

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 [The R.M.C. 803 session was called to order at 0858,  
2 14 November 2017.]

3 MJ [Col SPATH]: Good morning. These commissions are  
4 called to order. On the government side all the parties who  
5 were present yesterday are again present. In addition,  
6 General Martins has returned.

7 On the defense side the same parties present, and  
8 Mr. al Nashiri is not here today.

9 Trial Counsel, are you transmitting the proceedings?

10 TC [MR. MILLER]: We are, Your Honor. In addition, as  
11 additional individual in the courtroom today, Kelly Sullivan  
12 of the Federal Bureau of Investigation and she has the  
13 necessary clearances.

14 MJ [Col SPATH]: All right. Thank you. Do you have a  
15 witness available to discuss the absence of Mr. al Nashiri?

16 TC [MR. MILLER]: Yes, Your Honor. And Colonel Wells will  
17 handle that matter. Thank you.

18 MJ [Col SPATH]: Just take a seat. I know you've  
19 testified a number of times. Just remember you are still  
20 under oath, okay?

21 WIT: Yes, sir.

22 MJ [Col SPATH]: Thanks.

23 MATC [COL WELLS]: May I approach the witness, Your Honor?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col SPATH]: You may.

2 MAJOR, U.S. ARMY, was called as a witness for the prosecution,  
3 was reminded of his oath, and testified as follows:

4 DIRECT EXAMINATION

5 Questions by the Managing Assistant Trial Counsel [COL WELLS]:

6 Q. Major, good morning.

7 A. Good morning.

8 Q. I have handed you Appellate Exhibit 375F; is that  
9 correct?

10 A. That is correct.

11 Q. How many pages is that appellate exhibit?

12 A. It is three pages.

13 Q. Did you have an opportunity to meet with the accused  
14 this morning?

15 A. I did.

16 Q. Did you discuss with him his right to attend these  
17 proceedings?

18 A. I did read the entire document in English to him and  
19 he followed along with the Arabic version the way he has in  
20 the past.

21 Q. Okay. And what was his response?

22 A. After I read the entire document to him -- well, I  
23 first introduced myself, told him he had a commission this

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 morning. He said he understood. I asked him if he would be  
2 attending the Commission. He indicated he didn't want to  
3 come. He said, "Maybe tomorrow." I told him I would read the  
4 advisement. He followed along in Arabic. And after I  
5 completed the English version I asked him if he had any  
6 questions, and he said he did not, and he asked for the  
7 signature page and I gave him the signature page.

8 Q. And then did he sign that signature page?

9 A. He did sign the English version in my presence with  
10 the interpreter there. He didn't have any questions for the  
11 interpreter, either.

12 Q. And that is page 2 of the appellate exhibit?

13 A. That is correct.

14 Q. And then there is another signature there. Is that  
15 your handwriting?

16 A. That is my -- my signature. I signed after he signed  
17 and returned the document to me.

18 MATC [COL WELLS]: All right. May I approach the witness,  
19 sir?

20 MJ [Col SPATH]: You may.

21 MATC [COL WELLS]: Your Honor, I returned the appellate  
22 exhibit to the court reporters. They are passing it to you.

23 Q. Major, do you have the belief that he understood his

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 rights?

2 A. It is my belief that he did understand all his  
3 rights.

4 Q. Do you have the impression that he voluntarily waived  
5 those rights?

6 A. It is my belief that he voluntarily waived his right  
7 to attend the session today.

8 MATC [COL WELLS]: Sir, no further questions.

9 MJ [Col SPATH]: Thank you.

10 Defense Counsel, any questions?

11 DDC [LT PIETTE]: Nothing from defense, Your Honor.

12 MJ [Col SPATH]: I don't have any questions. Thanks again  
13 for your testimony.

14 WIT: Thanks, Judge.

15 [The witness was temporarily excused and withdrew from the  
16 courtroom.]

17 MJ [Col SPATH]: As in past, I find that Mr. al Nashiri  
18 has voluntarily and knowingly waived his right to be present  
19 during this proceeding, as he has done two other times while  
20 we have been down here over the past two and a half weeks.

21 MATC [COL WELLS]: Yes, sir.

22 MJ [Col SPATH]: Thanks, Colonel Wells.

23 MATC [COL WELLS]: Sir, I do have some administrative

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 announcements.

2 MJ [Col SPATH]: Sure.

3 MATC [COL WELLS]: I believe we are on track with our  
4 witnesses. We currently have six witnesses planned for  
5 Thursday and Friday, if all holds together, plus the  
6 additional witness that we hope to produce, the ethics expert.

7 Yesterday I mentioned the availability of an MRI. I  
8 did not want to leave the impression that the defense has been  
9 dilatory in obtaining that MRI, but it is a task that the  
10 government needs to comply with your court order. The MRI is  
11 not functional and operational, although it has been -- down  
12 here in September. It needs some maintenance and recheck, and  
13 so we will continue to work through that. But this is not the  
14 situation where the defense has been dilatory in any regard.  
15 We will continue to work to comply with the court's order.

16 MJ [Col SPATH]: Thank you.

17 MATC [COL WELLS]: Thank you, sir.

18 MJ [Col SPATH]: All right. I'm not going to spend a lot  
19 of time discussing the obvious absence, continued absence, of  
20 a learned counsel with over nine years of an attorney-client  
21 relationship and thousands of hours of representation built in  
22 who abandoned his role, along with the two DoD civilians, who  
23 are getting paid, apparently, not to come down here and comply

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 with the commission's orders.

2 We are going to continue to cover basic blocking and  
3 tackling that any trial counsel and any defense counsel can  
4 handle if they are certified and qualified. They do it every  
5 day in courts throughout America for sure, if not the world.  
6 And so we are just going to move through those exhibits.  
7 Again, the defense will have an opportunity to attack the  
8 foundation for these exhibits.

9 So it's hard to believe the prejudice that would  
10 occur by attempting to ask any questions on cross, but the  
11 defense will have an opportunity, as I've said all along, to  
12 call witnesses and deal with the foundation for these  
13 exhibits. That hasn't changed.

14 Trial Counsel, call your first witness.

15 TC [MR. MILLER]: Thank you, Your Honor. The government  
16 calls Special Agent -- former Special Agent Gary Reinecke.  
17 GARY REINECKE, civilian, was called as a witness for the  
18 prosecution, was sworn, and testified as follows:

19 DIRECT EXAMINATION

20 Questions by the Trial Counsel [MR. MILLER]:

21 Q. State your name for the record, please.

22 A. Gary Reinecke.

23 Q. And your present occupation, sir?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. I'm assistant professor at Boston University.

2 Q. Sir, I would like to go into a little bit about your  
3 background. You attended college; is that correct?

4 A. Yes.

5 Q. And where did you attend college?

6 A. Undergraduate I went to State University of Buffalo  
7 at New York, then I got a master's degree from Canyon College  
8 in Idaho.

9 Q. And your -- maybe I misunderstood. Your  
10 undergraduate degree was in?

11 A. Criminal justice.

12 Q. And you graduated in?

13 A. '76 -- 1976.

14 Q. And your master's was in?

15 A. Criminology.

16 Q. And when did you graduate, receive that?

17 A. '99.

18 Q. After you had obtained your undergraduate degree, did  
19 you obtain a law enforcement position?

20 A. Yes.

21 Q. And where did you obtain that position?

22 A. I was a police officer with the Columbus, Ohio  
23 Division of Police.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And was that in 1977?

2 A. Yes, that's correct.

3 Q. Prior to becoming a police officer, did you have to  
4 go through any training?

5 A. Yes, six months of training.

6 Q. At the -- a police academy?

7 A. Police academy, yeah.

8 Q. And did you receive any training in the collection of  
9 evidence during that time?

10 A. Yes.

11 Q. After you completed the academy, what were your --  
12 what was your position? What were your duties and  
13 responsibilities?

14 A. I spent several years as a patrol officer, and then I  
15 was promoted to the detective bureau where I became a crime  
16 scene investigator.

17 Q. And what were your duties and responsibilities as a  
18 crime scene investigator?

19 A. We would go out and process crime scenes for various  
20 crimes: murder, rape, bank robbery, burglary, all those types  
21 of ----

22 Q. Did you have to receive any additional  
23 evidence-collection training to be ----

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. ---- in that position?

3 A. Yes, I did. I received it both at the department,  
4 and then I went to training as a police officer at the  
5 FBI Academy also.

6 Q. I assume that you testified in court regarding your  
7 processing of various crime scenes; is that correct?

8 A. Yes, both state, local, and federal.

9 Q. How long did you remain with the Columbus PD?

10 A. Until 1986.

11 Q. And after that?

12 A. I was hired by the Federal Bureau of Investigation.

13 Q. Did you go to the New Agent Class at Quantico?

14 A. Yes.

15 Q. All right. And did you receive evidence collection  
16 training in your new agents class?

17 A. Yes, I did.

18 Q. After completing Quantico, what was your first  
19 office?

20 A. Phoenix, Arizona.

21 Q. Your squad assignment?

22 A. Initially, bank robbery squad.

23 Q. And did you remain in the bank robbery or reactive

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 squad?

2 A. No, I later worked drugs and organized crime.

3 Q. How long did you remain in the Phoenix office?

4 A. Approximately five-and-a-half years.

5 Q. And where were you transferred?

6 A. Flint, Michigan.

7 Q. And how long did you remain in Flint?

8 A. Until -- I'm trying to think here -- 1998.

9 Q. And what was your assignment in Flint?

10 A. Primarily drug investigations.

11 Q. After you left the Flint Resident Office, where did  
12 you go?

13 A. I was promoted and transferred to the FBI Laboratory  
14 at Quantico, Virginia, and I was assigned to the Evidence  
15 Response Team unit.

16 Q. What were your duties? What were your  
17 responsibilities there, sir?

18 A. I was the operational supervisor for all events that  
19 happened nationwide and overseas. And then I also, while I  
20 was there, was involved in training of new ERT people.

21 Q. Did you work what I would call -- other than the  
22 COLE, work any significant or large bomb scenes?

23 A. Yes.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And what were those, sir?

2 A. I was -- worked the Oklahoma City bombing, but my  
3 duties were up at the suspect's farm up in Michigan at that  
4 time.

5 Q. And what was your -- what did you do up at the  
6 suspect's farm?

7 A. We conducted probably about a five-day search, you  
8 know, looking for items that could be associated with the  
9 bombing in Oklahoma City.

10 Q. Any other large bombing scenes or cases?

11 A. I'm trying to think what else bombing-wise. I worked  
12 a car bomb with the Explosives Unit at the FBI over in  
13 Lebanon, Beirut.

14 Q. How long did you remain with the FBI?

15 A. Until December of 2010.

16 Q. And did you have any post-FBI employment?

17 A. Yes, my current position at Boston University.

18 Q. And again, what is your current position?

19 A. I'm an assistant professor. I'm at the Boston  
20 University School of Medicine in the Anatomy and Neurobiology  
21 Department, and our program is forensic anthropology. It's a  
22 graduate program that I teach at.

23 Q. And what do you teach?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Crime scene investigation.

2 Q. Do you have any other what I call collateral duties  
3 at the university?

4 A. Yes. I manage the research facility that we have,  
5 and I'm also the assistant director of the program.

6 Q. Have you ever been involved in any body recovery?

7 A. Yes.

8 Q. Any internationally?

9 A. Yes.

10 Q. And could you describe those for the court, please?

11 A. Yes. We sent -- I went with -- twice into Kosovo  
12 after -- after the -- to support the war crimes investigation,  
13 where we specifically worked on the recovery of human remains.

14 Q. Anywhere else?

15 A. Yeah. 9/11, I was both at the Pentagon and in  
16 New York. I've worked several airplane crashes with NTSB on  
17 the recovery of remains. I was in Thailand for the tsunami,  
18 and we worked on the identifications of the victims there.

19 Q. Have you ever been published?

20 A. Yes.

21 Q. And could you describe for the court, please, in what  
22 capacity?

23 A. I have a book chapter with a forensic pathologist on

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 recovery of commingled remains. I have published a couple  
2 articles on recovery of remains using a bulldozer, the  
3 techniques to use if it got to that. I have another article  
4 that's published on fingerprinting of human remains.

5 Q. I want to take you back to the fall of 2000. Did you  
6 have occasion to assist in the USS COLE investigation?

7 A. Yes.

8 Q. And in what capacity?

9 A. Once the COLE had been processed and remove from the  
10 site, there was -- a dredging operation went on to recover  
11 anything that was underneath the COLE at the bottom of -- the  
12 floor of the bay there. That was placed into a barge. And  
13 due to the climate in Yemen at that time, the barge was taken  
14 to Dubai. And I was -- I was sent to go to Dubai and process  
15 what was in the barge.

16 Q. When you say dredging, the mud and ----

17 A. Yes.

18 Q. ---- silt underneath the ship?

19 A. Yes.

20 Q. And who contacted you and asked you to become  
21 involved in this endeavor?

22 A. That would have been the director of the  
23 FBI Laboratory.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And did he provide you with any information as to  
2 what was going to be expected of you?

3 A. Yes. It was to leave that night, get over there, be  
4 ready. And that -- when we got there everything that had been  
5 collected was in the barge, and we were basically to locate  
6 and sift through anything that was of evidentiary  
7 possibilities.

8 Q. Did you fly to Dubai?

9 A. Yes.

10 Q. Do you remember any of the other team members that  
11 were involved?

12 A. Yes. I had -- there was two agents that came with me  
13 from the Denver office, Carle Schlaff and Mike -- I can't  
14 think of Mike's last name, sorry. I've been retired seven  
15 years. There was another individual, Brad; he came as a medic  
16 for support for us but helped with us. And then we had -- we  
17 brought a Dr. AbuBakr Marzouk from the Armed Forces medical  
18 examiners with us.

19 Q. Why did you bring Dr. AbuBakr?

20 A. In case we came across human remains or bone  
21 material.

22 Q. Do you know an agent named McSwain?

23 A. Yes.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Was he also there?

2 A. Yes, he was there as well. He was the explosives  
3 expert.

4 Q. When you got to Dubai, did you go out to the barge?

5 A. Yes.

6 Q. And could you describe that process, how far the  
7 barge was and how you got there?

8 A. Well, initially it was -- we were told it was going  
9 to be at the port in Dubai. And then before -- we ended up  
10 getting there five or six days before it even arrived. And  
11 then there was discussion that -- that Dubai didn't want the  
12 barge in their port because of possible contamination issues  
13 and stuff like that.

14 So it was then -- the barge was then left out in  
15 international waters in the Persian Gulf, so we would commute  
16 every day. So we would go early in the morning, get on a  
17 boat, and then we'd meet the barge and the tug it was attached  
18 to out in the Persian Gulf.

19 Q. Do you remember the time frame in which this was  
20 occurring?

21 A. It was right after Thanksgiving, because I know we  
22 celebrated Thanksgiving in Dubai.

23 Q. So it would be 2000?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes. November, yeah.

2 TC [MR. MILLER]: Your Honor, permission to publish to the  
3 witness Prosecution Exhibits for Identification 681, 677, 678,  
4 679, 680, 683, and 685.

5 MJ [Col SPATH]: You may.

6 Q. I want to start with this photograph. Do you  
7 recognize this, sir?

8 A. Yes. That's the barge.

9 Q. And about how -- if you could, although it is a  
10 fairly long photograph, approximately what was the dimensions  
11 of the barge?

12 A. It was almost the length -- not quite the width -- of  
13 a football field, a hundred yards.

14 Q. And I can see what appears to be a brown substance in  
15 the barge; is that correct?

16 A. Yes.

17 Q. And what is that?

18 A. That is the material that they dredged from the  
19 bottom of the bay there that was underneath the COLE.

20 Q. Fair and accurate depiction as it appeared when you  
21 were working on it?

22 A. Yes. Initially it was very dry, and we had to add  
23 water to it.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. All right. And why did you add water to it?

2 A. Well, the idea was to do a sifting operation, and in  
3 the condition it was in, it was dry and clumping and it would  
4 have been very difficult to sift that. So we actually put  
5 on -- a screen on the end of the barge, two of them, and then  
6 cut a plate out, screening, and then we would push the water,  
7 the silt and the sand through that.

8 Q. 677, please. Do you recognize that photograph, sir?

9 A. Yeah, that's still the same, the barge, as the  
10 process began.

11 Q. It appears that there has been water added; is that  
12 correct?

13 A. Yes.

14 Q. All right. And again, that is to soften the  
15 substances?

16 A. I'm sorry?

17 Q. Is that to soften?

18 A. Soften or remove the very fine material, the sand and  
19 everything, and leave us with items of possible evidence.

20 Q. And is Prosecution Exhibit 677 for Identification a  
21 fair and accurate depiction of the barge as it appeared while  
22 you were working on it or adding the water to it?

23 A. Yes.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And how did you add the water to it? Was it sea  
2 water or ----

3 A. Yes. There was a fire system on the tugboat that  
4 carried it, and we just ran hoses down and used that water.

5 Q. Prosecution 678. Again, you recognize 678 for  
6 Identification?

7 A. Yes. And that's the barge again, that's the tug that  
8 was attached to it.

9 Q. Fair and accurate depiction as it appeared ----

10 A. Yes.

11 Q. ---- while you were working on it?

12 A. Yes.

13 Q. 679. If you could, please, Prosecution Exhibit 679  
14 for Identification, explain to the court what is in that  
15 photograph.

16 A. Well, what you see here is the cracked material.  
17 That's what it looked like originally. And this is at some  
18 point, because we had added water to it, you could see it  
19 under the individual's boots there.

20 Q. Fair and accurate depiction as it appeared ----

21 A. Yes.

22 Q. ---- as you were working on it?

23 680, please. Do you recognize this photograph,

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Prosecution Exhibit 680 for Identification?

2 A. Yes. Before we even started, we walked through and  
3 we collected some of the larger items and just put them off to  
4 the side.

5 Q. Did you make a determination that they were of no  
6 evidentiary value?

7 A. At some point in time we did later, yes.

8 Q. All right. Fair and accurate depiction of some of  
9 the debris that was contained on the barge ----

10 A. Yes.

11 Q. ---- when you were working on it?

12 A. Yes.

13 Q. 683, please. You recognize this photograph, sir?

14 A. Yes. This is early on in the process when we first  
15 started adding water. And if you look at the end of the barge  
16 there, the narrow end, you can see where the screens had --  
17 where we established the screens and cut the plates out of the  
18 barge.

19 Q. And that's Prosecution Exhibit 683 for  
20 Identification. Fair and accurate depiction of the barge as  
21 it appeared while you were working on it?

22 A. Yes.

23 Q. And 685, please. Do you recognize Prosecution

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Exhibit 685 for Identification, sir?

2 A. Yes. That's the exterior walls of the barge.

3 Q. Fair and accurate depiction as it appeared while ----

4 A. Yes.

5 Q. ---- you were working on the barge?

6 A. Yes.

7 TC [MR. MILLER]: Your Honor, we -- the government would  
8 move for admission of 681 for Identification, 677 for  
9 Identification, 678 for Identification, 679 for Identification  
10 680 for Identification, 683 for Identification, and 685 for  
11 Identification.

12 MJ [Col SPATH]: Defense Counsel?

13 DDC [LT PIETTE]: Defense takes no position.

14 MJ [Col SPATH]: What I'm going to do, Trial Counsel, I've  
15 got them all offered. These are exactly the types of things I  
16 would typically admit, given that there is no concern about  
17 unfair prejudice, given the nature of the photographs. Pretty  
18 easy to do a 403 balancing test, something we learned in law  
19 school early.

20 I'm going to defer, though, until we have another  
21 counsel here, at some point, to have this conversation; or if  
22 another counsel doesn't show up I assume Lieutenant Piette,  
23 sooner or later, will take a position or continue to abandon

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 his role. Thank you.

2 TC [MR. MILLER]: Thank you, Your Honor.

3 Questions by the Trial Counsel [MR. MILLER]:

4 Q. Now, you indicated that there was some screens added  
5 to the barge?

6 A. Yes.

7 Q. Could you describe for the court what the importance  
8 of the screens were?

9 A. Well, we -- we sat there in Dubai waiting for it to  
10 come, and we were discussing with the company that was doing  
11 the movement of the COLE and everything that was working with  
12 us on the barge as well. And my idea was to build kind of  
13 like a fireplace screen of a certain mesh and to weld that to  
14 the exterior of the barge and then cut the plate out, so that  
15 we didn't lose anything as we were doing the screening  
16 operation.

17 Q. So the barge initially did not have the screens on  
18 it?

19 A. No.

20 Q. All right.

21 TC [MR. MILLER]: Permission, Your Honor, to publish to  
22 the witness Prosecution Exhibits for Identification 689 --  
23 yes, 689, 686, 687, 684, 688, 693, 694, and 695.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col SPATH]: You may.

2 TC [MR. MILLER]: Thank you, Your Honor.

3 Q. I want to first show you what has been -- what is  
4 Prosecution Exhibit 689 for Identification. Do you recognize  
5 that, sir?

6 A. Yes, I do.

7 Q. What do you recognize that to be?

8 A. That was when they initially started with the  
9 screening. It was a heavier screen and a wider screen, just  
10 to stabilize the situation. And they welded that on, just as  
11 I said, kind of like a fireplace screen that ----

12 Q. And so we are clear, there appears to be a cutout on  
13 the wall of the barge ----

14 A. Yes.

15 Q. ---- is that correct?

16 A. Yes.

17 Q. That was not there initially?

18 A. No. So initially they put the screens in, the  
19 heavy-duty screen, and then they cut the plates.

20 Q. Fair and accurate depiction of the process as it was  
21 occurring ----

22 A. Yes.

23 Q. ---- on the barge?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. 686, please. You recognize Prosecution Exhibit 686  
3 for Identification?

4 A. Yes. That was ----

5 Q. Can you describe what's in that, please?

6 A. I'm sorry. That was the finer mesh screen that we  
7 added inside there to collect the smaller particles or items,  
8 and this is all -- this whole screening setup here is on the  
9 exterior of the barge.

10 Q. Fair and accurate depiction as it appeared as you  
11 were working on the barge?

12 A. Yes.

13 Q. 687, please. Do you recognize what's in Prosecution  
14 Exhibit numbered 687?

15 A. Yes. Again, a similar picture to the previous photo.  
16 And you can see they built two walls out of plates and then  
17 first put in that heavier gauge to support, and then on the  
18 top and -- which would run down to the other, was the finer  
19 mesh of screening.

20 Q. Fair and accurate depiction of the screens as they  
21 were when you were working on the barge?

22 A. Yes.

23 Q. 684, please. Do you recognize this, sir?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. And what is in Prosecution Exhibit numbered 684 for  
3 Identification?

4 A. Again, it's a screen system completed, and I think  
5 it's -- at that point in time we started running water through  
6 it.

7 Q. Fair and accurate depiction of the screens as they  
8 appeared while you were working on the barge?

9 A. Yes.

10 Q. 688, please. Do you recognize 688, sir?

11 A. Yes.

12 Q. And what is in 688?

13 A. The same screen. Again, there was two of them on  
14 that end. I can't differentiate which one is -- well, this  
15 would have been on the previous in the far right corner when  
16 we were looking from the tug down into the barge, because I  
17 could see the edge in the water there.

18 Q. Is Prosecution Exhibit 688 for Identification a fair  
19 and accurate depiction of the screen -- screening system as it  
20 was on the ship while you were working on it, the barge?

21 A. Yes. Yes.

22 Q. 693, please. Before you is Prosecution Exhibit 693  
23 for Identification. Do you recognize that photograph, sir?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



***UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT***

1       A.   Yes, that's the initial heavy-duty screen that was  
2 put in. And the tape measure that runs across it was just put  
3 there for scale purposes.

4       Q.   All right. It's approximately how wide, sir?

5       A.   Approximately two feet, I believe.

6       Q.   All right. Fair and accurate depiction of the screen  
7 as it appeared ----

8       A.   Yes.

9       Q.   ---- back in October of 2000?

10      A.   Yes.

11      Q.   Prosecution Exhibit 694 for Identification, please.  
12 Do you recognize what's in Prosecution Exhibit 694 for  
13 Identification, sir?

14      A.   Yes. That's the similar image, again taken from  
15 inside of the barge looking out.

16      Q.   Fair and accurate depiction of the screening system  
17 as it was on the barge when you were working on it?

18      A.   Yes.

19      Q.   Lastly I want to show you Prosecution Exhibit 695 for  
20 Identification. Do you recognize that, sir?

21      A.   Yes.

22      Q.   695 for Identification appears to be a different kind  
23 of screening; is that correct?

***UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT***

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1       A.    Right.  This was -- depicts both the heavy-duty and  
2 the liner of the finer mesh that we put inside the screen.

3       Q.    Fair and accurate depiction of the screening system  
4 as it was on the barge when you were working on it?

5       A.    Yes.

6       TC [MR. MILLER]:  Your Honor, again, the prosecution --  
7 the government would move for the introduction -- or would  
8 offer for introduction into evidence Prosecution Exhibit 689  
9 for Identification, 686, 687, 684, 688, 693, 694, and 695.

10      MJ [Col SPATH]:  Defense Counsel?

11      DDC [LT PIETTE]:  The defense takes no position.

12      MJ [Col SPATH]:  And again, I will do as I did with the  
13 previous series of photographs, Trial Counsel.  I will just  
14 defer on those, but they have been offered.  Thank you.

15      Q.    Now once the screening system was in, what sort of  
16 protocol or what sort of system for searching did you  
17 employ -- did you and the team employ?

18      A.    Well, initially, as I previously testified, we went  
19 through and gathered all the larger articles that were  
20 visible, got them out of the way.  Then we started pumping the  
21 water.  And then what would happen is it would get backed up,  
22 and then -- because a lot of items were pushed against the  
23 screen.  So then we would go in there by hand and pull those

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 out, put them in a wheelbarrow, take them back to the far end  
2 of the barge where we had another screen set up with a smaller  
3 hose. And then we cleaned items off, tried to identify what  
4 they were, and then collected what was deemed as possible  
5 evidence.

6 Q. You said you'd take it to a smaller screen. Is that  
7 sort of a sifting station?

8 A. Yes.

9 TC [MR. MILLER]: Permission, Your Honor, to publish to  
10 the witness Prosecution Exhibits for Identification 260, 682,  
11 and 692.

12 MJ [Col SPATH]: You may.

13 Q. Showing you Prosecution Exhibit 260 for  
14 Identification. Do you recognize that, sir?

15 A. Yes.

16 Q. And what do you recognize that photograph to show?

17 A. Again, that's the barge, the same barge. And you can  
18 see in the center there there's a group of three in white  
19 Tyvek and one in orange suit, and that was the sifting  
20 operation. It was just a small probably two-foot-by-two-foot  
21 screen with legs, and we would just take the items out, clean  
22 them off there.

23 Q. In the corner of the picture what I would say is the

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 -- if I'm facing the barge, would be the far right-hand  
2 corner, there seems to be a pile of debris; is that correct?

3 A. Yes, that's still part of the sediment and everything  
4 from the dredging that we hadn't completely gone through yet.

5 Q. Is that a fair and accurate depiction of the process  
6 as it was occurring?

7 A. Yes.

8 Q. Prosecution Exhibit for Identification 682, please.  
9 Before you is a photograph, Prosecution Exhibit 682 for  
10 Identification. Do you recognize that, sir?

11 A. Yes.

12 Q. And what do you recognize that to be?

13 A. That's the same sifting operation that I discussed,  
14 just a closer photo.

15 Q. And the flooring of the barge appears to be somewhat  
16 clean or free of debris; is that correct?

17 A. In that area, yes. There's water on it, but it was  
18 down to the metal.

19 Q. Fair and accurate depiction of the screening process  
20 as it was occurring?

21 A. Yes.

22 Q. 692, please, for Identification. Lastly, I'm showing  
23 you Prosecution Exhibit 692 for Identification. Do you

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 recognize that, sir?

2 A. Yes.

3 Q. Are you in that photograph?

4 A. Yes.

5 Q. What are you wearing?

6 A. The white Tyvek suit.

7 Q. And what is occurring there?

8 A. That's a closeup of the sifting operation. So we  
9 have the water going over it. And that's Agent McSwain in the  
10 blue shirt that's looking at possible items of evidence.

11 Q. And the photograph has a date on it actually, a  
12 digital date of 11/27/2000; is that correct?

13 A. Yes.

14 Q. Fair and accurate depiction of the process as you all  
15 were involved in it?

16 A. Yes.

17 TC [MR. MILLER]: Your Honor, the prosecution would move  
18 for the admission of Prosecution Exhibit 260 for  
19 Identification, 682, and 692.

20 MJ [Col SPATH]: Thank you.

21 Defense Counsel?

22 DDC [LT PIETTE]: Defense takes no position.

23 MJ [Col SPATH]: I understand, and I'm going to do what I

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 have done so far and defer on those three. Thank you, Trial  
2 Counsel.

3 Q. And what types of evidence were you finding, if any?

4 A. Metallic objects. I'm trying to remember what else.  
5 I mean, we found a variety of things. We found hand tools,  
6 things of that nature that were from the ship, actually.

7 Q. And how long did the search take?

8 A. Approximately, my best recollection was four days,  
9 five days, somewhere around there.

10 TC [MR. MILLER]: Permission to publish to the witness,  
11 Your Honor, Prosecution Exhibit 691 and 261.

12 MJ [Col SPATH]: You may.

13 Q. First showing you Prosecution Exhibit 269 -- 691,  
14 excuse me, for Identification. Do you recognize that, sir?

15 A. Yes.

16 Q. And what's occurring in this photograph?

17 A. We're getting very close to completing the operation,  
18 the sifting operation, and doing kind of a final wash-through.  
19 You can see the three water hoses going from the tug, pushing  
20 everything towards the screens at the end of the barge.

21 Q. And if you look -- that's right, we're not on the  
22 ELMO.

23 If you look at the far end of the barge, there

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 appears to be two openings, correct?

2 A. Yes.

3 Q. And are those the screening operation that you  
4 described earlier?

5 A. Yes. Those are the ones that we manufactured when we  
6 got out there, yes.

7 Q. All right. Fair and accurate depiction of what was  
8 occurring and how the barge appeared back in November of 2000?

9 A. Yes.

10 Q. 261, please. And lastly, the last picture, I'm  
11 showing you Prosecution Exhibit 261 for Identification. Do  
12 you recognize that, sir?

13 A. Yes.

14 Q. And could you describe what's occurring in this  
15 photograph?

16 A. Again, it was finishing up on the last part, cleaning  
17 the barge. You can see the bare metal there. You can see the  
18 ladder, which is how we accessed the barge. And then at one  
19 point in time, after we were almost nearly completed, there  
20 was a second panel taken off, which you see on the right, to  
21 make easier and safer access.

22 Q. It appears, at least in the front part of the  
23 picture, the barge is clean and actually drying.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. And there is, in the right corner, a digital date of  
3 11/27 of 2000; is that correct?

4 A. Yes.

5 Q. Fair and accurate depiction of what was occurring on  
6 that date?

7 A. Correct.

8 TC [MR. MILLER]: Your Honor, the government would move  
9 for admission of Prosecution 691 and 261.

10 MJ [Col SPATH]: Defense Counsel?

11 DDC [LT PIETTE]: Defense takes no position.

12 MJ [Col SPATH]: All right. And again I'll defer on those  
13 two. Thank you.

14 Q. Now, when you would find something that you thought  
15 was of evidentiary value, what would you -- how would you guys  
16 go about documenting that?

17 A. We would photograph it and write a written  
18 description of what it was.

19 Q. Did you have the traditional sort of evidence bags  
20 that had evidence chain of custody ----

21 A. Yes.

22 Q. ---- indications on it?

23 TC [MR. MILLER]: Permission to publish to the witness,

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Your Honor, Prosecution Exhibits for Identification 46, 46A,  
2 46B, and 46C.

3 MJ [Col SPATH]: You may.

4 TC [MR. MILLER]: And we would also ask permission, Your  
5 Honor, at this time to use the ELM0.

6 MJ [Col SPATH]: You may. And, Mr. Miller, as you go  
7 through the rest of the real evidence, I know it's already  
8 been cleared and all, you don't need to ask permission each  
9 time if you don't want to.

10 TC [MR. MILLER]: Thank you, Your Honor. I appreciate  
11 that.

12 MJ [Col SPATH]: Thanks.

13 Q. I'm going to place -- excuse me. I think before you  
14 has been placed Prosecution Exhibit 46 for Identification,  
15 correct?

16 A. Yes.

17 Q. First, I want to show you what has been --  
18 Prosecution Exhibit 46A for Identification. Can you see that,  
19 sir?

20 A. Yes.

21 Q. Do you recognize what's in that photograph?

22 A. Yes.

23 Q. And what is that?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1       A.   Those are three metallic items that we collected  
2 while sifting through at the barge.

3       Q.   And it has what we call a Q number on it; is that  
4 correct?

5       A.   Yes.

6       Q.   Can you read that Q number?

7       A.   Q597.

8       Q.   Now before you, also, is the evidence bag,  
9 Prosecution Exhibit for Identification 46; is that correct?

10      A.   Yes.

11      Q.   Do you recognize that bag, sir?

12      A.   Yes, I do.

13      Q.   And how are you able to recognize it?

14      A.   I have my initials both on the card in there and  
15 directly on the bag that it was sealed -- those items were  
16 sealed in.

17      Q.   Can you see those items?

18      A.   Yes.

19      Q.   Are they the same items that are contained -- the  
20 ones in Prosecution Exhibit 46, are they the same items that  
21 are in the photograph, Prosecution Exhibit 46A?

22      A.   Yes.

23      Q.   All right. And you say your signature or initials

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 are there in two separate places?

2 A. Yes.

3 Q. Is there a Q number on that particular package?

4 A. Yes, Q597.

5 Q. And does that match the Q number in the photograph,

6 Prosecution Exhibit 46A for Identification?

7 A. Yes.

8 Q. Is there also a 1B number on it?

9 A. Yes.

10 Q. And what is that 1B number?

11 A. 1B949.

12 Q. Now, do you have before you a chain of custody form,

13 an FD-192?

14 A. Yes, I do.

15 Q. And do you recognize that form, sir?

16 A. I do.

17 Q. And is your signature contained on it?

18 A. Yes. It's my signature and my handwriting with the

19 date and time.

20 Q. And what is the date and time, sir?

21 A. November 27th, 1445.

22 Q. And are you able to associate this chain of custody

23 form with Prosecution Exhibit 46?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. And how are you able to do that, sir?

3 A. By the case number and the 1B949 number.

4 Q. All right. Those are -- the numbers match; is that  
5 correct?

6 A. Yes, that's correct.

7 Q. I'm placing before you what is Prosecution  
8 Exhibit 46C for Identification. Does that -- do those first  
9 two entries match the entries on the chain of custody form  
10 that you've just described?

11 A. Yes.

12 Q. Did you actually take this evidence back with you to  
13 the laboratory?

14 A. No. I -- I took it back as far as Dulles Airport,  
15 and then there was an individual from the explosives unit --  
16 unit at the laboratory that took all the evidence from me.

17 Q. On the second line of Prosecution Exhibit 46C, under  
18 your first signature, did you sign it again? Is that a "Gary"  
19 underneath it also?

20 A. Yes, but I -- I had crossed it out.

21 Q. Okay. But this is the individual to whom you  
22 surrendered the evidence, correct?

23 A. Yes.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. All right. I'm showing you Prosecution Exhibit 46B  
2 for Identification. Do you recognize that, sir?

3 A. Yes.

4 Q. And what do you recognize it to be?

5 A. It would have been one of the other item -- or items  
6 that we collected. And, again, I know because it has my  
7 initials on there.

8 Q. If you'd look at Prosecution Exhibit 46, please. Is  
9 46B a photograph of 46?

10 A. From the angle -- yes. Yes.

11 Q. Fair and accurate depiction of it?

12 A. Yes.

13 Q. And if you could circle for the court where you see  
14 your initials.

15 A. I see them here. And it doesn't show on the  
16 photograph, but I ----

17 Q. But at least one of them you can see in the  
18 photograph, correct?

19 A. Yes.

20 TC [MR. MILLER]: Your Honor, the record should reflect  
21 that he has circled the initials on the bottom of what I would  
22 call a Post-It sicker. It starts as D19 with the case number,  
23 date and suspect, both parts.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           Your Honor, at this time the prosecution would move  
2 for the admission of 46A, 46B, and 46C.

3           MJ [Col SPATH]: Those, as I have done throughout, I defer  
4 [no audio]. Thanks.

5           Q. Has Prosecution Exhibit 52 been placed before you?

6           A. No.

7           Q. Do you now have Prosecution Exhibit 52 for  
8 Identification before you?

9           A. Yes.

10          Q. All right. Do you recognize that, sir?

11          A. Yes, I do.

12          Q. All right. First I'm going to ask you to take a look  
13 at the photograph before you, 52A. Do you recognize that,  
14 sir?

15          A. Yes.

16          Q. What do you recognize that to be?

17          A. The items that we had collected from the barge.

18          Q. Does that photograph fifty -- 52A for Identification  
19 have a Q number?

20          A. Yes.

21          Q. And what is that Q number?

22          A. 586.

23          Q. And why did you collect this item? And, in fact, why

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 did you collect the last item, 46?

2 A. We used two different techniques to decide what was  
3 to be taken and what wasn't. One was the opinion of  
4 Agent McSwain, the explosives expert. And then at one point  
5 in time while we were on the barge, we had two Navy ships that  
6 were circling us for security purposes, and we requested that  
7 two of the mechanics from that ship come over to look at --  
8 see if they could recognize things as being from the COLE, or  
9 a Navy ship, as compared to other items. So based on that  
10 that's where we -- those two things, we collected items.

11 Q. And you have now before you fifty -- 52, is that  
12 correct, for Identification?

13 A. Yes.

14 Q. And do you recognize that evidence bag, sir?

15 A. Yes, I do.

16 Q. All right. And how are you able to recognize it?

17 A. Once again, my initials.

18 Q. Your initials are contained on the bag?

19 A. Yes, sir. And on the card.

20 Q. And does that bag have a Q number?

21 A. Yes.

22 Q. And what is that Q number?

23 A. Q586.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And do the items in the bag appear to be the same  
2 items that are in the photograph, Prosecution Exhibit 52A for  
3 Identification?

4 A. Yes.

5 Q. Does the bag have a 1B number?

6 A. It does.

7 Q. And what is that 1B number, sir?

8 A. 1B949.

9 Q. I think I may have asked you this: Do the Q numbers  
10 from 52A and the bag match?

11 A. Yes.

12 Q. All right. If you would, please, take a look at --  
13 I'm going to place in front of you a chain of custody form.  
14 Is there also a chain of custody form there in front of you?

15 A. Yes.

16 Q. Take a look at the one in front of you. Do you  
17 recognize that?

18 A. Yes.

19 Q. And do you recognize your signature on it?

20 A. I do.

21 Q. All right. And are you able to associate that with  
22 the Exhibit 52A?

23 A. Yes.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And how are you able to do that, sir?

2 A. Again, case number and the 1B number.

3 Q. I've placed on the ELM0 Prosecution Exhibit 52C. Is  
4 that an exact duplicate of the chain of custody form you've  
5 just described?

6 A. Yes.

7 Q. And again, you transported this particular item back  
8 to Andrews Air Force Base?

9 A. It would have been Dulles Airport.

10 Q. Dulles Airport?

11 A. Yes.

12 Q. You did that personally?

13 A. Yes.

14 Q. And did you then surrender it to lab personnel?

15 A. Correct.

16 Q. Lastly I'm placing before you Prosecution Exhibit 52B  
17 for Identification. Do you recognize this photograph, sir?

18 A. Yes, I do.

19 Q. Is it a fair and accurate depiction of Prosecution  
20 Exhibit 52?

21 A. Yes.

22 TC [MR. MILLER]: Move for the admission, Your Honor, of  
23 Prosecution Exhibits 52A, 52B, and 52C.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col SPATH]: Thank you.

2 Q. If you could provide the witness, please, with  
3 Prosecution Exhibit 53.

4 A. I have it.

5 Q. Do you have that in front of you, sir?

6 A. Yes.

7 Q. Thank you. I ask you to take a look at the  
8 photograph on the ELM0, Prosecution Exhibit 53A for  
9 Identification. Do you recognize that item, sir?

10 A. Yes.

11 Q. And what do you recognize it to be?

12 A. A gear item, another thing that we collected off the  
13 barge.

14 Q. And does that photograph contain a Q number?

15 A. Yes. Q587.

16 Q. If you would look at the bag, Prosecution Exhibit 53  
17 for Identification. Do you recognize that bag, sir?

18 A. Yes, I do.

19 Q. And what do you recognize it to be?

20 A. My initials are both on the 3-by-5 card and the bag  
21 itself.

22 Q. All right. And is this an item that you seized off  
23 the barge?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. Does -- the item contained in the bag, can you see  
3 it?

4 A. Yes.

5 Q. Is it identical to the one in the photograph ---

6 A. Yes.

7 Q. ---- 53A for Identification? Is it identical?

8 A. Yes.

9 Q. You say your initials are on it, correct?

10 A. Correct.

11 Q. Is there a Q number on the bag?

12 A. Yes.

13 Q. And what is that Q number, sir?

14 A. Q587.

15 Q. Is there a 1B number on it?

16 A. Yes.

17 Q. What is that 1B number?

18 A. 1B949.

19 Q. Is there a chain of custody form attached to it?

20 A. Yes, there is.

21 Q. And do you recognize the chain of custody form?

22 A. Yes, I do.

23 Q. And is that your signature on the chain of custody

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 form?

2 A. Yes, it is.

3 Q. Are you able to associate that chain of custody form  
4 with the Exhibit 53?

5 A. Yes.

6 Q. And how are you able to do that, sir?

7 A. By both the case number and the 1B number.

8 Q. I'm placing on the ELM0 Prosecution Exhibit 53C. Is  
9 that an exact duplicate of the chain of custody form you've  
10 just described?

11 A. Yes, it is.

12 Q. And again, did you transport this item back to Dulles  
13 Airport?

14 A. Yes, I did.

15 Q. And did you surrender it to lab personnel at Dulles?

16 A. I did.

17 Q. I'm placing before you Prosecution Exhibit 53B.  
18 You -- can you see that, sir?

19 A. Yes.

20 Q. Is it a fair and accurate depiction of Prosecution  
21 Exhibit 53?

22 A. Yes, it is.

23 TC [MR. MILLER]: Move for the admission, Your Honor, of

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Prosecution Exhibits 53A, 53B, and 53C.

2 MJ [Col SPATH]: Thank you.

3 TC [MR. MILLER]: If you could provide the witness with  
4 Prosecution Exhibit 54.

5 Q. Do you have that, sir?

6 A. Yes.

7 TC [MR. MILLER]: Thank you, Sergeant.

8 Q. I'm going to place on the ELMO Prosecution  
9 Exhibit 54A for Identification. Do you recognize that item,  
10 sir?

11 A. Yes, I do.

12 Q. What do you recognize it to be?

13 A. A gear and a shaft that's bent.

14 Q. Was that an item that you all seized?

15 A. Yes.

16 Q. Does it have a Q number in the photograph?

17 A. Yes.

18 Q. And what is that Q number?

19 A. Q588.

20 Q. If you would, please, take a look at Prosecution  
21 Exhibit 54. Do you recognize that bag, sir?

22 A. Yes.

23 Q. And what do you recognize -- how are you able to

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 recognize that bag?

2 A. From the case number and the writing and my initials.

3 Q. And does the item -- can you see the item in the bag?

4 A. Yes.

5 Q. Does it appear to be the same item that's contained  
6 in the photograph, Prosecution Exhibit 54A?

7 A. Yes, it is.

8 Q. The bag has a Q number also?

9 A. Yes.

10 Q. What is that Q number?

11 A. Q588.

12 Q. And that would be the same number that's contained in  
13 Prosecution Exhibit 54A; is that correct?

14 A. Correct.

15 Q. Does the bag have a 1B number?

16 A. Yes.

17 Q. What is that 1B number, sir?

18 A. 1B949.

19 Q. Is there a chain of custody form?

20 A. Yes.

21 Q. All right. And do you recognize your signature on  
22 that form?

23 A. I do.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. All right. And are you able to associate it with the  
2 exhibit?

3 A. Yes, I am.

4 Q. And how are you able to do that?

5 A. Again, by the -- my initials, the 1B number and the  
6 case number.

7 Q. I'm showing you Prosecution Exhibit 54C for  
8 Identification. Do you recognize that, sir?

9 A. I do.

10 Q. And do you recognize your signature in it?

11 A. Yes, that is my signature.

12 Q. And is that an exact duplicate of the item, the chain  
13 of custody form, that you just described?

14 A. Yes.

15 Q. And again, did you personally take this exhibit,  
16 transport it to Dulles Airport?

17 A. I did.

18 Q. And did you then surrender it to lab personnel there?

19 A. Yes.

20 Q. Placing on the ELM0 Prosecution Exhibit 54B for  
21 Identification. Do you recognize that, sir?

22 A. Yes, I do.

23 Q. And what do you -- is that a fair and accurate

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 depiction of the bag in front of you, Prosecution Exhibit 54?

2 A. Yes, it is.

3 Q. And if you could circle just for the record, for the  
4 court, where your signature is contained on this document.

5 A. My initials are on the 3-by-5 card and directly on  
6 the bag.

7 TC [MR. MILLER]: All right. Your Honor, the record  
8 should reflect that there is two initials. Looks like a G and  
9 then a squiggly next to it and another G with a squiggly next  
10 to it. He circled both of those.

11 MJ [Col SPATH]: Thank you.

12 TC [MR. MILLER]: Your Honor, the government would move  
13 for the admission of Prosecution Exhibits 54A for  
14 Identification, 54B, and 54C.

15 MJ [Col SPATH]: All right. Thank you. Mr. Miller, what  
16 we're going to do, we'll take a short break before we go on  
17 through the rest of these. I will see you all in ten minutes.  
18 We're in recess.

19 [The R.M.C. 803 session recessed at 0951, 14 November 2017.]

20 [END OF PAGE]

21

22

23

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 [The R.M.C. 803 session was called to order at 1002,  
2 14 November 2017.]

3 MJ [Col SPATH]: The commission is called back to order.  
4 All the parties who were present during our last session are  
5 again present. The witness remains on the witness stand. I  
6 know you will remember, just remember you are still under  
7 oath.

8 WIT: Yes, sir.

9 MJ [Col SPATH]: Mr. Miller.

10 TC [MR. MILLER]: Thank you. Your Honor, I appreciate it.

11 Could you provide the witness with Prosecution  
12 Exhibit 55.

13 **DIRECT EXAMINATION CONTINUED**

14 **Questions by the Trial Counsel [MR. MILLER]:**

15 Q. Sir, you have before you Prosecution Exhibit 55 for  
16 Identification; is that correct?

17 A. Yes.

18 Q. I placed on the ELM0 Prosecution Exhibit -- a  
19 photograph, Prosecution Exhibit 56 -- Prosecution Exhibit 55A,  
20 excuse me, for Identification. Do you recognize that item,  
21 sir?

22 A. Yes, I do.

23 Q. And what do you recognize it to be?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

- 1 A. Some type of shaft.
- 2 Q. Was it an item that you seized from the barge?
- 3 A. Yes, it was.
- 4 Q. Does the photograph have a Q number?
- 5 A. Yes, it does.
- 6 Q. And what is the Q number?
- 7 A. 589.
- 8 Q. If you would, please, take a look at Prosecution
- 9 Exhibit 55. Do you recognize that bag, sir?
- 10 A. Yes, I do.
- 11 Q. And what do you -- how are you able to recognize it?
- 12 A. I have two sets of my initials on it, both on the
- 13 card and on the bag itself.
- 14 Q. And can you see the item in the bag?
- 15 A. Yes.
- 16 Q. Does it appear to be the same item that's in
- 17 Prosecution Exhibit 55A?
- 18 A. Yes, it does.
- 19 Q. And does the bag, Prosecution Exhibit 55, have a Q
- 20 number on it?
- 21 A. Yes. Yes, it does.
- 22 Q. And what is that number?
- 23 A. Q589.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And does that match the number on Prosecution  
2 Exhibit 55A?

3 A. Yes, it does.

4 Q. Is there a 1B number on that bag also?

5 A. Yes.

6 Q. And what is the 1B number?

7 A. 1B949.

8 Q. All right. If you could, is there a -- oh, here it  
9 is.

10 Do you have a chain of custody form with that?

11 A. Yes, I do.

12 Q. All right. And do you recognize that chain of  
13 custody form?

14 A. Yes, I do.

15 Q. And does it contain your signature?

16 A. Yes.

17 Q. Are you able to associate that chain of custody form  
18 with the exhibit, Prosecution Exhibit 55?

19 A. Yes.

20 Q. And how are you able to do that, sir?

21 A. By the case number and the 1B number.

22 Q. All right. And again, did you personally deliver  
23 this exhibit to Dulles Airport?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. And did you then give it to certain personnel from  
3 the lab?

4 A. Yes, I did.

5 Q. I'm placing on the ELM0 Prosecution Exhibit 55C for  
6 Identification. Do you recognize that, sir?

7 A. Yes, I do.

8 Q. All right. And is that your signature under the  
9 "Collected" area?

10 A. Yes. Yes, it is.

11 Q. Is that a duplicate of -- are the other first two  
12 entries duplicates of the chain of custody form that you've  
13 just identified?

14 A. Yes, it is.

15 Q. Placing before you Prosecution Exhibit 55B for  
16 Identification. Do you see that photograph, sir?

17 A. Yes, I do.

18 Q. Is it a fair and accurate depiction of Prosecution  
19 Exhibit 55?

20 A. Yes, it is.

21 TC [MR. MILLER]: Your Honor, the government would move  
22 for the admission of Prosecution Exhibit 55A for  
23 Identification, 55B, and 55C.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col SPATH]: Thank you.

2 Q. Have you just been handed Prosecution Exhibit  
3 numbered 56?

4 A. Yes, I have.

5 Q. I'm placing on the ELM0 Prosecution Exhibit -- a  
6 photograph, Prosecution Exhibit 56B. Do you recognize that  
7 item, sir?

8 A. Yes, I do.

9 Q. And what do you recognize it to be?

10 A. A portion of a gear that we collected off the barge.

11 Q. Does that photograph have a Q number?

12 A. Yes.

13 Q. And what is that Q number?

14 A. 590.

15 Q. If you would, please, take a look at the bag, 56.

16 A. Yes.

17 Q. Do you recognize the bag?

18 A. I do.

19 Q. And what do you recognize it to be?

20 A. The same item as depicted on the screen.

21 Q. The same item in Prosecution Exhibit 56A?

22 A. Yes.

23 Q. All right. And is your signature contained on the

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 bag in any place?

2 A. My initials are on -- on the bag and on the card, and  
3 my signature is on the chain of custody form.

4 Q. As to the bag itself, does it have a Q number?

5 A. Yes.

6 Q. What is that Q number?

7 A. Q590.

8 Q. And is that the same number that's contained in the  
9 photograph, Prosecution Exhibit 56A?

10 A. Yes.

11 Q. Is there a 1B number on the bag?

12 A. Yes.

13 Q. And what is that 1B number?

14 A. 1B949.

15 Q. You say that you have a chain of custody form there  
16 also?

17 A. Yes.

18 Q. If you would, please, take a look at it. Does it  
19 contain your signature?

20 A. It does.

21 Q. And where on the form does it contain your signature?

22 A. The first individual to accept custody.

23 Q. Are you able to associate this particular chain of

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 custody form with the Exhibit 56?

2 A. Yes, I am.

3 Q. And how are you able to do that?

4 A. By the file number and the 1B number.

5 Q. Showing you on the ELM0 Prosecution Exhibit 56C. Do  
6 you recognize that, sir?

7 A. Yes.

8 Q. And what do you recognize that to be?

9 A. A copy of the original chain of custody form that I'm  
10 holding in my hand.

11 Q. Are the first two entries there the exact -- are they  
12 exact duplicates of the form that you've just described?

13 A. Yes.

14 Q. And again, did you take possession of this exhibit  
15 and transport it back to the United States?

16 A. Yes.

17 Q. To?

18 A. And I turned it over to lab personnel there.

19 Q. At Dulles Airport?

20 A. At Dulles Airport.

21 Q. Showing you Prosecution Exhibit 56B. Do you see that  
22 photograph?

23 A. Yes.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. All right. And is Prosecution Exhibit 56B for  
2 Identification a fair and accurate depiction of Prosecution  
3 Exhibit 56?

4 A. Yes, it is.

5 TC [MR. MILLER]: Your Honor, the government would move  
6 for the admission -- or it would offer into evidence  
7 Prosecution Exhibit 56A, 56B, and 56C.

8 MJ [Col SPATH]: Thank you.

9 Q. You have before you Prosecution Exhibit 57 for  
10 Identification?

11 A. Yes, I do.

12 Q. I'd ask you first to take a look at these  
13 photographs -- this photograph, Prosecution Exhibit 57A for  
14 Identification. Do you see that photograph, sir?

15 A. Yes.

16 Q. Do you recognize the item in it?

17 A. Yes, I do.

18 Q. And what is it?

19 A. It's a -- two pieces of metal. Looks like a possible  
20 gear, portion of a gear. And those are -- items were  
21 collected on the barge.

22 Q. Does the photograph have a Q number?

23 A. Yes, Q591.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. If you would take a look at the actual evidence bag,  
2 Prosecution Exhibit 57. Do you recognize that bag, sir?

3 A. Yes, I do.

4 Q. And how are you able to recognize it?

5 A. I have initialed both the bag and the card inside of  
6 it.

7 Q. And do you see the items inside the bag?

8 A. Yes.

9 Q. Are they the same items that are contained in  
10 Prosecution Exhibit 57A?

11 A. Yes, they are.

12 Q. Does the bag, Prosecution Exhibit 57 for  
13 Identification, have a Q number on it?

14 A. Yes.

15 Q. And what is that Q number?

16 A. 591.

17 Q. And does that match the Q number in the photograph,  
18 Prosecution Exhibit 57A?

19 A. Yes, it does.

20 Q. Is there a 1B number?

21 A. Yes, there is.

22 Q. What is that number?

23 A. 1B949.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Are you able -- is there a chain of custody form  
2 there?

3 A. Yes, it's attached.

4 Q. All right. And do you recognize your signature on  
5 that form?

6 A. Yes, I do.

7 Q. All right. And it's the top line; is that correct?

8 A. Yes.

9 Q. In fact, all of these forms, yours is always on the  
10 top line, correct?

11 A. As the initial person to take custody.

12 Q. Are you able to associate this form with the exhibit,  
13 Prosecution 57?

14 A. Yes.

15 Q. And how are you able to do that, sir?

16 A. Again, by file number and 1B number.

17 Q. And did you then -- you took possession of this in  
18 Dubai or in or around Dubai?

19 A. Yes.

20 Q. And transported it back to the United States?

21 A. Yes.

22 Q. Dulles Airport?

23 A. Correct.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And did you give that to lab personnel?

2 A. Yes, I did.

3 Q. I'm going to place on the ELMO Prosecution

4 Exhibit 57C for Identification. Is that an exact duplicate of  
5 the chain of custody form that you have just described.

6 A. Yes, it is.

7 Q. And is that your signature on the top?

8 A. Yes.

9 Q. I show you Prosecution Exhibit 57B for  
10 Identification, ask you if you recognize that, sir.

11 A. Yes, I do.

12 Q. Is that a fair and accurate depiction of Prosecution  
13 Exhibit 57, the evidence bag?

14 A. Yes, it is.

15 Q. And again, that photograph shows on the -- what I  
16 call Post-It, D-13. Is your initials on that?

17 A. Yes, and at the top on the bag, also.

18 TC [MR. MILLER]: Prosecution would move for the  
19 admission, Your Honor, of Prosecution Exhibit 57A, 57B, and  
20 57C.

21 MJ [Col SPATH]: Thank you.

22 Q. I place before you -- I think it's been placed before  
23 you, Prosecution Exhibit 58; is that correct, sir?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. That's correct.

2 Q. I ask you to take a look at the photograph on the

3 ELMO. Do you recognize the items in the photograph?

4 A. Yes.

5 Q. And what do you recognize them to be?

6 A. Wiring and a metal object.

7 Q. And was this an item you seized from the barge?

8 A. That is correct.

9 Q. In fact, all the items that you've talked about today  
10 were seized on the barge, correct?

11 A. Yes. Yes.

12 Q. And does the Prosecution Exhibit 58A have a Q number?

13 A. Yes. That would be 592.

14 Q. Ah. If you would, please, take a look at the bag,  
15 Prosecution Exhibit 58. Do you recognize that bag?

16 A. Yes, I do.

17 Q. And what do you recognize it to be?

18 A. The item that was depicted on the screen here.

19 Q. The screen being Prosecution Exhibit 56A for  
20 Identification?

21 A. Correct.

22 Q. All right.

23 A. Wait a minute. I'm sorry. 58?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. I'm sorry. You're correct. 58. All right.

2 Prosecution Exhibit 58, the bag, the item in it matches the  
3 photograph, Prosecution Exhibit 58; is that correct?

4 A. Yes.

5 Q. And do you -- you recognize the bag, correct?

6 A. Yes, I do.

7 Q. And how are you able to do so?

8 A. Again, my initials are on it, the case number.

9 Q. And is there a Q number on the bag?

10 A. Yes.

11 Q. And what is that Q number?

12 A. 592.

13 Q. Does that match the Q number in the photograph,  
14 Prosecution Exhibit 58A?

15 A. Yes.

16 Q. Do you have a chain of custody form attached?

17 A. I do.

18 Q. And is your signature contained on that?

19 A. Yes, it is.

20 Q. On the first line?

21 A. Yes.

22 Q. And are you able to associate that chain of custody  
23 form with the Exhibit 58?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. And how are you able to do so?

3 A. By case number and 1B number.

4 Q. I'm placing on the ELM0 Prosecution Exhibit 58C for  
5 Identification. Is that your signature on the top?

6 A. Yes.

7 Q. And is this an exact duplicate of the chain of  
8 custody form you just described?

9 A. Yes.

10 Q. And did you personally transport this item back to  
11 the United States?

12 A. Yes.

13 Q. And did you surrender it to lab personnel at Dulles  
14 Airport?

15 A. I did.

16 Q. I'm placing on the ELM0 Prosecution Exhibit 58B. Do  
17 you recognize that photograph, sir?

18 A. Yes, I do.

19 Q. Is it a fair and accurate depiction of Prosecution  
20 Exhibit 58 for Identification?

21 A. Yes, it is.

22 Q. And does the photograph contain -- can you see your  
23 signature on it?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Initials on two locations, on the card and on the  
2 bag.

3 Q. All right.

4 TC [MR. MILLER]: Prosecution would move for the  
5 admission, Your Honor, of Prosecution Exhibit 58A, 58B, and  
6 58C for Identification.

7 MJ [Col SPATH]: Thank you.

8 Q. I believe that Prosecution Exhibit 59 has been placed  
9 before you; is that correct?

10 A. That is correct.

11 Q. I'm placing on the ELM0 Prosecution Exhibit 59A and  
12 ask you if you recognize that, sir.

13 A. Yes.

14 Q. What do you recognize that to be?

15 A. As an item that we collected on the barge, some type  
16 of sheared piece of metal.

17 Q. And does that photograph have a Q number?

18 A. Yes.

19 Q. What is that Q number?

20 A. 593.

21 Q. If you would, please, take a look at the bag,  
22 Prosecution Exhibit numbered 59. Do you recognize that bag,  
23 sir?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes, I do.

2 Q. And how are you able to recognize it?

3 A. My initials are on -- both on the bag and on the  
4 3-by-5 card included.

5 Q. And can you see the item contained in the bag?

6 A. Yes, I can.

7 Q. And is it the same item that's contained in the  
8 photograph, Prosecution Exhibit 59A?

9 A. Yes, it is.

10 Q. Does the bag have a Q number?

11 A. Yes, it does.

12 Q. And what is that Q number?

13 A. 593.

14 Q. And does that match the Q number in Prosecution  
15 Exhibit numbered 59A?

16 A. Yes.

17 Q. Is there a 1B number?

18 A. Yes.

19 Q. And what ----

20 A. 1B949.

21 Q. Is there a chain of custody form attached?

22 A. Yes.

23 Q. Do you see that form?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes, I do.

2 Q. Is your signature contained on that form?

3 A. Yes, it is.

4 Q. Where is it contained on that form?

5 A. As the first person receiving the evidence.

6 Q. And this evidence, did you personally transport it  
7 back to the United States?

8 A. Yes.

9 Q. To Dulles Airport?

10 A. Yes.

11 Q. And to whom did you surrender it?

12 A. Lab personnel.

13 Q. I'm placing on the ELM0 Prosecution Exhibit 59C. Do  
14 you recognize that form, sir?

15 A. Yes.

16 Q. Is that exhibit, Prosecution Exhibit 59C for  
17 Identification, an exact duplicate of the chain of custody  
18 form you've just described?

19 A. Yes, it is.

20 Q. I'm placing on the ELM0 Prosecution Exhibit numbered  
21 59B. Do you recognize that photograph, sir?

22 A. Yes, I do.

23 Q. Is it a fair and accurate depiction of Prosecution

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Exhibit 59?

2 A. Yes.

3 Q. And again, can you see your initials on it?

4 A. Yes, both on the bag and on the 3-by-5 card.

5 TC [MR. MILLER]: The government would move, Your Honor,  
6 for the admission of Prosecution Exhibit 59A, 59B, and 59C for  
7 Identification.

8 MJ [Col SPATH]: All right. Thank you.

9 Q. Prosecution Exhibit 60 been placed before you, sir?

10 A. Yes.

11 Q. I'm placing on the ELM0 Prosecution Exhibit 60A. Do  
12 you recognize that item, sir?

13 A. Yes, I do.

14 Q. And what do you recognize it to be?

15 A. One of the items that we collected on the barge.

16 Q. A piece of -- looks like sheared metal?

17 A. Yes.

18 Q. Is there a Q number in it ----

19 A. Yes.

20 Q. ---- on the photograph?

21 And what is the Q number on Prosecution Exhibit  
22 numbered 60A?

23 A. 594.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. If you would, please, take a look at the bag,  
2 Prosecution Exhibit 60. Do you recognize that, sir?

3 A. Yes, I do.

4 Q. And what do you recognize it to be?

5 A. The same item that was depicted on the screen here.

6 Q. The photograph, Prosecution Exhibit 60A?

7 A. Yes.

8 Q. And do you recognize -- do you recognize the bag?  
9 Does it contain your signature or any other identifying  
10 number?

11 A. It has my initials on it, both the bag and the 3-by-5  
12 card.

13 Q. And is there a Q number on the bag?

14 A. Yes.

15 Q. And what is that Q number?

16 A. 594.

17 Q. And is that the same Q number contained on  
18 Prosecution Exhibit numbered 60A?

19 A. Yes, it is.

20 Q. Is there a 1B number on it also?

21 A. Yes.

22 Q. And what is that 1B number?

23 A. 1B949.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Is there a chain of custody form attached?

2 A. Yes.

3 Q. Let's take a look at that, please. Does that chain  
4 of custody form contain your signature?

5 A. Yes.

6 Q. Is it on the first line?

7 A. Yes, it is.

8 Q. Are you able to associate that chain of custody form  
9 with the exhibit, Prosecution Exhibit 60?

10 A. Yes.

11 Q. And how are you able to do that, sir?

12 A. By case file number and 1B number.

13 Q. And this particular exhibit, you took possession of  
14 it in Dubai, correct?

15 A. Yes.

16 Q. In fact, you took possession of all the items in  
17 Dubai?

18 A. I did.

19 Q. And did you then transport it back to the United  
20 States?

21 A. Yes.

22 Q. To Dulles Airport?

23 A. Correct.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And to whom did you surrender it?

2 A. FBI lab personnel.

3 Q. All right. I'm going to place on the ELM0

4 Prosecution Exhibit 60C for Identification. Is that an exact  
5 duplicate of the chain of custody form you've just described?

6 A. Yes, it is.

7 Q. And does that contain your signature on the top line?

8 A. Yes, it does.

9 Q. Lastly I've placed on the -- on the ELM0 Prosecution  
10 Exhibit 60B for Identification. Do you recognize that, sir?

11 A. Yes, I do.

12 Q. Is that photograph an exact duplicate of Prosecution  
13 Exhibit 60?

14 A. Yes, it is.

15 Q. Is it a fair and accurate depiction?

16 A. Yes.

17 TC [MR. MILLER]: The government would move for the  
18 admission, Your Honor, of Prosecution Exhibit 60A for  
19 Identification, 60B, and 60C.

20 MJ [Col SPATH]: Thank you.

21 Q. Has Prosecution Exhibit 61 been given to you?

22 A. Yes.

23 Q. I'm placing on the ELM0 Prosecution Exhibit

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 numbered -- excuse me. I'm placing on the ELM0 Prosecution  
2 Exhibit 61A for Identification. Do you recognize that item,  
3 sir?

4 A. Yes, I do, as an item that was collected off the  
5 barge.

6 Q. Does it have a Q number?

7 A. Yes. Q595.

8 Q. All right. I'm now placing on the ELM0 a second  
9 photograph, Prosecution Exhibit numbered 61B for  
10 Identification. Do you recognize that?

11 A. Yes.

12 Q. And what do you recognize that to be?

13 A. A gear shaft, I believe, that was also collected off  
14 the barge.

15 Q. And does that have a Q number?

16 A. Yes.

17 Q. All right. And what is that Q number?

18 A. Q595.

19 Q. All right. If you would, please, take a look at the  
20 bag itself, the actual evidence, Prosecution Exhibit 61. Do  
21 you recognize that, sir?

22 A. Yes, I do.

23 Q. And what do you recognize it to be?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. The -- the item that we collected, the gear shaft.

2 Q. These photographs, Prosecution 61 and 61B, two  
3 separate items, or is it just two different sides of the same  
4 item?

5 A. Two different sides.

6 Q. Both the top and the bottom?

7 A. Right, correct.

8 Q. And your signature is contained on the bag?

9 A. Yes.

10 Q. All right. And does the bag have a Q number?

11 A. Yes.

12 Q. And what is that Q number?

13 A. 595.

14 Q. And does that match the Q number in Prosecution  
15 Exhibits numbered 61A for Identification and Prosecution  
16 Exhibit 61B for Identification?

17 A. Yes, it does.

18 Q. And is there a 1B number on it also?

19 A. Yes.

20 Q. And what is that 1B number?

21 A. 1B949.

22 Q. If you would, please, look at the chain of custody  
23 form. Is there one attached?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. And do you recognize that chain of custody form?

3 A. Yes. My signature is on the first line.

4 Q. Are you able to associate that chain of custody form,  
5 Prosecution Exhibit -- excuse me, that chain of custody form  
6 with Prosecution Exhibit 61?

7 A. Yes.

8 Q. And how are you able to do that, sir?

9 A. By both the file number and the 1B number.

10 Q. I'm placing on the ELM0 Prosecution Exhibit 61D,  
11 David. Is that an exact duplicate of the chain of custody  
12 form you've just described?

13 A. Yes, it is.

14 Q. And did you personally take custody of this item in  
15 Dubai?

16 A. Yes.

17 Q. Did you transport it?

18 A. Yes.

19 Q. To Dulles?

20 A. Correct.

21 Q. And to whom did you surrender it?

22 A. Laboratory personnel.

23 Q. I've placed on the ELM0 Prosecution Exhibit 61C for

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Identification. See that photograph, sir?

2 A. Yes.

3 Q. Is that an accurate depiction of the actual  
4 evidence -- actual evidence bag, Prosecution Exhibit 61?

5 A. That's correct.

6 Q. And can we see your signature on, or initials on this  
7 particular item?

8 A. Yes.

9 TC [MR. MILLER]: Your Honor, the prosecution would move  
10 for the admission of 61A for Identification, 61B, 61C, and  
11 61D.

12 MJ [Col SPATH]: Thank you.

13 Q. Has item Prosecution Exhibit 63 -- excuse me, 83 for  
14 Identification been placed in front of you?

15 A. Yes.

16 Q. I'd first ask you to take a look at the photograph on  
17 the ELM0, Prosecution Exhibit 83A, and ask you if you  
18 recognize this, sir.

19 A. Yes.

20 Q. And what do you recognize it to be?

21 A. Just various pieces of damaged metal that we  
22 collected on the barge.

23 Q. And did you put it all in one evidence bag?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 A. Correct.

2 Q. And does the -- if I can, does the photograph,  
3 Prosecution Exhibit 83A, have a Q number? This may come  
4 into -- can you read that? Let me see if I can get it a  
5 little bit better. Not much. Give me a second here. No.

6 Fair statement, you can't read the Q number on it?

7 A. No.

8 Q. All right. If you would take a look at the evidence,  
9 the actual evidence bag, please, 83.

10 A. Yes.

11 Q. Do you recognize the bag?

12 A. Yes, I do.

13 Q. And what do you recognize it to be?

14 A. Miscellaneous metal fragments inside a bag that's  
15 labelled and marked with my initials.

16 Q. All right. And are you able to see the items?

17 A. I can see part of them.

18 Q. Do they appear to be the same items that are  
19 contained in the photograph ----

20 A. Yes.

21 Q. ---- Prosecution Exhibit 83A?

22 A. Yes.

23 Q. And you indicated that the bag has your initials on

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 the ----

2 A. Yes.

3 Q. ---- bag?

4 A. And the 3-by-5 card.

5 Q. On the 3-by-5 card. Is there a 1B number?

6 A. Yes.

7 Q. What is the 1B number?

8 A. 949.

9 Q. And is there a chain of custody form attached to it?

10 A. Yes, there is.

11 Q. All right. If you would take a look at that, please.

12 Do you recognize that?

13 A. Yes. My signature is on the first line.

14 Q. Are you able to associate that particular bag of  
15 evidence, Prosecution Exhibit 83, with the evidence receipt,  
16 the FD-190?

17 A. Yes.

18 Q. And how are you able to do that, sir?

19 A. By file number and 1B number.

20 Q. And it's your signature on the top line; is that  
21 correct?

22 A. That's correct.

23 Q. And did you personally take possession of these

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 items?

2 A. Yes, I did.

3 Q. In Dubai?

4 A. In Dubai.

5 Q. And you transported them back to the United States?

6 A. Yes.

7 Q. And did you surrender them to personnel at Dulles  
8 Airport, lab personnel?

9 A. Yes, I did.

10 Q. I'm showing you Prosecution Exhibit 83C for  
11 Identification. And is that an exact duplicate of the chain  
12 of custody form you've just described?

13 A. Yes, it is.

14 Q. Again, that is your signature at the top, correct?

15 A. Correct.

16 Q. And I'm placing on the ELMO Prosecution Exhibit 83B.  
17 Do you recognize that, sir?

18 A. Yes.

19 Q. And what do you recognize that to be?

20 A. It's a 3-by-5 card with my signature on it.

21 Q. And is that the 3-by-5 card attached to Prosecution  
22 Exhibit 83?

23 A. No. I'm sorry.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Oh. Let me try Prosecution Exhibit -- let me see.

2 TC [MR. MILLER]: Permission to approach, Your Honor?

3 MJ [Col SPATH]: You may.

4 Q. I'm placing before you Prosecution Exhibit 145B for  
5 Identification, and ask you if you recognize that, sir.

6 A. Yes, I do.

7 Q. And what do you recognize that to be?

8 A. That's the 3-by-5 card contained in item number --  
9 Exhibit 83.

10 Q. All right. And that's how you're able to recognize  
11 83, from that signature and that card?

12 A. Yes.

13 Q. Fair and accurate depiction of the card?

14 A. Yes.

15 TC [MR. MILLER]: Your Honor, the prosecution would move  
16 for the admission of Prosecution Exhibits 83A, 145B ----

17 Q. Again, 145B is -- correct? This is the item that is  
18 on the actual bag, correct, Prosecution Exhibit 83?

19 A. Correct.

20 TC [MR. MILLER]: Move for the admission of Prosecution  
21 145B and Prosecution 83C.

22 MJ [Col SPATH]: All right. Thank you.

23 Q. Placing before you, I believe, is Prosecution

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Exhibit 145.

2 A. Correct.

3 Q. Do you recognize that bag, sir?

4 A. Yes, I do.

5 Q. First I'm going to place on the ELMO Prosecution  
6 Exhibit 145A and ask you if you recognize that photograph,  
7 sir.

8 A. I do.

9 Q. And what do you recognize it to be?

10 A. They were suspected boat parts that we collected on  
11 the barge.

12 Q. If you would, please -- I think you are going to have  
13 difficulty. Can you make out the -- are you able at all to  
14 make out the 1B number?

15 A. Looks like 599, but I'm ----

16 Q. All right.

17 A. ---- not confident.

18 Q. If you would take a look at the bag, Prosecution  
19 Exhibit 145. Again, do you recognize that bag?

20 A. I do.

21 Q. And what do you recognize it to be?

22 A. The suspected boat parts that we collected on the  
23 barge.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. And does it have a -- a yellow sticky on it also,  
2 what I call a Post-It?

3 A. Yes.

4 Q. All right. And what is the number on it?

5 A. Q599.

6 Q. All right. Which would match the Q number in  
7 Prosecution Exhibit 145A for Identification, correct?

8 A. Correct.

9 Q. All right. And can you see the items generally that  
10 are inside it?

11 A. Yes.

12 Q. And do they match the items that are in Prosecution  
13 Exhibit ----

14 A. Yes.

15 Q. ---- 145A?

16 A. Yes, they do.

17 Q. Now, you say your signature is on there?

18 A. Yes.

19 Q. And is it on the yellow sticky?

20 A. It's actually on the 3-by-5 card, and it's on the bag  
21 that we marked with.

22 Q. All right. The 3-by-5 card, if you could read that  
23 into the record.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1       A.    Item D-20.  It's New York case number 262-NY-277013,  
2   dated 11/27 of 2000.  It's identified as suspect boat parts,  
3   and it has my initial at the bottom of it.

4       Q.    Does it have a 1B number?

5       A.    Yes, it does.

6       Q.    What is the 1B number?

7       A.    1B949.

8       Q.    All right.  Is there a chain of custody form attached  
9   to it?

10      A.    Yes, it is.

11      Q.    All right.  And do you recognize that chain of  
12 custody form?

13      A.    I do.

14      Q.    Does it contain your signature?

15      A.    On the first line, yes.

16      Q.    And did you take possession of this item in Dubai?

17      A.    I did.

18      Q.    Did you transport it back to the United States?

19      A.    Yes.

20      Q.    And did you surrender it to lab personnel at Dulles  
21 Airport?

22      A.    I did, yes.

23      Q.    I'm going show you a photograph, Prosecution

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Exhibit 145C for Identification. Is that an exact duplicate,  
2 at least as to the first two entries, of the chain of custody  
3 form you have just described?

4 A. Yes, it is.

5 Q. I'm also going to place on the ELM0 Prosecution  
6 Exhibit 83B for Identification. Do you recognize that?

7 A. Yes.

8 Q. I have been calling it a Post-It, but it is actually  
9 an index card.

10 A. Yes.

11 Q. All right. Is that the index card that's contained  
12 in the exhibit, Prosecution Exhibit 145?

13 A. Yes, it is.

14 Q. All right. And that photograph is -- I'm identifying  
15 it as Prosecution Exhibit 83B, and that is a fair and accurate  
16 depiction of that card; is that correct?

17 A. Yes, it is.

18 TC [MR. MILLER]: The government would move for the  
19 admission, Your Honor, of Prosecution Exhibit 145A, 145C, and  
20 83B.

21 MJ [Col SPATH]: Thank you.

22 Q. As to any of these items, do you have any reason to  
23 believe they have been altered, changed, or damaged in any

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 way?

2 A. No.

3 Q. And were you the person who originally packaged all  
4 of those items?

5 A. Yes.

6 TC [MR. MILLER]: I have no further questions, Your Honor.  
7 Thank you.

8 MJ [Col SPATH]: Thanks.

9 Defense Counsel.

10 DDC [LT PIETTE]: Your Honor, defense takes no position.

11 MJ [Col SPATH]: I'm not going to repeat my kind of  
12 constant on-the-record response to that. I think it's pretty  
13 clear. I will talk about it in a minute.

14 I am going to give you a standard order. I don't  
15 want you to discuss your testimony about these matters until  
16 it is resolved. The unique piece here is that could be a  
17 while, so just keep that in mind as we move forward.

18 Also for the witnesses who come down to testify, I  
19 thank them for coming in person. I think it's important and I  
20 appreciate it, since I know that it is not necessarily easy to  
21 get down here. I appreciate it very much.

22 WIT: Thank you, Your Honor.

23 MJ [Col SPATH]: You are excused.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           WIT: Thank you.

2   [The witness was warned, temporarily excused, and withdrew  
3   from the courtroom.]

4           MJ [Col SPATH]: I know tomorrow the plan is not to have  
5   any session, and then six witnesses or seven, depending, on  
6   Thursday and Friday.

7           I don't know what your client's plan is, Defense  
8   Counsel, but for Friday I do need him here in person. I have  
9   some questions for him that I will go over with him before we  
10   depart. And so on Friday make sure we secure his attendance.

11           Thursday, given that we are doing preadmission, if he  
12   wants to voluntarily absent himself and goes through the  
13   procedure with the SJA, he can do that, but not on Friday.

14           Is Major Robinson still here on the island?

15           DDC [LT PIETTE]: Yes, Your Honor.

16           MJ [Col SPATH]: Has Major Fewell traveled down?

17           DDC [LT PIETTE]: No, Your Honor.

18           MJ [Col SPATH]: Okay. Just -- Lieutenant Piette, again,  
19   I have great empathy. My worry is that, like it or not, I  
20   believe that Congress meant what they said when they said  
21   "learned counsel to the degree practicable," and you know I  
22   found learned counsel aren't practicable because they  
23   voluntarily are not here, despite court orders. Not just

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 voluntarily not here, fighting a court order to represent  
2 their client in Indiana.

3           And I think that's important, because the risk you  
4 continue to run is that the C.M.C.R. and the District Courts  
5 ultimately, if there is any conviction, agree with my  
6 interpretation that learned counsel is not practicable when,  
7 after nine years and almost \$2 million and thousands of hours  
8 of investment, they walk away with no determination of whether  
9 or not even the client wants that to occur; and by the way,  
10 filings from a chief defense counsel in prior releases of  
11 counsel that make clear that they believe their authority only  
12 applied to detailed military counsel, not learned counsel;  
13 unique because learned counsel aren't detailed, they are  
14 appointed.

15           But again, it doesn't hurt my feelings that people  
16 disagree with how I interpret the law. That happens every  
17 time I rule on something; one side or the other disagrees with  
18 me. What I'm worried about is, most of the time the side that  
19 disagrees with me doesn't just ignore it and go on  
20 interpreting it that way. That -- the justice system wouldn't  
21 work very well if that is how things worked in any other court  
22 process.

23           And here I have said learned counsel are not

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 practicable. And so earlier when I discussed the abandonment  
2 of your role, my concern is truly the harm that it's going to  
3 cause you at some point.

4           Your client deserves representation, and I don't  
5 think learned counsel are practicable, particularly right now.  
6 Because again, after nine years he walked away from here. And  
7 I haven't heard from his client yet that he doesn't want him  
8 back. Mr. al Nashiri has yet to say, Please sever the  
9 relationship. I may or may not at that point, of course; that  
10 is a different assessment. But I haven't even been asked,  
11 telling me that this client still wants his lawyer and his  
12 lawyer refuses to appear.

13           So again, there will be a written ruling in that  
14 regard, probably findings of fact as we depart here about it.  
15 But I -- that's why I believe it is a decision by you not to  
16 engage in questioning and, again, kind of the basics of trial  
17 work. And I have great empathy for the position they have  
18 left you with.

19           But I hope you recognize that, recognize my concern  
20 and, frankly, my concern for your client. Because if you all  
21 are wrong in this belief that when Congress said "learned  
22 counsel to the extent practicable," what they really meant is  
23 learned counsel all the time -- right? If Congress wasn't

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 clear, although it seemed reasonably clear to me when I read  
2 it, if you are wrong, the harm to your client seems pretty  
3 obvious to me; but it also seems like a strategic decision.

4           Again, people watching, if they have an agenda I'll  
5 never fix it. They will say whatever they want. But  
6 hopefully objective people understand. This is not some  
7 summary march to do harm to your client. Because if it was,  
8 we are pretty ineffective since we have been doing it for nine  
9 years.

10           And right now it is a methodical pace to put on  
11 evidence from the government that they believe is going to  
12 convict your client. And we are going to continue with the  
13 preadmission of evidence in January and on with the rest of  
14 the schedule that I have already set out.

15           My plan was different for those months with learned  
16 counsel. I was going to try to work in preadmission and some  
17 trial deadlines that are long past due. But with the absence  
18 of counsel, we'll do preadmission. And the government put  
19 together a pretty decent calendar for that, and it remains  
20 real evidence found in a variety of searches.

21           And the preadmission of evidence is not new in a  
22 trial, in any trial. What is clear and remains clear is your  
23 ability to attack it, both now and later. But the danger, of

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 course, is later it may well be admitted at that point; and  
2 then it's up to the members to put what weight on it they're  
3 going to put on it based on the attacks. But the admission is  
4 my call; I know you know that.

5           And I just -- I recognize the position you've been  
6 put in, but learned counsel are not practicable because of  
7 their voluntary abandonment of their client, and no other  
8 reason.

9           Again, I know the evidence of alleged intrusion.  
10 I've been in the same position as General Baker being able to  
11 review it. And we're all stuck with, you know, he's not the  
12 judge; I am. I've reviewed it. And based on prior rulings I  
13 think all of you know at least, if I interpret it correctly  
14 and I believe there was this significant intrusion, we'd have  
15 an evidentiary hearing. I don't know more what I could do to  
16 demonstrate that I will rule for either side depending on the  
17 facts.

18           Here they didn't play out the way learned counsel  
19 expected; I recognize that. But the response to that of  
20 abandoning your role and your client after nine years and all  
21 those thousands of hours; and, frankly, these same complaints  
22 over and over, over the last nine years, tell me it's  
23 strategic; and that seems pretty obvious.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1           We'll start Thursday morning 0900, as we have all  
2 along, and continue with the preadmission of evidence. We are  
3 in recess.

4 [The R.M.C. 803 session recessed at 1045, 14 November 2017.]

**5** [END OF PAGE]

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23