

NATIONAL SCIENCE FOUNDATION  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

**CLOSEOUT MEMORANDUM**

**TO:** AIGI

**File Number:** I97010009

**Date:** 15 May 2002

**Subject:** Closeout Memo

Page 1 of 1

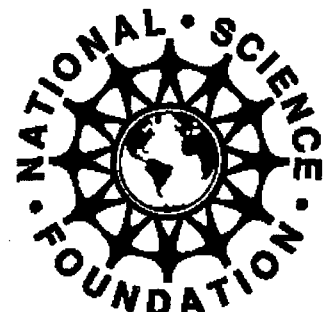
There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

Our office was informed that the subject<sup>1</sup> was alleged to have forged a signature that appeared on a reference letter for the Alan T. Waterman Award. The individual whose name was forged wrote to NSF saying he never wrote a letter for the subject or nominated the subject for this Award. The subject was convicted of forgery.

The attached documents constitute the closeout for this case.

<sup>1</sup> Mohamed Siddiqui, Univ. of South Alabama

Name:	Prepared by:	Cleared by:		
	Agent:	Attorney:	Supervisor:	AIGI
Signature & date:				



NATIONAL SCIENCE FOUNDATION

4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230

March 23, 2000



OFFICE OF THE  
GENERAL COUNSEL

Ms. Natalie Jones  
Office of GSA Acquisition Policy (MV)  
U.S. General Services Administration  
1800 F Street, N.W.  
Room 4012  
Washington, D.C. 20405

Re: Addition of name to GSA's list of suspended and debarred parties

Dear Ms. Jones:

On March 22, 2000, the National Science Foundation (NSF) debarred Dr. Mohammed Siddiqui from receiving financial and non-financial assistance and benefits under Federal non-procurement programs and participating in Federal procurement transactions. The debarment is based upon his criminal conviction of five counts of fraud and false statements, two counts of obstruction with a Federal investigation, and one count for failure to appear in court. A copy of our letter notifying Dr. Siddiqui of his debarment is attached.

NSF requests that GSA add Dr. Siddiqui to the list of debarred parties. Dr. Siddiqui is debarred until July 29, 2002. Dr. Siddiqui's last known address is 141 Carondelet South, Mobile, AL 36608. The appropriate treatment code is R.

If you need any additional information in order to place Dr. Siddiqui's name on the list, please do not hesitate to contact me at (703) 306-1060.

Sincerely,

Anita Eisenstadt  
Assistant General Counsel

Enclosure

cc: Robert Hardy/CPO  
Montgomery Fisher/OIG

NATIONAL SCIENCE FOUNDATION  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230



July 29, 1999

OFFICE OF THE  
GENERAL COUNSEL

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dr. Mohamed Siddiqui  
141 Carondolet Court South  
Mobile, AL 36608

Re: Notice of Suspension and Proposed Debarment

Dear Dr. Siddiqui:

This letter serves as formal notice that the National Science Foundation (NSF) has suspended you and is proposing to debar you from directly or indirectly obtaining the benefits of Federal grants for a period of three years from the date of this letter. A person who is debarred will be excluded during the period of debarment from Federal financial and non-financial assistance and benefits under non-procurement Federal programs and activities. See 45 CFR Sections 620.110 and 620.200. In addition, you will also be prohibited from receiving any Federal contracts or approved subcontracts under the Federal Acquisition Regulations (FAR) at 48 CFR Subpart 9.4 for the period of this debarment. 45 CFR Section 620.110(c). Debarment of an individual is effective throughout the executive branch of the Federal Government. The effect of suspension is the same as debarment, except that it is for a temporary period of time pending completion of debarment proceedings.

Reasons for Suspension and Debarment

Your suspension and debarment is based upon a referral from our Office of Inspector General (OIG). The Foundation's record demonstrates that you committed irregularities seriously reflecting on the propriety of further Federal Government dealings with you, and that there is cause for your suspension and debarment. The Foundation's current administrative record indicates that you were an Assistant Professor at the University of South Alabama and that you submitted falsified recommendations from three scientists in order to receive the National Science Foundation's (NSF) prestigious Alan T. Waterman Award and a Faculty Early Career Development Award. The investigation of this matter further disclosed that you obstructed the OIG's investigation of the forgery charges by attempting to convince two of the scientists to falsely state that they had authorized you to sign their names to the recommendations.

Specifically:

1. In April, 1997, an Indictment was filed in the United State District Court for the Southern District of Alabama in the matter of United States v. Mohamed Siddiqui, Case No. 1:97CR00085-001. A copy of the Indictment is enclosed and the allegations are hereby incorporated by reference. The Indictment charged you with a total of 7 counts, including five counts of fraud and false statements in violation of 18 U.S.C. §1001 and two counts of obstruction of proceedings before a U.S. agency - National Science Foundation, in violation of 18 U.S.C. §1505. A copy of the Indictment is hereby incorporated by reference.
2. A jury trial commenced on May 14, 1998 and on May 15, 1998, the jury found you guilty of Counts 1-7 of the Indictment.
3. On August 11, 1998, you failed to appear for sentencing and consequently were indicted and plead guilty to one count of failure to appear, in violation of 18 USC §3146(a)(1).
4. On November 24, 1998, the United States District Judge sentenced you to the time you had already served; three years of supervised release, which included participation in the Home Confinement Program, and a criminal penalty of \$700.00. You were also fined \$100 for the failure to appear infraction. (A copy of the Judgments are attached).

Regulatory Basis for Suspension and Debarment

45 CFR Section 620.305 provides that debarment may be imposed for:

(a) conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

\* \* \*

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

Your conviction for fraud and false statement and obstruction of a Federal Government investigation, as well as your conviction for failure to appear, support a cause for debarment under 45 CFR Sections 620.305(a)(1), (2), and (3). Your convictions reflect

adversely on your integrity, honesty, and present responsibility in relation to Federal financial and non-financial assistance and benefits. The filing of the Indictments and your subsequent convictions also establish adequate evidence for your suspension. 45 CFR Sections 620.400 and 620.405.

Debarment must be for a period commensurate with the seriousness of the cause. 45 CFR Section 620.320(a). It should generally not exceed three years, but where circumstances warrant, a longer period may be imposed. 45 CFR Section 620.320. The burden of proof is on the government to establish facts which justify debarment by a preponderance of the evidence. 45 CFR Section 620.314(c). Where the proposed debarment is based upon a conviction, the standard shall be deemed to have been met. 45 CFR Section 620.314(c).

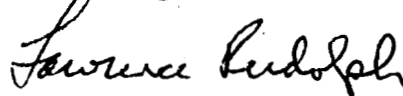
You were found guilty, after a jury trial, of submitting five falsified documents to NSF in order to obtain Federal funding. You were also found guilty of obstructing the OIG's investigation of the fraud. You then failed to appear in Court on your sentencing date. Because of the seriousness of these offenses, we are proposing debarment for a period of three years.

#### Procedures Governing Proposed Debarment/Suspension

The provisions of 45 CFR Sections 620.300 through 620.420 govern debarment and suspension procedures and decisionmaking. Under our regulations, your client has 30 days after receipt of this notice to submit, in person, or in writing, or through a representative, information and argument in opposition to his debarment. 45 CFR Section 620.313(a). Comments submitted within the 30-day period will receive full consideration and may lead to a revision of the recommended disposition. If we do not receive a response to this notice within the 30-day period, this debarment will become final.

Any response should be addressed to me at the National Science Foundation, Office of General Counsel, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia, 22230. For your information, we are attaching a copy of the Foundation's regulations on Non-procurement Debarment and FAR Subpart 9.4.

Sincerely,



Lawrence Rudolph  
General Counsel

Attachments (5)  
Indictment  
Judgements (2)  
Nonprocurement Debarment Regulations  
FAR Regulations

UNITED STATES of America, Plaintiff-Appellee, v. Mohamed  
SIDDIQUI, Defendant-Appellant.

No. 98-6994.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH  
CIRCUIT

235 F.3d 1318; 2000 U.S. App. LEXIS 31882; 55 Fed. R. Evid.  
Serv. (Callaghan) 301; 14 Fla. L. Weekly Fed. C 285

December 15, 2000, Decided

December 15, 2000, Filed

SUBSEQUENT HISTORY:

[\*\*1] Certiorari Denied June 25, 2001, Reported at: 2001 U.S. LEXIS 4878.

PRIOR HISTORY:

Appeal from the United States District Court for the Southern District of Alabama. No. 97-00085-CR-1). Richard W. Vollmer, Judge.

DISPOSITION:

AFFIRMED.

COUNSEL:

For Mohamed Siddiqui, Appellant: Christopher Knight, Federal Defenders Organization, Inc., Mobile, AL.

For United States of America, Appellee: Richard W. Moore, Charles A. Kandt, U.S. Attorney's Office, S.D. of Alabama, Mobile, AL.

JUDGES:

Before COX and HULL, Circuit Judges, and GEORGE \*, District Judge.

\* Honorable Lloyd D. George, District Judge for the District of Nevada, sitting by designation.

OPINIONBY:

GEORGE

## OPINION:

[\*1320]

GEORGE, District Judge:

Mohamed Siddiqui appeals his convictions for fraud and false statements to a federal agency, and obstruction in connection with a federal investigation. Siddiqui challenges the district court's admission into evidence of e-mail and foreign depositions.

### *I. Background*

The National Science Foundation ("NSF") is a congressionally established federal agency. The NSF presents the Waterman Award annually to an outstanding scientist or engineer, and consists of a \$ 500,000 research grant. To become eligible for the Waterman Award, candidates are nominated by a nominator who [\*\*2] completes and submits a form to the NSF, and recruits four outside references to support the candidate. The nominator identifies the references on the form, and sends forms to the references for letters to be submitted on behalf of the nominee.

On December 15, 1996, Susan Fannoney, Executive Secretary of the Waterman Award, received a form indicating that Dr. Hamuri Yamada was nominating Mohamed Siddiqui, an Indian citizen, and at that time a visiting professor at the University of South Alabama, for the award. The nomination form listed three references, Dr. von Gunten, James Westrick and Dr. Mysore. Along with the nomination form, Ms. Fannoney received a reference form apparently signed by von Gunten, recommending Siddiqui for the Waterman Award. In addition, Fannoney received by fax a letter of reference from James Westrick.

On January 14, 1997, Fannoney received a letter from von Gunten addressed to the Waterman Awards Committee. The letter stated that von Gunten had received confirmation for a letter of recommendation in support of Siddiqui, but that he had never sent such a letter. Fannoney alerted the Inspector General's office, which began an investigation. On February 7, 1997, Fannoney [\*\*3] received a fax from Siddiqui stating that he was withdrawing his name from consideration for the award.

On February 18, 1997, Jodi Saltzman, a special agent with the NSF interviewed Siddiqui at Siddiqui's office at the University of South Alabama. During the interview, Siddiqui signed a statement admitting that he had nominated himself for the Waterman Award, but that he had permission from Yamada and von Gunten to submit forms on their behalf. Siddiqui also acknowledged in the statement that Westrick had recommended Siddiqui for a different award, the PECASE Award, but that Siddiqui had changed the wording of the letter to apply to the Waterman Award. Siddiqui was indicted on April 29, 1997.

Before trial, the government moved the court to allow the taking of the depositions [\*1321] of Yamada, who resided in Japan, and von Gunten, who resided in Switzerland. In support of the motion, the government provided Agent Saltzman's affidavit indicating that von Gunten had stated outright that he would not come to the United States to testify, and that Yamada would not be able to testify in the United States because of conflicts with personal commitments.

Siddiqui opposed the taking of the depositions [\*\*4] on the grounds that the witnesses' personal presence at trial was necessary, and that Indian travel restrictions for its citizens residing abroad prevented him from traveling to Japan and Switzerland. Specifically, Siddiqui asserted that because of religious persecution in India his travel to Japan or Switzerland related to the criminal action would put his family members still living in India at risk. The magistrate judge ruled that the government had carried its burden of showing that Yamada and von Gunten would be unavailable to appear at trial, and instructed that Siddiqui's fear of obtaining a travel visa from India because of the threat of persecution of family members should not preclude the taking of the foreign depositions.

Yamada's deposition was taken in Japan on March 6, 1998. At government expense, Siddiqui's counsel attended the deposition and cross-examined the witness, but was not in telephonic contact with Siddiqui during the deposition. Yamada testified that on February 1, 1997, she received an e-mail stating that if she received a phone call from the NSF to "please tell good words about me." Yamada testified that she knew the e-mail was from Siddiqui because the [\*\*5] name on the e-mail had Siddiqui's sender address, and it ended with the name "Mo" which Siddiqui had previously told her was his nickname, and which he had used in previous e-mail.

Yamada further testified that she never signed or submitted a Waterman Award form on behalf of Siddiqui, nor had she given Siddiqui permission to sign her name to the form. On February 22, 1997, Yamada received another e-mail from Siddiqui requesting that she prepare a letter indicating that she had permitted Siddiqui to sign the nomination form on her behalf. Yamada testified that during that time period Siddiqui had also contacted her by phone making the same request, and that she recognized his voice. On February 28, 1997, Yamada sent an e-mail to Agent Saltzman stating that she had permitted Siddiqui to sign on her behalf. Yamada later admitted to Saltzman that she had not given Siddiqui permission to sign, but had made the earlier representation because she thought Siddiqui would go to jail.

During cross-examination of Yamada at the deposition, Siddiqui's counsel introduced an e-mail from Yamada to Siddiqui. This e-mail contained the same e-mail address for Siddiqui as the e-mail received by Yamada [\*\*6] and von Gunten apparently from Siddiqui.

Von Gunten's video deposition was taken in Switzerland. At government expense, Siddiqui's counsel attended the deposition and cross-examined von Gunten. During the deposition, Siddiqui was in communication with his counsel by telephone. Von Gunten testified at the deposition that he had not submitted a letter of recommendation in favor of



Siddiqui for the Waterman Award, and that he had not given Siddiqui permission to submit such a letter in his name.

Von Gunten further testified that on February 24, 1997, he received an e-mail from what appeared to be Siddiqui's e-mail address asking him to tell the NSF that Siddiqui had permission to use von Gunten's name. Von Gunten replied by e-mail to the address that he could not tell the NSF anything but the truth. Von Gunten also testified that during the same time period as the exchange of e-mail he spoke with Siddiqui by phone two or three times. In those conversations, in which Siddiqui identified himself and von Gunten recognized his voice, Siddiqui urged von Gunten [\*1322] to change the statements that he had made to the NSF that Siddiqui did not have permission to use von Gunten's name. Von Gunten refused [\*\*7] those requests.

During trial, the district court allowed the depositions to be read into evidence, and admitted the e-mail into evidence.

## II. Discussion

Siddiqui assigns four errors to the proceedings below. He claims that the district court abused its discretion by allowing the government to offer the e-mail into evidence without proper authentication, and over Siddiqui's hearsay objections. Siddiqui further claims that the district court erred by admitting Yamada's and von Gunten's depositions because Siddiqui was not present at the depositions, and because the court did not insure that Siddiqui be allowed to enter Japan and Switzerland to attend the depositions. Finally, Siddiqui claims that the district court erred by admitting Yamada's and von Gunten's depositions without a showing that the deponents were unavailable for trial.

We review the district court's authentication rulings for abuse of discretion. *United States v. Mendez*, 117 F.3d 480, 484 (11th Cir.1997). In the absence of a contemporaneous objection, hearsay claims are reviewed under the plain error doctrine. *United States v. Hernandez*, 896 F.2d 513, 523 (11th Cir.), cert. [\*\*8] denied, 498 U.S. 858, 111 S. Ct. 159, 112 L. Ed. 2d 125 (1990). We review the district court's authorization of foreign depositions for abuse of discretion, *United States v. Drogoul*, 1 F.3d 1546, 1552 (11th Cir.1993), and give plenary review to claims of constitutional error for a failure to show the unavailability of an out-of-court declarant. *United States v. McKeeve*, 131 F.3d 1, 7 (1st Cir.1997).

### A. Authentication of the E-mail

Under Fed.R.Evid. 901(a), documents must be properly authenticated as a condition precedent to their admissibility "by evidence sufficient to support a finding that the matter in question is what its proponent claims." A document may be authenticated by "appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." Fed.R.Evid. 901(b)(4); *United States v. Smith*, 918 F.2d

1501, 1510 (11th Cir.1990) ("the government may authenticate a document solely through the use of circumstantial evidence, including the document's own distinctive characteristics and the circumstances surrounding its discovery"), *cert. denied* [\*\*9] *sub nom.*, *Hicks v. United States*, 502 U.S. 849, 112 S. Ct. 151, 116 L. Ed. 2d 117 (1991), and *cert. denied sub nom.*, *Sawyer v. United States*, 502 U.S. 890, 112 S. Ct. 253, 116 L. Ed. 2d 207 (1991). A district court has discretion to determine authenticity, and that determination should not be disturbed on appeal absent a showing that there is no competent evidence in the record to support it. *United States v. Munoz*, 16 F.3d 1116, 1120-21 (11th Cir.), *cert. denied sub nom.*, *Rodriguez v. United States*, 513 U.S. 852, 115 S. Ct. 153, 130 L. Ed. 2d 92 (1994).

In this case, a number of factors support the authenticity of the e-mail. The e-mail sent to Yamada and von Gunten each bore Siddiqui's e-mail address "msiddiquo at jajuar1.usouthal.edu" at the University of South Alabama. This address was the same as the e-mail sent to Siddiqui from Yamada as introduced by Siddiqui's counsel in his deposition cross-examination of Yamada. Von Gunten testified that when he replied to the e-mail apparently sent by Siddiqui, the "reply-function" on von Gunten's e-mail system automatically dialed Siddiqui's e-mail address as the sender. [\*\*10]

The context of the e-mail sent to Yamada and von Gunten shows the author of the e-mail to have been someone who would have known the very details of Siddiqui's conduct with respect to the Waterman Award and the NSF's subsequent investigation. In addition, in one e-mail sent to [\*1323] von Gunten, the author makes apologies for cutting short his visit to EAWAG, the Swiss Federal Institute for Environmental Science and Technology. In his deposition, von Gunten testified that in 1994 Siddiqui had gone to Switzerland to begin a collaboration with EAWAG for three or four months, but had left after only three weeks to take a teaching job.

Moreover, the e-mail sent to Yamada and von Gunten referred to the author as "Mo." Both Yamada and von Gunten recognized this as Siddiqui's nickname. Finally, both Yamada and von Gunten testified that they spoke by phone with Siddiqui soon after the receipt of the e-mail, and that Siddiqui made the same requests that had been made in the e-mail. Considering these circumstances, the district court did not abuse its discretion in ruling that the documents were adequately authenticated.

#### B. Hearsay Challenge to Admission of the E-mail

Siddiqui argues that [\*\*11] the e-mail addressed to Yamada and von Gunten was erroneously allowed into evidence over hearsay objections. The government responds that Siddiqui posed no hearsay objections to the e-mail, and the issue therefore should be reviewed for plain error. In the portions of the record identified by Siddiqui as hearsay objections to the e-mail (R4-39, 174, R5-266), Siddiqui's counsel objects based on the government's failure to show with reliability who sent the e-mail. Because these objections

go to authentication, and are not hearsay objections, Siddiqui's assignment of error lacks merit.

Even if Siddiqui had preserved hearsay objections to the introduction of the e-mail, however, the district court would have been within its discretion in denying the objections. The e-mail was properly authenticated. Those sent by Siddiqui constitute admissions of a party pursuant to Fed.R.Evid. 801(d)(2)(A), and those between Siddiqui and Yamada unrelated to the NSF investigation are non-hearsay admitted to show Siddiqui's and Yamada's relationship and custom of communicating by e-mail.

### *C. Admission of Foreign Depositions*

Siddiqui argues that the admission of Yamada's and von Gunten's depositions [\*\*12] taken outside of Siddiqui's presence violated the confrontation clause of the Sixth Amendment. Specifically, Siddiqui contends that the government failed to make a diligent effort to ensure Siddiqui's attendance at the depositions, and did not provide Siddiqui with the opportunity to confer with his attorney during the Yamada deposition.

Depositions, particularly those taken in foreign countries, are generally disfavored in criminal cases. *United States v. Mueller*, 74 F.3d 1152, 1156 (11th Cir.1996). Nevertheless, depositions are authorized "when doing so is necessary to achieve justice and may be done consistent with the defendant's constitutional rights." *Id.* See Fed.R.Crim.P. 15.

In this case, the magistrate judge ruled that Siddiqui had the choice of attending the depositions at the risk of possibly placing his family in jeopardy in India, or waiving his confrontation right and allowing the depositions to be attended by his attorney. Siddiqui made no request of the magistrate judge or the government to assist him in removing barriers so that he could attend the depositions, which suggests that Siddiqui made a calculated decision not to alert Indian authorities [\*\*13] by seeking to lift travel restrictions. Indeed, in the face of the possible threat to Siddiqui's family, it would have been improvident for the government to proceed on international fronts absent Siddiqui's express consent. After failing to authorize the government to proceed on his behalf, Siddiqui cannot now claim that his confrontation rights were violated by the government's failure to act unilaterally. [\*1324]

Siddiqui's counsel attended Yamada's and von Gunten's depositions at government expense. In each deposition, oaths were administered to the witnesses, counsel had an unlimited opportunity for direct and cross examination, objections were made and preserved for trial, a judicial officer presided, and transcripts were provided. Siddiqui was in contact by telephone with counsel during the von Gunten deposition. Except for the lack of telephone contact with counsel during the Yamada deposition, Siddiqui does not challenge any other aspect of the manner of the taking of the depositions, nor does he suggest that the law of the host countries was violated in any respect.

The Eleventh Circuit has recognized the approval of foreign depositions even "where the proceeding was in a foreign [\*\*14] language and conducted by a judicial officer rather than counsel." *Mueller*, at 1157 (citing *United States v. Salim*, 855 F.2d 944, 954-55 (2d Cir.1988)). In the absence of any indication that the manner of the Yamada examination was so incompatible with principles of fairness or prone to inaccuracies or bias as to render the testimony inherently unreliable, see *Salim*, 855 F.2d at 953, and in view of Siddiqui's decision not to pursue attending the deposition, the lack of telephone contact between Siddiqui and his lawyer during the deposition does not amount to a violation of the confrontation clause.

#### D. Unavailability of Yamada and von Gunten

Siddiqui argues that his Sixth Amendment confrontation rights were violated when the district court found that Yamada and von Gunten were unavailable to testify at trial before admitting their depositions. The standard for unavailability is whether the witness' attendance could be procured "by process or other reasonable means." Fed.R.Evid. 804(a)(5). In criminal cases, the Sixth Amendment requires the government to show (1) that the out-of-court declarant is unavailable to testify despite its good [\*\*15] faith efforts to obtain his presence at trial, and (2) that the out-of-court statements bear sufficient indicia of reliability to provide the jury with an adequate basis for evaluating their truth. *United States v. Chapman*, 866 F.2d 1326, 1330 (11th Cir.), cert. denied, 493 U.S. 932, 110 S. Ct. 321, 107 L. Ed. 2d 312 (1989). The lengths to which the government must go to produce a witness is a matter of reasonableness. *Ohio v. Roberts*, 448 U.S. 56, 74, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980).

During his deposition, von Gunten unequivocally stated that it would be impossible for him to travel to the United States for the trial. On May 11, 1998, the government faxed a letter to von Gunten explaining that the case against Siddiqui would be much stronger if he could attend the trial, and that it would pay von Gunten's expenses to attend the trial. On May 13, 1998, von Gunten sent a fax to the government confirming that he would not be able to testify at the trial. The government, therefore, has shown that von Gunten was unavailable to testify despite the government's good faith efforts to obtain his presence at trial.

As to Yamada, [\*\*16] the government points out that the district court had before it the affidavit of the NSF agent Saltzman, who stated her belief that, based on both Yamada's numerous reasons given for not traveling to the United States to testify, she would not testify at trial regardless of when it was scheduled. The government also submits that when pressed for a definite answer to whether she would attend the trial, Yamada stated, "I don't want to go, if possible." On May 11, 1998, the government faxed to Yamada the same message that it sent to von Gunten, urging Yamada's attendance at trial beginning on May 14, 1998. On May 15, 1998, the government received an overnight mail response from the

center where Yamada worked indicating that Yamada would be away from her office and unavailable to testify. [\*1325]

Siddiqui responds that Yamada's testimony was at least equivocal, and that Yamada several times expressed a willingness to attend trial. For instance, moments before Yamada stated that she did not want to attend trial, she also conveyed that she was annoyed by the case, and that she would attend, if necessary, in order to have it finished. Siddiqui further argues that the overnight mail response from [\*\*17] the center regarding Yamada's unavailability was dated May 18, 1998, and that her testimony was needed on May 15, 1998.

We find that the government made an adequate showing of Yamada's unavailability. Yamada was initially indefinite during her deposition about whether her schedule would permit her to attend trial and whether the university would give her permission, but her last word on the matter was "I don't want to go, if possible." This was in direct response to the government's request that Yamada state whether she would attend trial or not. Moreover, Yamada did not indicate a change of mind even after the government sent the May 11, 1998, fax urging Yamada's trial attendance. Under such circumstances, the government would not reasonably be expected to have done more.

We also conclude that the out-of-court statements bear sufficient indicia of reliability to provide the jury with an adequate basis for evaluating their truth. As previously stated, Yamada and von Gunten were administered oaths in their depositions, counsel had an unlimited opportunity for direct and cross examination, objections were made and preserved for trial, a judicial officer presided, and transcripts were [\*\*18] provided.

AFFIRMED.