and worst of all in his
14 view, seven years of solitary confinement in a military prison
15 operated by General Samantar's army.

16 You saw the emotional pain that he still carries all
17 this time later, and it falls to this Court to try to put a
18 value on the pain and suffering that, that he has gone through
19 and still goes through.

20 You heard from Mr. Aziz Deria and his sister, Nimo.
21 They lost their father and their brother in the indiscriminate
22 killing in Hargeisa by General Samantar's army in June of 1988.
23 The city they were born and raised in was completely destroyed.

24 You heard Nimo Dirie's description of fleeing the
25 city, with dead bodies everywhere and the stench of it. What

1 dollar figure can make them whole for their suffering?

2 Buralle Salah Mohamoud, he and his family were
3 celebrating a holiday cooking food. General Samantar's army
4 arrived, accused them of helping the resistance, the SNM,
5 forced Buralle and his brothers into a truck, and took them to
6 a military base. They were put in the infamous MiG position,
7 kept that way for an hour-long drive from one place to another.
8 They were packed into a cell with others, summarily sentenced
9 to death.

10 Buralle only escaped because a commander let him go
11 rather than kill three brothers from one family, and as he ran
12 down the road, he could hear the gunfire as his brothers were
13 presumably executed.

14 So again, the task is for the Court, what can
15 compensate Buralle for what happened to him and for the loss of
16 his brothers?

17 I mentioned Mr. Gulaid, lined up and shot with others
18 into a pit, miraculously survived, climbed out, found his
19 shoes, and staggered home, seeing a city destroyed. What can
20 compensate him?

21 All of these people have suffered what no one should
22 have to suffer at the hands of another, much less at the hands
23 of one's own government.

24 In brief, Your Honor, the compensatory damages to
25 which these people are entitled is quite substantial. As Your

1 Honor noted earlier, we are also seeking punitive damages.
2 Punitive damages are appropriate here because the defendant's
3 conduct was intentional, malicious, wanton, and reckless. It
4 showed an utter disregard for the potential consequences of his
5 acts on the safety and rights of others.

6 He has admitted it by taking the default, and again,
7 it's going to fall to Your Honor to determine an appropriate
8 figure in light of that admission, and of course, the Court
9 will take into consideration the purposes of punitive damages,
10 which are to punish, to deter similar conduct in the future,
11 and to demonstrate that the types of conduct that General
12 Samantar committed, types of abuses that he committed will not
13 be tolerated.

14 So the Court must consider the enormity of the
15 wrongdoing that General Samantar is responsible for, and we
16 would submit, Your Honor, that here it's especially enormous.
17 His conduct is especially egregious because it's not just
18 command responsibility. It's not just the fact that General
19 Samantar was second in command and the ultimate military figure
20 in the country and the person ultimately responsible for the
21 conduct of the military. Here it's also that he personally
22 went to Hargeisa and was in command when the atrocities
23 happened there in June of 1988.

24 There's plenty of evidence to find him responsible as
25 a -- as the top commander. As Your Honor knows, the Barre

1 regime was a military dictatorship. It ran the country with an
2 iron fist. General Samantar was the fist. He was in charge of
3 the military, and you heard Mr. Sharmarke testify today he even
4 outranked Siad Barre in terms of military. He was first in
5 command of the Armed Forces.

6 You may recall that Bashe, Bashe Yousuf testified
7 about how he used to see pictures of General Samantar all
8 around. That's the type of prominence that General Samantar
9 had in the country. He had been part of the coup from 1969,
10 and he remained a close confidante of the dictator and in
11 charge of the military all the way until when the government
12 collapsed in 1991.

13 He was on the Supreme Revolutionary Council, which
14 was the junta that ruled the country. So there's plenty of
15 evidence that Samantar was aware of and could have stopped the
16 human rights abuses being perpetrated by his military, by his
17 underlings, and he made no effort to punish them.

18 I'd like to refer Your Honor to an exhibit that is in
19 evidence, Plaintiffs' Exhibit 15. I'm going to ask Jamey to
20 put it up on the screen.

21 This is a cable from the then ambassador to Somalia,
22 U.S. ambassador to Somalia, Frank Crigler, from March of 1990.
23 And, Jamey, if we could see -- well, the first page you'll
24 see -- well, can we look at the top of the second page?

25 There's a subject, "Prime Minister Samantar.

1 Perestroika in Somalia a Reality," and this is Mr. Crigler
2 reporting on communications he had with Prime Minister Samantar
3 at that time, and I just want to point to page 5 of this
4 document, and at the top is paragraph 5, and at the end of the
5 second paragraph there, you'll see Mr. Crigler is reporting
6 what he told the prime minister, Samantar, about the -- his
7 view and the U.S. government's view of what has happened in
8 Somalia, and he says, "Somalia's military establishment has
9 been the most flagrant violator of human rights."

10 That's what the United States ambassador determined.
11 That's what the United States ambassador said to Prime Minister
12 Samantar's face in 1990, and that falls on General Samantar.
13 He was Somalia's military establishment.

14 Let's also take a look at Plaintiffs' Exhibit 35, and
15 in the middle of the first page, you'll see the subject, this
16 is a cable again from Ambassador Crigler from October of 1989.
17 The subject is "1989 Country Report on Human Rights Practices:
18 Somalia." So this is the Embassy in Mogadishu reporting back
19 to the State Department their report on human rights practices
20 in Somalia, and this is a time when General Samantar is the
21 prime ministry -- prime minister of the country.

22 On the second page of the document, in the middle,
23 middle paragraph, there's a sentence: "During 1989, army
24 combat units and military police resorted to attacks on
25 civilian villages, roundups and summary executions as means of

1 combatting the anti-regime Somali National Movement (SNM),
2 other dissent groups, and rioters."

3 On page 4, the bottom of the page, there's a section
4 of the report that begins "Section 1," and then subsection A,
5 "Political and other extrajudicial killing. During 1989,
6 extrajudicial killing was employed as a method of warfare in
7 Somalia's civil conflict. Government forces were the worst,
8 though not the only offenders. Some incidents could be
9 attributed to poor leadership, poor training, inappropriate
10 equipment, or poor discipline, but the pattern of raids on
11 civilian villages, reprisal killings, and summary executions
12 suggested that extrajudicial killing had some degree of
13 official sanction."

14 It goes on to list some documented incidents, the
15 first one of which is fighting around the northern town of
16 Erigavo, and at the end, Ambassador Crigler notes that the
17 pro-government militias drove the SNM out and killed about 200
18 Isaaq civilian inhabitants of the town.

19 THE COURT: All right, let me just stop, though. I'm
20 reading the whole paragraph. Make sure I understand this. It
21 says, "In fighting around the northern town of Erigavo in
22 March, SNM fighters of the Isaaq clan killed a number of
23 unresisting civilians. Pro-government militias then drove the
24 SNM out of Erigavo and killed about 200 Isaaq civilian
25 inhabitants of the town."

1 That's the whole paragraph, correct?

2 MR. McLISH: That's the whole paragraph.

3 THE COURT: All right.

4 MR. McLISH: On page 7 of the same document --

5 THE COURT: Hold on just one second. There has been
6 reference before to Marehan. That's another clan; is that
7 right?

8 MR. McLISH: Right.

9 THE COURT: And the next paragraph says, "Marehan
10 soldiers carried out reprisal killings of Isaaq civilians, 94
11 dead according to some reports, after a landmine explosion on
12 the Burao-Berbera road in May."

13 I mean, this report is reflecting all sorts of fights
14 going on between the warring factions.

15 MR. McLISH: Correct. There were fights. There were
16 warring factions.

17 THE COURT: And reprisals by both sides against
18 civilians.

19 MR. McLISH: Reprisals by both sides. And our
20 contention is that -- and the reports will indicate that the
21 Somali government reprisals and abuses were much worse, but the
22 fact that the SNM may have been abusing human rights does not
23 excuse General Samantar's conduct of the same abuses.

24 So I offer those documents for Your Honor's
25 consideration. There are many more that talk about what was

1 going on at that time, but to indicate that there was a pattern
2 of same types of abuses going on that were being perpetrated by
3 the military of which General Samantar was in charge, but
4 again, as I said before, it's not just that. It's not just
5 that he was in charge of the military. He went to Hargeisa and
6 had direct personal control of the operations up there in June
7 1988 that left the place devastated.

8 I would like to play for Your Honor the, the
9 portion -- the key portion of his interview with the BBC that
10 we heard some of yesterday but may have been difficult to hear.
11 We have a slide that has the quotation on it as well, which is
12 now up on the screen, and, Jamey, could you play the tape?

13 (Audiotape excerpt played as follows:)

14 "I was there at that time, but I was not the
15 commander of the unit. I was the higher-ranking person in
16 Hargeisa; therefore, it was necessary those commanders to
17 consult with me and to have directions from myself.

18 "As you know, the top person in the area of conflict
19 should give the last okay.

20 "Yes, I give this okay. How to use tactically, how
21 to employ the units; it was my task to give them directions and
22 the directives."

23 (End of audiotape excerpt.)

24 MR. McLISH: That's what General Samantar admitted to
25 in 1989 in that interview with Elizabeth Ohene, and let's talk

1 about what he admitted to. The conflict in Hargeisa that he
2 was in charge of left the city destroyed, left thousands of
3 civilians dead. We've heard the testimony about mass graves,
4 mass executions. We've heard the testimony about children
5 being killed, students. We heard that from Mr. Abdullahi
6 yesterday in his video deposition. We heard about the
7 indiscriminate bombing of the town, and we heard that these
8 things were perpetrated on people with no connection to the
9 resistance whatsoever.

10 Now, I submit that General Samantar made this
11 admission in 1989 because he did not foresee that what he was
12 admitting to would be exposed to the world and the enormity of
13 what happened in Hargeisa. He thought he could pass it off as,
14 oh, that was -- there was some collateral damage, but I think
15 the tell here is that as trial approached and we were finally
16 able to take Mr. Samantar's deposition, he denied that he was
17 in charge in Hargeisa. He denied that he had given this
18 interview. He denied that he had made this admission, because
19 he knew that if he admitted it, he was sunk, because what
20 happened in Hargeisa under his command was truly, truly awful.

21 And I'd like to point Your Honor to one of the
22 documents, Plaintiff Exhibit 112, that Your Honor just admitted
23 a few moments ago. This is the report of Robert Gersony that
24 he did for the State Department. On page -- and you'll see,
25 Your Honor, that it was submitted to a director for Bureau of

1 Refugee Programs and an ambassador who was an Assistant
2 Secretary of State, Bureau for African Affairs. This is August
3 of 1989.

4 And what Mr. Gersony did is he went and he
5 interviewed hundreds of Somalis in refugee camps and other
6 places in Ethiopia and in Somalia, and his findings and
7 conclusions appear on page 65 of Plaintiffs' Exhibit 112. It's
8 page 60 of the actual report. It's the 65th page of the
9 exhibit. So in the upper right-hand corner, it's page No. 60.

10 Findings and conclusions, you'll see he -- the report
11 references that these findings are based principally on
12 interviews with over 250 residents and former residents of
13 northern Somalia, and I just want to point to -- and he breaks
14 it up, first he talks about Somali Armed Forces' conduct in the
15 report, and later in the report, he talks about conduct of the
16 SNM, so he's reporting on both sides.

17 Your Honor, our, our position is that it's the
18 conduct of the Somali Armed Forces that are relevant in this
19 proceeding.

20 So in paragraph 1, what does Mr. Gersony report? He
21 says: "In response to the SNM's May 1988 intensification of
22 the civil conflict in northern Somalia, the Somali Armed Forces
23 appears to have engaged in a widespread, systematic, and
24 extremely violent assault on the unarmed civilian Isaaq
25 population of northern Somalia in places where and at times

1 when neither resistance to these actions nor danger to the
2 Somali Armed Forces was present."

3 So that puts to rest the collateral damage idea.

4 He goes on in paragraph 2: "The Somali Armed Forces
5 conducted what appears to be a systematic pattern of attacks
6 against unarmed civilian Isaaq villages, watering points and
7 grazing areas of northern Somalia, killing many of their
8 residents and forcing the survivors to flee for safety to
9 remote areas within Somalia or to other countries.

10 "3. The Somali Armed Forces engaged in a pattern of
11 roundups, summary executions and massacres of many hundreds, if
12 not more, unarmed civilian Isaacs. Some of these actions
13 appear to have been reprisals for acts committed by the SNM;
14 the motives for others are not clear, but the appearance that
15 victims were selected for these killings principally because of
16 their ethnic identity is unmistakable."

17 I'll skip to No. 7 on the next page, where he reports
18 that civilian detainees in Somali government prisons accused of
19 supporting the SNM appear to have been at least at times
20 routinely the objects of ill treatment, including severe
21 beatings, stabbing, prolonged choking, use of metal clips and
22 electric shock on flesh and testicles, and immersion in
23 excrement. This ill treatment sometimes resulted in death.

24 Paragraph 8, "It is conservatively estimated that at
25 least 5,000 unarmed civilian Isaacs were purposefully murdered

1 by the Somali Armed Forces between May 1988 and March 1989, in
2 the absence of resistance and in contexts which presented no
3 immediate danger to these forces."

4 That's what General Samantar admitted to when he
5 admitted to being in charge in Hargeisa. And he does not have
6 the excuse that he was under orders, not that that would
7 matter, but you heard today in Mr. Sharmarke's testimony how it
8 was Barre, the dictator, who was saying don't be so swift to
9 use the artillery, and Samantar is reported to have overruled
10 Barre in saying it must be done.

11 Your Honor, the evidence in this case establishes
12 egregious conduct by the general. It establishes that his, his
13 actions were deliberately, intentionally, purposefully
14 malicious, reckless, wanton, with complete utter disregard of
15 the rights of other people, including these plaintiffs,
16 including the Isaaq population of northern Somalia. A
17 substantial punitive damage award is appropriate.

18 With regard to your question about General Samantar's
19 assets, we do not know what his assets are. When he filed
20 bankruptcy last Sunday night, he didn't include a schedule of
21 his assets. The bankruptcy judge in our hearing on Tuesday
22 noted that his assets are unknown.

23 And I would suggest to the Court that it not be
24 influenced by the filing of bankruptcy and, and by General
25 Samantar's contention that he has no assets. That's yet to be

1 determined.

2 We intend to file a motion with this Court for
3 sanctions at some point in the near future about the way the
4 lead-up to this trial occurred, and -- but I think it's telling
5 and I think General Samantar's conduct during this litigation
6 is indicative of the type of conduct for which punitive damages
7 should be awarded.

8 And I'll end with just a remark about the companion
9 case that this Court has, the *Doe v. Ali* case, which we also
10 represent the plaintiffs, and Mr. Drennan also represents the
11 defendant, and we think it's, it's important to avoid in that
12 case having a run-up -- or a reprise --

13 THE COURT: I don't think that's appropriate to raise
14 in this context. Let's take care of this case first. And I
15 don't disagree with you, but I don't expect the same problems.
16 We will address that in the context of that case, not this one.

17 MR. McLISH: Understood, Your Honor.

18 THE COURT: All right.

19 MR. McLISH: All right. With that, Your Honor,
20 plaintiffs respectfully request that Your Honor award
21 substantial compensatory damages, substantial punitive damages,
22 and I'm not going to suggest dollar amounts to the Court. If
23 Your Honor is interested in briefing about damages issues,
24 we're happy to brief any issues that the Court may have, and
25 we're also happy to provide examples of similar cases in which

1 the trier of fact both in default situations and jury trial
2 situations, where they were -- where they were awarded dollar
3 amounts in similar circumstances, so you could see the kind of
4 range that there has been.

5 THE COURT: All right, thank you. I think we have
6 more than enough evidence with which to work at this point.
7 Obviously, it will take some time to get a decision out.
8 There'll be a written decision.

9 And in the meantime, what's happening -- I'm just
10 curious, in light of the default, does that have any impact --
11 well, both the default and the still pending bankruptcy, has
12 the Fourth Circuit been notified about those events, do you
13 know?

14 MR. McLISH: I do not believe they've been notified
15 about the default.

16 Was something filed on the bankruptcy?

17 I don't, I don't think there was something filed. I
18 don't believe there was a suggestion of bankruptcy similar to
19 what was filed here. I don't believe that was filed in the
20 Fourth Circuit. So it's yet to be seen what effect these
21 events will have on the pending Fourth Circuit appeal.

22 THE COURT: All right. Well, make sure you don't
23 bump into any stay issues in case there is something there.

24 MR. McLISH: Thank you.

25 THE COURT: All right, we'll recess court for the

1 day.

2 MR. McLISH: Thank you very much.

3 (Which were all the proceedings

4 had at this time.)

5

6 CERTIFICATE OF THE REPORTER

7 I certify that the foregoing is a correct transcript of
8 the record of proceedings in the above-entitled matter.

9

10

11

/s/

Anneliese J. Thomson

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

EXAMINATION

WITNESS ON BEHALF OF
THE PLAINTIFFS:

Yousuf Sharmarke 163
(by deposition)

EXHIBITS

MARKED

RECEIVED

PLAINTIFFS':

No. 93	182
94	182
112	182
121	183
129	184
144	184
303	185

Closing Argument by Mr. McLish: Page 186