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1 [The R.M.C. 803 session was called to order at 0859, 15 March
2 2017.]

3 MJ [Col SPATH]: This commission is called to order. All
4 of the parties who were present during yesterday's sessions
5 are again present. Mr. Nashiri is not present.

6 Mr. Miller, first, I assume we are transmitting these
7 proceedings in a manner consistent with how we have already
8 discussed.

9 TC [MR. MILLER]: We are, Your Honor. In addition to the
10 parties that were here yesterday is an additional FBI
11 representative here today, Morgan McCall, and she does have
12 the proper clearances.

13 MJ [Col SPATH]: All right. Then are you going to call a
14 witness to explain Mr. Nashiri's absence?

15 TC [MR. MILLER]: We are, Your Honor.

16 MJ [Col SPATH]: You may proceed.

17 TC [MR. MILLER]: Thank you.

18 MJ [Col SPATH]: Take a seat.

19 WIT: Good morning, Your Honor.

20 MJ [Col SPATH]: Good morning. I know you're the same
21 witness who testified yesterday from the legal office down
22 here. I remind you you are still under oath.

23 WIT: All right.

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1 MJ [Col SPATH]: Colonel Wells.

2 CAPTAIN, U.S. ARMY, was recalled as a witness for the
3 prosecution, reminded of his previous oath, and testified as
4 follows:

5 **CROSS-EXAMINATION**

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

7 Q. Captain, did you have an opportunity to meet with
8 Mr. Nashiri this morning?

9 A. I did.

10 Q. What did he communicate to you about his attendance?

11 A. He communicated to me that he did not want to attend
12 today, so then we went through the waiver process.

13 Q. Okay. Did you use a form?

14 A. I did. I used the same form that I used yesterday.

15 Q. I have in front of me a statement of understanding of
16 the right to be present at commission proceedings that has
17 previously been marked as Appellate Exhibit 375B. It's three
18 pages.

19 May I approach the witness, sir?

20 MJ [Col SPATH]: You may.

21 Q. Captain, I've provided you that Appellate
22 Exhibit 375B. Do you recognize it?

23 A. I do.

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1 Q. Did you use that form with Mr. Nashiri today?

2 A. I did.

3 Q. Could you take us through what happened on your
4 encounter with him?

5 A. Certainly. I arrived and spoke to him at 0647 this
6 morning, and he indicated that he wished to waive his
7 appearance today, and then I read to him the form. He also
8 had a copy of it in Arabic. After I finished reading the form
9 in English, I had it translated to him in Arabic. At the
10 conclusion of that translation, he executed both versions, the
11 English and Arabic, signing and dating that he did not want to
12 attend this morning.

13 Q. Is that all that he communicated to you?

14 A. He indicated that he would be looking for a letter
15 from his attorneys, but he didn't want to attend today's
16 session.

17 Q. All right. Do you think he understood what you
18 communicated to him?

19 A. Absolutely.

20 MATC [COL WELLS]: Sir, I have no further questions.

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

22 Mr. Kammen, any questions?

23 LDC [MR. KAMMEN]: No.

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1 MJ [Col SPATH]: Regarding your client's absence, any
2 comments about the voluntariness, at least as far as you know?

3 LDC [MR. KAMMEN]: It's absolutely voluntary, Your Honor.

4 MJ [Col SPATH]: All right. Thank you. Can I see that
5 document?

6 WIT: Yes, Your Honor.

7 MJ [Col SPATH]: What time did you talk to him this
8 morning?

9 WIT: At 0647.

10 MJ [Col SPATH]: I will make a finding. Let me just get
11 the witness on his way. Thank you again for your testimony.
12 You are excused.

13 WIT: Thank you.

14 **[The witness was excused and withdrew from the courtroom.]**

15 MJ [Col SPATH]: I find that Mr. Nashiri's absence is
16 voluntary and knowing.

17 Are we ready to start with cross-examination?

18 LDC [MR. KAMMEN]: **[Counsel away from podium; no audio.]**

19 MJ [Col SPATH]: You may.

20 LDC [MR. KAMMEN]: First, we concur with the commission's
21 finding. As the Captain said, Mr. Nashiri's looking for a
22 letter from us, so we wanted to discuss very briefly the way
23 forward. Based on the conversations yesterday at the end of

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1 the day, our sense is that the government will be done with
2 this process ideally today. If not today, certainly pretty
3 early tomorrow morning.

4 In the background, I will advise the commission that
5 our experts have been working with the FBI to review some of
6 the exhibits that the government is not offering. And the
7 most efficient way for them to do that would be in the
8 courtroom. The FBI apparently is leaving early Friday
9 morning. So our experts are available all day tomorrow and
10 into the evening so that everyone can get done with that
11 process tomorrow and nobody would have to come back, because
12 we don't want to incur the unnecessary expense of having them
13 come back.

14 That would also help us. We have things we need to
15 be doing as well as meeting with Mr. Nashiri about a number of
16 things. So if we have the understanding that when they're
17 done with this process we will adjourn the session, you know,
18 then we can advise him and we can make our plans. So that's
19 how we would prefer the way forward. I don't know what their
20 position, of course, is.

21 The other thing, and then I'll step away and let them
22 address it, I just wanted to advise the commission, we had
23 filed a petition for certiorari in the United States Supreme

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1 Court concerning the actions of the D.C. -- the denial of writ
2 of mandamus -- habeas in the D.C. Circuit. That was a
3 classified filing which has been declassified and is available
4 for public release. The important point for our purposes
5 going forward is that, at least based upon the
6 declassification, it probably changes to a degree a little
7 bit -- it's a little bit surprising the universe of
8 information concerning the torture inflicted on Mr. Nashiri
9 that now is public.

10 And so I don't know to what extent the commission is
11 looking at these kinds of things in making its decisions
12 regarding 120 material, but we wanted to make you aware of
13 that, as well as anyone else.

14 Another thing, just to advise the commission, is we
15 are filing today a motion concerning the failure of the
16 government to properly produce the 120 material that you have
17 approved to us. And we can deal with that presumably in July.
18 Thank you.

19 MJ [Col SPATH]: Or hopefully some discussions today.
20 We'll see how it goes. All right.

21 Any comments from the government? Let me just add.
22 Here's the question. Assuming we move -- and we have been.
23 This is not to say we're not moving efficiently. Assuming we

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1 continue to move efficiently through the process and we do
2 finish in a time period as discussed by the defense, will you
3 all -- can you all work with the defense counsel to assist
4 with review of evidence and that type of thing while we're all
5 here?

6 TC [MR. MILLER]: I believe so. Yes, Your Honor.

7 LDC [MR. KAMMEN]: And they have been.

8 MJ [Col SPATH]: Good. Perfect. That helps.

9 Regarding declassified information, as information is
10 declassified, certainly I would hope if it's producible to the
11 defense -- because just because it's declassified doesn't make
12 it discoverable, I understand that. As it declassifies, if it
13 is producible to the defense, I hope you all are keeping that
14 in mind as you work through the ongoing discovery effort under
15 120.

16 TC [MR. MILLER]: We are.

17 MJ [Col SPATH]: Perfect.

18 TC [MR. MILLER]: We do anticipate, Your Honor, being able
19 to finish today. Of course, that will depend on the length of
20 the cross-examination.

21 MJ [Col SPATH]: It does, and we're good on today and
22 tomorrow or tomorrow morning. So ----

23 TC [MR. MILLER]: Are there -- the court had mentioned

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1 there was some preliminary discussions about some additional
2 motion practice or motions that the court wanted to discuss at
3 the end of this. Is it still the court's desire to do so?

4 MJ [Col SPATH]: I have been going through those. A lot
5 of those are briefed, and nobody asked for witnesses or
6 evidence in those. It was purely discussions of law. So I
7 believe I'm going to be able to move forward in getting
8 rulings done on those without further discussion, which is my
9 hope with a lot of legal issues as we move forward.

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

11 MJ [Col SPATH]: So as a preview, we'll talk as we finish
12 this session up. I'd like to have an 802 just about my own
13 personal situation that we talked about when this week started
14 and how that might impact us for a little while, not very
15 long, but I do need to -- I'd like to do that in an 802
16 initially. Of course, I'll summarize it for the record.

17 Second, I plan to put together a final discovery
18 order and a trial order for 2018. And I recognize,
19 Mr. Kammen, you're going to say no, and I recognize a lot of
20 wheels are going to start turning, but we are changing how
21 this looks.

22 I've had a chance to look at the 120 discovery, and
23 so I recognize that a lot of the material is stuff that has

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1 been disclosed in some manner, and I also know what it relates
2 to in large part, which is sentencing and voluntariness. But
3 we already know that there is an interrogation background with
4 this person. Nobody's surprised by this, and that's what it
5 relates to.

6 So I've seen -- now I've had a chance -- I was new to
7 the story three years ago, but we've had a long break and I've
8 had a lot of time to look at discovery. The way we're going
9 to fight these battles is, as we work towards trial, because
10 that's where Brady and Giglio are going to be complied with,
11 that's where witness lists are going to be developed. I've
12 heard that there's only one witness, and so it should be a
13 pretty quick case. I don't believe that to be the case.

14 LDC [MR. KAMMEN]: [Microphone button not pushed; no
15 audio].

16 MJ [Col SPATH]: But one eyewitness with information,
17 that's what -- we are going to start exchanging and moving
18 towards trial. The reason that's important is because 2018,
19 your calendars need to look a lot more like we're here, that
20 we're down here and we're getting this moving. It's going to
21 take months to seat a jury. Do you know what we can be doing
22 while we're seating a jury? We can be having motion practice
23 because we can do it contemporaneously.

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1 You can shake your head, Mr. Kammen, but that's how
2 it runs. I watched a capital case run just like that. We
3 worked on jury selection a few days and we worked on motion
4 practice. We are going to make progress here because jury
5 selection will take so long. To get members picked will take
6 the convening authority a significant amount of time. For you
7 all to come up with a questionnaire for those members will
8 take some time.

9 Again, the last case I did, the parties came up with
10 the 100 percent solution on the questionnaire. I don't
11 anticipate that here, but some of the questions are obvious,
12 because we know what questions you can ask in capital cases.
13 You all should be able to get to the 90 percent solution. But
14 if it takes me being involved, we'll do it and we'll do it
15 down here. And so we need to figure out no-go dates in 2018
16 because we're going to be down here and we're going to move
17 this thing forward. No argument necessary right now.

18 There will be a trial order forthcoming. I'm going
19 to give you some dates before we get out of here on the
20 record, and I know the government is going to aggressively
21 finalize what discovery is out there.

22 But again, I've had three years now to see what this
23 universe is; and the universe is, in large part, known and

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1 disclosed.

2 Go get the witness, please. Come on in and have a
3 seat. I know you are the same Ms. -- is it Kneisler?

4 WIT: Yes, sir.

5 MJ [Col SPATH]: Have a seat. You testified yesterday, so
6 I just remind you, you are still under oath. Defense, you may
7 examine.

8 ADC [MS. ELIADES]: Thank you, Your Honor.

9 TRACY KNEISLER, civilian, was recalled as a witness for the
10 prosecution, was reminded of her previous oath, and testified
11 as follows:

12 Questions by the Assistant Defense Counsel [MS. ELIADES]:

13 Q. Good morning, Ms. Kneisler.

14 A. Yes.

15 Q. I've been saying it incorrectly. I'm sorry.

16 I just want to brush up on a few things from your
17 direct examination. You mentioned when you arrived at the
18 airport all your items were placed on a conveyor belt.
19 There's a long process that you went through before you were
20 cleared to leave; is that correct?

21 A. I did not mention a conveyor belt. I don't recall a
22 conveyor belt.

23 Q. Well, there were -- a lot of the equipment that you

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1 brought with was placed on a screening area?

2 A. No, ma'am, I didn't say that.

3 Q. Let me ask it another way. Did you get all of your
4 items that you brought with you returned when you left the
5 airport? You had them with you?

6 A. All of my personal items, yes.

7 Q. Did you have all of your equipment returned?

8 A. I do not know. All of my personal equipment. I
9 don't recall any equipment missing, but I don't have any
10 information about that.

11 Q. Okay. All right.

12 A. I don't think I even knew at the time.

13 Q. As you stand here -- as you testify here today, you
14 don't recall anything missing from the items you brought,
15 correct?

16 A. Not my personal items, no, ma'am. I don't know
17 anything about all of the other items.

18 Q. If you arrived on the scene to do your investigative
19 work and you didn't have items, would you recall that?

20 A. Yes. I don't recall not having anything that I
21 needed.

22 Q. You also testified that when you arrived, you arrived
23 before the New York team?

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1 A. Yes, ma'am.

2 Q. Did you arrive on the scene before the New York team?

3 A. Which scene?

4 Q. I believe there was two scenes. You described the
5 beach, right ----

6 A. Okay.

7 Q. ---- and then the ship?

8 A. Yes.

9 Q. Did you arrive on the ship before the New York team?

10 A. As best as I can recall, New York personnel were
11 there when we went to the ship.

12 Q. Okay. Do you recall who were -- who the individuals
13 involved in the New York personnel?

14 A. From their Evidence Response Team, it was Dayna
15 Better and Jane Rhodes.

16 Q. And you worked together with them in your evidence
17 collection efforts?

18 A. Yes, ma'am.

19 Q. Okay. And as far as you recall, is it Ms. Rhodes and
20 Ms. Better who are involved as the custodian of records?

21 A. Yes, ma'am.

22 Q. They were in the evidence room?

23 A. Yes.

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1 Q. And the evidence room has been referred to a few
2 different things throughout the testimony. Would that also be
3 called the theater, if you know?

4 A. I don't -- I don't recall.

5 Q. Can you tell me -- give me a description of this room
6 that you refer to as the evidence room?

7 A. All I remember is that it was an interior compartment
8 and that it was air conditioned, and pretty much that's all I
9 recall.

10 Q. Do you recall the approximate size?

11 A. I don't recall so much as I can tell you that all of
12 us fit in there. And there were ten of us, so everyone fit,
13 but I don't specifically remember the dimensions. Any
14 estimation that I would give you would be just what I'm trying
15 to sort out how big it must have been. It wasn't really big,
16 but it was like a room or two.

17 Q. And you mentioned it was air conditioned?

18 A. Yes.

19 Q. Were there -- can you describe anything in the room,
20 like tables, chairs, boards? Do you recall any items in the
21 room?

22 A. I know I sat down so there must have been chairs, but
23 I don't -- no, ma'am, I have very little memory of what that

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1 room looked like. I was only there for that day, and mostly I
2 was searching, not inside the room. So people who were in the
3 room more often than I was would be able to give you a better
4 description of it.

5 Q. That's fair enough. And when you say I was only
6 there that day, are you referring to being there in the
7 morning when you received instructions?

8 A. I know that we gathered together and discussed what
9 the plan was going to be and what everyone's work assignment
10 was. I also would have -- I also brought my evidence back to
11 that room to hand off when we were completed with specific
12 areas, and then I would -- then I was assigned another area,
13 and so I would have left, and I did leave, and done evidence
14 collection in the new area and then brought the evidence back.

15 So I would have been -- I wouldn't have been in the
16 room for very long.

17 Q. Okay. Now, you mentioned the ten of us. Are you
18 referring to the eight agents that comprised your team and the
19 two agents from the New York team?

20 A. Yes, ma'am.

21 Q. Were there other individuals who were in the room at
22 any time that you noticed?

23 A. I don't have a specific recollection of other people,

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1 no, ma'am.

2 Q. Were any of the sailors there, for example?

3 A. I don't specifically recall, ma'am. I'm sorry.

4 Q. Okay. Okay. And just to clarify, you said you
5 collected evidence from one area you were assigned to and
6 brought it to the evidence room; is that correct?

7 A. Yes.

8 Q. And then you went to a new area and retrieved -- is
9 it correct that you retrieved evidence from that new area and
10 also brought it back to the same evidence room?

11 A. Yes, ma'am.

12 Q. Okay. Thank you. And you also said in your direct
13 examination you worked with Ed Cronin. Now, what department
14 is he with?

15 A. Ed was assigned to the Boston Field Office.

16 Q. And what was his area of expertise?

17 A. He's a bomb technician.

18 Q. So he was the one who would determine whether an
19 artifact or something at the scene would have any evidentiary
20 significance, correct?

21 A. We would both make that determination, but his
22 determination would have more -- it would be -- he would -- he
23 would be able -- better able to discern whether or not

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1 something was specifically involved in the device. But he was
2 also there for safety, to make sure that we didn't pick up
3 anything that would explode.

4 Q. Okay. And you said that two areas -- were there
5 approximately two areas that you were assigned to search that
6 day?

7 A. I don't remember that, ma'am.

8 Q. And to clarify, this is on the 16th of October in
9 2000?

10 A. Yes, ma'am.

11 Q. When you went to the areas, can you tell me what you
12 had with you at the time? You mentioned you had gloves. Did
13 you have any other materials that helped you collect the
14 evidence?

15 A. I had evidence bags and I had a Sharpie, and gloves,
16 and I don't recall specifically what else we took with us.

17 Q. Okay. And when -- you're saying you had the bags,
18 the Sharpie. Did you have the forms with you at the time, the
19 evidence bag form.

20 A. Which form, ma'am?

21 Q. The forms that are contained in the evidence now as
22 you see them, as you ----

23 A. The FD-192s?

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1 Q. I'm referring to actually the cardboard piece that --
2 or the brown piece of paper that's inside ----

3 A. That was a bag.

4 Q. ---- the plastic ----

5 A. That would have been -- that's a brown paper bag ----

6 Q. Thank you.

7 A. ---- when it started, and it seems like they've just
8 taken part of it -- part of the bag that had the writing on it
9 and put it with a new bag.

10 Q. Okay. And what's the best terminology to use?

11 A. An evidence bag.

12 Q. The evidence bag?

13 A. Yes. That was the actual evidence bag.

14 Q. Okay. So what about the plastic bag? You didn't
15 have that with you?

16 A. I did have the plastic bags that have my writing on
17 them with me. If the -- if the items had been repackaged into
18 additional plastic bags, because it seems like there's -- most
19 of the items are in multiple bags now at this point, I didn't
20 have those bags.

21 Q. Okay. And so since you had your Sharpie, you were
22 writing down as you retrieved the items where you retrieved
23 them from ----

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1 A. Yes, ma'am.

2 Q. ---- and the time that you retrieved them?

3 A. The -- all of them have the same time, and so that
4 was the time that we finished that particular area.

5 Q. So you would bag these individually and bring them
6 back to the evidence room; is that fair? Bagged the items?

7 A. All the items that were in one bag were in one bag.

8 Q. Okay. So you put -- did you bag one and bring it
9 down to the evidence room or bag them separately there and
10 then bring them all together? Or did you just use one bag for
11 everything and separate it out when you got to the evidence
12 room?

13 A. Oh, no. So like items were bagged together, but --
14 so each individual item was not put in its own bag, as you saw
15 yesterday. But there would be -- we had a bag for fiberglass,
16 for example. And so all of the fiberglass pieces in that
17 specific area would have been put -- were put in that bag
18 until the bag was full, and then we would use a new bag.

19 Q. When you finished an area, you had all the bags with
20 you and you'd go back downstairs to the evidence room?

21 A. Yes, ma'am.

22 Q. Okay. And when you got to the evidence room, what
23 specifically did you do?

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1 A. The bags were sealed. And if any of the information,
2 case number for example, hadn't been added to the bag, we
3 would make sure the bags were complete and they were handed
4 off to the -- to Dayna Better or Jane Rhodes who were at the
5 evidence collection point. And we were reassigned and went
6 back out to collect more evidence.

7 Q. When you would come back downstairs and hand over
8 these bags, did you do anything with the 192 form?

9 A. Yes. So it's -- the 192s would be signed so that you
10 would hand -- we would hand over the -- we'd fill out the 192
11 and hand that over with the bag to Dayna and Jane. So the
12 chain of custody goes with the bag.

13 Q. Okay. So those were forms you had with you as well?

14 A. No. Those were forms that were in the evidence
15 control area that would be filled out. As we finished the
16 bag, we would sign the 192 sheet, and it would go with the
17 evidence bag, and they'd stay together to go to the evidence
18 control personnel.

19 Q. And the DK numbers, do you know what I'm referring to
20 when I say that?

21 A. The item numbers.

22 Q. Okay. Yes. The item numbers. Who determined what
23 the item numbers were?

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1 A. The item numbers were determined by Dayna and Jane.
2 So Dayna Better and Jane Rhodes.

3 Q. And was it usually them who wrote the numbers on the
4 actual ----

5 A. I don't know who wrote the numbers on the bag.

6 Q. And when they were assigning these numbers, did you
7 notice whether they had an evidence log with them?

8 A. I don't recall that they did, but I would imagine
9 that they did. It was norm -- it would have been typical that
10 they would have had an evidence recovery log.

11 Q. That's part of the protocol, is that fair to say,
12 that you keep a log of the evidence as you're receiving it?

13 A. It's a guideline that we keep the evidence recovery
14 log.

15 Q. So you've gone -- have you processed many scenes
16 without an evidence log?

17 A. I can't think of another scene without an evidence
18 log.

19 Q. Do you have protocols that you follow?

20 A. We have guidelines.

21 Q. You have just guidelines.

22 A. There are some -- there's some policy, but policy
23 doesn't include the evidence recovery log. It's just a best

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1 practice.

2 Q. So by best practice, we're referring to a method of
3 procedures that would be the best practice to follow in order
4 to ensure the integrity of the evidence; is that fair to say?

5 A. I'm not sure I would agree that the integrity of the
6 evidence has to do with the evidence recovery log, but it
7 certainly helps administratively to keep track of what
8 everything is.

9 Q. And it's important to keep track of where everything
10 came from?

11 A. Where everything came from is also noted on the bag
12 itself. So the evidence recovery log could be created from
13 just the information on the bags.

14 Q. When -- is it required, when you don't follow the
15 guidelines, to document that you're not following the
16 guidelines or policies?

17 A. I don't know that it's required. It's a good idea.

18 Q. It's good practice. Why would you say it's good
19 practice?

20 A. Because you might have to testify to it 14 years
21 later and ----

22 Q. Exactly. And that's the reason we record everything,
23 right?

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1 A. Right.

2 Q. You're trying to preserve your memory of what
3 happened that day?

4 A. Yes.

5 Q. And you know that sometimes you may not get to a case
6 that you're working on until several years later, like in this
7 situation?

8 A. Yes, ma'am.

9 Q. Okay. So that's why we're trying to keep track of
10 everything that we do and every little piece of what we do
11 with regards to the evidence as best we can.

12 A. In general, it's helpful to have an evidence recovery
13 log and to note deviations from normal practice, yes, ma'am.

14 Q. All the signatures on the 192s that you testified to
15 on direct examination, of your name, were those your
16 signatures?

17 A. Yes, ma'am.

18 Q. Have you ever signed another person's name on a 192?

19 A. No, ma'am.

20 Q. It would be inappropriate, correct?

21 A. Yes. For sure.

22 Q. You said that you completed your work that day and
23 then you were assigned to another scene?

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1 A. Another part of the ship, yes, ma'am.

2 Q. Let me be more clear. I apologize. You completed
3 your work at the end of the day on the ship but you didn't
4 return back there the next day?

5 A. Yes, ma'am. My memory is I did not return back for
6 many days.

7 Q. Okay. And you obviously were assigned to another
8 scene in the city, not on the ship? You didn't just sit
9 around for several days?

10 A. Oh, yes, ma'am.

11 Q. Okay. So how was it determined that you would leave
12 this scene to go to another scene?

13 A. So the senior team leaders were Tom O'Connor and Joe
14 McNamara, and they were regularly meeting with other
15 supervisors, FBI supervisors. And I'm not sure how the
16 decision was made about who was going to go to which scene,
17 but I was assigned to a -- to search one of the houses in the
18 city the following day or in the following days.

19 Q. So on the following days when you weren't on the ship
20 you were at other scenes, other locations that you had to
21 conduct an investigation and gather evidence from?

22 A. Yes. I did do other scenes. I'm just trying to
23 recall if it was every day, but certainly I was involved in

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1 searches of a lot of other scenes later in the week, yes,
2 ma'am.

3 Q. I'm going to assume there wasn't a lot of idle time,
4 so you were working at a scene. If you weren't at one scene
5 you were at another scene; is that fair to say?

6 A. Yes, ma'am. We were very busy.

7 Q. Okay. Do you know if the priorities changed at any
8 time in order to direct you to leave this scene and go to
9 another scene?

10 A. My recollection is the priorities didn't change so
11 much as other scenes became available that we were allowed to
12 search, and so we had to spread our few resources as best as
13 we could to make sure we got all of the work done.

14 Q. Did you ever return to the ship?

15 A. Yes, ma'am.

16 Q. Do you remember what day you returned?

17 A. The 22nd. October 22nd.

18 Q. And prior to returning -- well, so you were there on
19 the 16th and there on the 22nd and not any other days in
20 between, fair to say?

21 A. Not that I specifically recall.

22 Q. If you were on the ship, you'd be collecting
23 evidence, you'd be doing something?

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1 A. Yes, ma'am.

2 Q. Okay. And that would be documented somewhere?

3 A. Yes, ma'am.

4 Q. Now, on evidence -- prosecution evidence number 41,
5 you mentioned it was an item received from a diver; is that
6 correct? Would you like to see it on the exhibits in order to
7 identify it so that you can be more accurate?

8 A. Sure.

9 Q. This is the photograph.

10 MJ [Col SPATH]: Can you tell me what prosecution exhibit
11 number?

12 ADC [MS. ELIADES]: That is Prosecution Exhibit 41A, Your
13 Honor.

14 MJ [Col SPATH]: For Identification. Thanks.

15 Q. And then I'm also going to place on the ELM0
16 Prosecution 41B, and that might help you recall.

17 A. So to my recollection -- I was never underwater, so I
18 did not collect this from underwater. And I don't recall
19 exactly who provided it to me, but since it's listed as
20 Underwater Aft, I assume that it came from someone who was
21 underwater. But I don't know that it was a diver
22 specifically. I don't recall how this evidence came to be
23 above water.

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1 Q. Okay. Do you recall anything about how you acquired
2 it other than a diver gave it to you?

3 A. I can't even tell you that a diver gave it to me.

4 Q. You only can tell us that -- where it was recovered
5 from because you recorded that?

6 A. Yes, ma'am.

7 Q. But you can also tell you are not a diver and did not
8 retrieve it yourself, correct?

9 A. Yes, ma'am.

10 Q. Okay. Did you -- do you remember if -- so it's
11 possible someone else could have given it to you, not the
12 actual diver?

13 A. Absolutely.

14 Q. Do you remember where it was when you retrieved it?

15 A. No, ma'am.

16 Q. Could it have been already in the evidence room?

17 A. I have no memory so it could be -- you could ask me
18 if it could have been anywhere and I would have to say
19 possibly.

20 Q. So -- fair enough. So you did not document how you
21 came into possession of this item, fair to say?

22 A. Only what's on that bag, ma'am.

23 Q. Okay. Would it have been helpful to have that

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1 documented so that you could remember 18 years later?

2 A. Sure.

3 Q. Isn't it important how you came across that piece of
4 evidence since you didn't yourself retrieve it?

5 A. Yes.

6 Q. Okay. That's one of the things you were taught would
7 be a good policy or procedure, to keep track of something like
8 that, keep track of how you acquired a piece of evidence, that
9 you became the -- became -- I guess you originated the chain
10 of custody on that, correct?

11 A. Yes, ma'am.

12 Q. But you're not the actual person who came into -- who
13 discovered this item?

14 A. I didn't get it from the underwater compartment.

15 Q. Okay. Have you processed many scenes where you are
16 the original person in the chain of custody where you didn't
17 retrieve the item?

18 A. So one example of that would be where material was
19 sifted, for example. So if -- the sifting from the Pentagon,
20 for example, where material was brought out of the facility or
21 out of the compartment, in this instance, by one group of
22 people or one person and then -- but it was not -- it was in
23 and amongst a lot of other items that would need to be sifted.

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1 So I could be one of -- I have been on scenes where I have
2 gone through evidence in that way to determine from a larger
3 amount of material if any of that had evidentiary value.

4 And I've collected it in that way and I've signed as
5 the collector because I ultimately identified that it had
6 evidentiary value, versus actually getting it from the place
7 where it was originally, yes, ma'am.

8 Q. Okay. And you are able at that time to specify where
9 at least you got it from?

10 A. Yes, ma'am.

11 Q. Okay. You referred to Grid 1. Have you ever seen a
12 copy of Grid 1? Let me put this back on and refresh your --
13 this again is Prosecution Exhibit 41B. Is that even your
14 writing?

15 A. I don't think Grid 1 is my handwriting. Underwater
16 Aft is my handwriting.

17 Q. So have you -- did you ever see the underwater grid?

18 A. No, ma'am.

19 Q. Did you ever see any grid in this case?

20 A. I don't recall a grid.

21 Q. In Exhibit Number 68, there's a photograph -- just
22 want to clarify this on the record.

23 ADC [MS. ELIADES]: I'm placing Exhibit 68A, Your Honor.

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1 MJ [Col SPATH]: Thank you.

2 Q. Do you notice this bag right here?

3 A. Yes, ma'am.

4 Q. Whose initials are those?

5 A. I have no idea.

6 Q. Did you place the items inside this bag?

7 A. No, ma'am.

8 Q. Where did you obtain this bag from?

9 A. I did not use that bag. That's not my bag. It looks
10 like a lab bag.

11 Q. Okay. Oh, I see. Okay. So that's something that
12 happened after you handed the evidence over?

13 A. I assume.

14 Q. Okay. That's fair enough. That helps understand
15 that.

16 But you had the other -- you placed the other items
17 in that photograph into the bag -- evidence bag in the
18 beginning?

19 A. And probably the items that are in the small bag.

20 Q. So if you're on the chain of custody for this, you
21 would have placed all of those items?

22 A. Yes, ma'am.

23 Q. So someone later might have put that portion?

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1 A. In a separate bag.

2 Q. Okay.

3 MJ [Col SPATH]: When the items are in the lab, I know
4 they go through -- sometimes different portions of the lab for
5 trace evidence or DNA or whatever they're looking for. Does
6 the lab maintain a separate chain of custody for them to track
7 when they do something with the evidence?

8 WIT: Yes, sir.

9 MJ [Col SPATH]: Okay.

10 Q. Okay. I then want to also talk about -- there were
11 four exhibits, Exhibit 93, 103, 140 and 150, that you
12 testified on direct examination regarding. If I can have 93.
13 This is actually 93B.

14 Now, on this where it says chain of custody, it has
15 your signature right here, correct?

16 A. Yes, ma'am.

17 Q. Okay. Can you identify whose signature this is right
18 here?

19 A. That's mine.

20 MJ [Col SPATH]: That's on the received from -- the second
21 received from line under chain of custody?

22 WIT: Yes, sir.

23 MJ [Col SPATH]: Okay.

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1 Q. So when you signed this form, did you sign it in both
2 places?

3 A. Yes, ma'am.

4 Q. And why did you do that?

5 A. So the chain of custody -- the FBI official chain of
6 custody is the FD-192. The chain of custody on this bag the
7 FBI doesn't use typically. And in fact, I can't think of
8 another scene where I actually signed the chain of custody on
9 the bag. And oftentimes there's not -- it's not even printed
10 on the bag.

11 So in this case, this was a New York -- a New York
12 case and -- instead of a Washington Field Office case, and so
13 the two evidence -- the two ERT members from New York in this
14 case wanted us to sign the bag also, and so I signed the bag
15 because they asked me to. But the FD-192 is the official FBI
16 chain of custody.

17 Q. And what is the date below your signature the second
18 time? When it says received from and you have a signature,
19 what is the date below that?

20 A. 10/18/2000.

21 Q. Do you know whether or not you signed that on 10/18
22 or 10/16?

23 A. No, ma'am, I likely did not sign that on 10/18. I

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1 would say I signed that on 10/16.

2 Q. I guess what I'm understanding is you were asked to
3 sign it twice for some kind of reason?

4 A. Yes, ma'am.

5 Q. Because you knew you wouldn't be there when ----

6 A. No, I probably didn't know I wouldn't be there since
7 I didn't know that at the time.

8 Q. Let me -- then I don't want to put words in your
9 mouth. Do you know why you signed it twice on that original
10 16th date?

11 A. Because Dayna Better and Jane Rhodes wanted me to.

12 Q. Did they explain why?

13 A. Because they wanted us to sign on the chain of
14 custody on the bag instead of just the chain of custody on the
15 FD-192, and I don't remember why they wanted us to do it that
16 way.

17 Q. I guess my concern isn't that you signed it once, you
18 signed it twice on two -- signifying that you signed it two
19 different days, but we know that you only signed it on one
20 day. So here's one I'm pointing to, which is next to the
21 by ----

22 A. I didn't -- the handwriting for the 10/18/2000 is not
23 mine.

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1 MJ [Col SPATH]: That's the blue signature on the by line.

2 WIT: Yes, sir.

3 MJ [Col SPATH]: Do you recognize that signature?

4 WIT: I don't.

5 MJ [Col SPATH]: Okay.

6 Q. But on the from line, that is you?

7 A. That is my signature, yes, ma'am.

8 Q. So there's two signatures?

9 A. Yes, ma'am, but I didn't date it. I didn't date the
10 10/18/2000.

11 Q. And you knew somebody else would?

12 A. I did not know what would happen.

13 Q. You didn't know -- you just did what you were told to
14 do in that situation?

15 A. Yes, ma'am.

16 Q. For whatever reason, when we look at Prosecution
17 Exhibit 93C, the 18th is not noted on there.

18 A. Oh, yeah. There's no 10/18/2000 on that, no, ma'am.

19 Q. And this is the official chain of custody form?

20 A. The official FD-192 chain of custody for that item is
21 there, yes, ma'am.

22 Q. And this occurred several times, you testified on
23 direct examination?

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1 A. Which bit?

2 Q. Where you signed it twice. But you weren't -- you
3 didn't put your date underneath it.

4 A. I -- in most of those, as I recall from yesterday,
5 the date -- the first date, the 10/16/2000 was in my
6 handwriting, yes, ma'am.

7 Q. And it did not occur on other pieces of evidence that
8 you retrieved, did it?

9 A. I'm sorry, what is it?

10 Q. Let me -- let me just have 93 and I'll compare it to
11 41.

12 ADC [MS. ELIADES]: This is 41B, Your Honor.

13 MJ [Col SPATH]: Thank you.

14 Q. So it appears you signed it the same way on 41B as
15 you did in 41 -- I mean, in 93B?

16 A. Yes, ma'am.

17 Q. And by same way, I'm -- all the same areas you filled
18 out. Now, the difference is on 93B, there's another signature
19 and another date and time that is not contained on this one.

20 A. Yes, ma'am.

21 Q. Okay. And you do not know the reason for that?

22 A. No, ma'am.

23 Q. And if I told you in reviewing all of these, 93, 103,

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1 140 and 155, they were similarly signed in blue ink by
2 Ms. Better, you wouldn't question me on that, right?

3 A. No, ma'am.

4 Q. And you never went back inside the evidence room
5 other than on the 16th, correct?

6 A. And the 22nd.

7 Q. And on the 22nd.

8 A. Yes, ma'am.

9 Q. Okay. If you recall, when you came inside the
10 evidence room, did you see other bags of evidence?

11 A. I don't recall.

12 Q. The best you can recall is you know that either
13 Ms. Better or Ms. Wolfe were in the room?

14 A. Yes, ma'am.

15 Q. Do you recall if both of them were always in the
16 room, or you don't even recall that?

17 A. I recall them being together most of the time.

18 Q. Okay. That's fair enough. Do you recall boxes or
19 seeing evidence being grouped or anything in the room?

20 A. No, ma'am.

21 Q. Do you know if there's any pictures of this evidence
22 room, that you are aware of?

23 A. I'm not aware of any photos.

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1 Q. I'm going to ask: When you first arrived, were you
2 with a team that videoed the area?

3 A. No, ma'am.

4 Q. Okay. So you didn't take any videos or photographs?

5 A. No, ma'am.

6 Q. Is there anything else that stands out about
7 equipment or anything that you needed that you did not have at
8 your disposal when you were collecting evidence?

9 A. No, ma'am.

10 ADC [MS. ELIADES]: Just a moment, Your Honor.

11 Pass the witness, Your Honor.

12 MJ [Col SPATH]: Thank you.

13 Mr. Miller.

14 TC [MR. MILLER]: Thank you.

15 **REDIRECT EXAMINATION**

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

17 Q. Just briefly. I think you indicated that Ms. Rhodes
18 and Ms. Better were custodian of records. They were evidence
19 custodians, were they not?

20 A. Yes. They were just ERT members whose function was
21 to collect all of the evidence that we were bringing back and
22 to maintain it and log it.

23 Q. All right. Now, you indicated that an evidence log

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1 contains certain information, correct? Or let me ask you this
2 way: An evidence log contains certain information, correct?

3 A. Yes, sir.

4 Q. What sort of information does an evidence log
5 contain?

6 A. It's -- usually it will contain the item number, a
7 description of the item, where the item was located, and who
8 the collecting agents were.

9 Q. All right. Now, in this case is all of that
10 information on your evidence bags?

11 A. Yes, sir.

12 LDC [MR. KAMMEN]: [Microphone button not pushed; no
13 audio] Objection.

14 MJ [Col SPATH]: Basis?

15 ADC [MS. ELIADES]: [Microphone button not pushed; no
16 audio]. Knowledge. Personal knowledge. She testified she
17 didn't know about the log in this case.

18 MJ [Col SPATH]: And he didn't ask about the log in this
19 case, he asked about the log generally, just what do evidence
20 logs look like. And then he asked about evidence bags in this
21 case, which she does know. Objection overruled.

22 Q. Is all of that information contained on the evidence
23 bags in this case?

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1 A. Yes, sir.

2 Q. Could you compile an evidence log based on the
3 evidence bags in this case?

4 A. Yes, sir.

5 Q. It would be simply an administrative task?

6 A. It's an administrative worksheet that we use.

7 Q. If I could see 41, please. One last question. The
8 integrity of the evidence isn't affected by the presence or
9 the absence of an evidence log, is it?

10 A. No, sir.

11 Q. I show you what has been marked -- or excuse me, it
12 was shown to you previously by defense counsel, Prosecution
13 Exhibit 41B. That's the bag, correct, the evidence bag ----

14 A. Yes, sir.

15 Q. ---- for that particular evidence. It shows a date
16 and time of recovery of October 22nd, correct?

17 A. Yes, sir.

18 Q. Now, was this evidence you gathered after you had
19 returned from doing the land searches?

20 A. Yes, sir, based on the date.

21 Q. All right. Was this evidence that was recovered from
22 the sifting station area?

23 MJ [Col SPATH]: If you don't know, that's a fine answer.

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1 A. To the best of my memory, yes, sir.

2 Q. All right. Somebody would have to provide it to you,
3 the fact that it had been brought in from underwater, correct?

4 A. Yes.

5 ADC [MS. ELIADES]: Objection, leading.

6 MJ [Col SPATH]: Hold on.

7 TC [MR. MILLER]: All right.

8 MJ [Col SPATH]: Don't answer the next question, either.
9 We're still trying to teach them that after an objection, I go
10 next. We're working on it.

11 TC [MR. MILLER]: My apologies, Your Honor.

12 MJ [Col SPATH]: That's all right. We're going to get
13 there by the time we have court members there. That's our
14 goal. The objection is leading. Any response?

15 TC [MR. MILLER]: I will rephrase.

16 MJ [Col SPATH]: You may rephrase.

17 Q. Where did you obtain the information regarding the
18 location of the recovery, both as to it being underwater and
19 that it being on the aft position?

20 A. I don't specifically recall, but I would have had to
21 have been told that by someone else.

22 Q. All right. You indicated it was from the underwater
23 compartment?

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1 A. That was ----

2 ADC [MS. ELIADES]: Objection. Misstatement of the
3 evidence.

4 TC [MR. MILLER]: I believe that's where it was.

5 MJ [Col SPATH]: I'm trying to figure it out because I
6 think I understand her testimony. Taking a look at this.

7 As best you remember, how did you either come into
8 possession of what's described as the fiberglass, or how did
9 what got on the bag end up there? Does that make sense?

10 WIT: Okay.

11 MJ [Col SPATH]: Okay. If you can tell me that.

12 WIT: Okay. So the best of my memory, material was being
13 brought up from some of the underwater areas, the compartments
14 outside the ship, that sort of thing, and was being sorted
15 through on the deck. And on the 22nd, I was there and
16 participating in that. And so ----

17 MJ [Col SPATH]: And your participation, you weren't part
18 of the underwater team?

19 WIT: No, sir. I was part of the going through the
20 material once it had been brought up. And the -- the material
21 I was going through, the pile that I was sorting through was
22 represented to me as coming from what was being referred to as
23 Underwater Aft and so that is ----

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1 MJ [Col SPATH]: That is whoever was there told you that?

2 WIT: Told me that. Because I wouldn't have known since I
3 didn't do it myself.

4 MJ [Col SPATH]: Understand. So the Grid 1 that's written
5 underneath it, defense counsel asked you about that. That was
6 not put on the bag that you remember at that time?

7 WIT: I did not write that on the bag.

8 MJ [Col SPATH]: That's not your handwriting?

9 WIT: No, sir.

10 MJ [Col SPATH]: Okay.

11 TC [MR. MILLER]: Cleared it up.

12 MJ [Col SPATH]: Just trying to figure it out and I
13 appreciate ----

14 TC [MR. MILLER]: That got me where I wanted to go. Thank
15 you.

16 MJ [Col SPATH]: All right.

17 TC [MR. MILLER]: Government has nothing further. Thank
18 you.

19 MJ [Col SPATH]: Ms. Eliades.

20 **RE-CROSS-EXAMINATION**

21 **Questions by the Assistant Defense Counsel [MS. ELIADES]:**

22 Q. You said -- your testimony was the evidentiary log
23 was an administrative matter.

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1 A. They have -- we have an administrative packet that's
2 the ERT paperwork, and we use that to help us make sure that
3 we cover all of the steps that we need to take, and we use it
4 as a guide. And different people use the administrative
5 worksheets in different ways, but the evidence recovery log is
6 one of those documents that's included in that -- in that
7 paperwork. And it typically becomes sort of an attachment to
8 the FD-302, which is the official record of the search.

9 Q. Okay. But the log is used to document -- another
10 form of documenting what is in -- on -- written on the
11 evidence bags, correct?

12 A. Yes, it typically includes the things -- the
13 information that's on the evidence bags, yes, ma'am.

14 Q. So that's kind of a system of checking the
15 evidence -- the information later when you need it, correct?
16 It has to match up?

17 A. Oftentimes what I use it for personally is the
18 evidence bags go into the evidence -- go to the evidence room,
19 but it's just a piece of paper that includes all of the
20 information that's on the bags, and so you can use that to
21 refer back to without having to actually go look at the
22 evidence bag itself.

23 Q. It also records the bags' information as they went

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1 into storage; is that fair to say?

2 A. No, ma'am.

3 Q. Okay. Well, you -- let me back up. You testified
4 different additions were made to the bags and different people
5 handled the bags afterwards, correct?

6 A. Yes.

7 Q. So in another instance, the log serves as kind of
8 documentation of what happened -- how the evidence was
9 received at that point in time and it logs it, correct?

10 A. At the scene, yes, ma'am. At the point of
11 collection, yes.

12 Q. Okay. So in a way, it documents that as well. It's
13 not just administrative, it's a form of documentation --
14 additional documentation?

15 A. It documents the same information as is on the bag.

16 Q. Have you ever had a situation where the information's
17 not the same?

18 A. Not that I specifically recall. But ----

19 Q. So -- but there would be a problem if something was
20 not the same, correct?

21 A. No, ma'am.

22 Q. It wouldn't matter?

23 A. I mean, it would matter, but the information on the

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1 bag is likely to be accurate, but you could always have
2 changes. You could decide to change the name of a room where
3 something was collected, for example, for clarity. And so it
4 could be documented in different ways.

5 Q. Okay.

6 A. So there could be some differences, yes, ma'am.

7 Q. Just one more thing. When I asked you earlier if you
8 recalled anything about the contents or where they came from
9 in Exhibit 41, you didn't know or mention anything about
10 sifting at that point, right?

11 A. I'm sorry. Can you ask the question?

12 Q. Your original testimony when I asked you the question
13 about 41, you didn't recall anything about sifting or that you
14 were involved in the sifting of this evidence?

15 A. Did I -- I'm not sure if I mentioned it to you or
16 not, but I do recall that there was sifting on the ship.

17 Q. Okay. And you recalled it after the prosecution
18 asked you that.

19 A. No, I recalled it before we started today. Before
20 we -- before we got here.

21 Q. Okay.

22 ADC [MS. ELIADES]: Thank you, Your Honor. No questions.

23 MJ [Col SPATH]: Mr. Miller, do you have any follow-up?

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1 TC [MR. MILLER]: Nothing further. Thank you, Your Honor.

2 MJ [Col SPATH]: All right. Ms. Kneisler, I know you
3 recognize the order that I gave you last night, so now it's
4 more extensive. Don't discuss your testimony that you
5 provided here with anybody until we finish this process, which
6 could be a while, with a couple of exceptions: To the extent
7 that you want to, you can work with the team members of the
8 prosecution and the defense while they get ready for trial.
9 So I'm not telling you don't talk to them if you want to as
10 you get ready for testimony in the future, but don't talk to
11 anybody else outside of that. Do you understand?

12 A. Yes, sir.

13 MJ [Col SPATH]: Okay. Special Agent Kneisler, thank you
14 so much for your testimony. Thanks for coming down in person.
15 It's -- I recognize it's voluntary so I appreciate that you're
16 here. You're excused.

17 WIT: Thank you, sir.

18 [The witness was warned, excused, and withdrew from the
19 courtroom.]

20 MJ [Col SPATH]: Before we get to your next witness, let's
21 take ten minutes and then we'll come back. We're in recess.

22 [The R.M.C. 803 session recessed at 0959, 15 March 2017.]

23 [END OF PAGE]

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