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1 [The R.M.C. 803 session was called to order at 0900,
2 16 September 2019.]

3 MJ [Col COHEN]: The commission is called to order.

4 All right. General Martins, good morning. If you
5 would please announce who is here for this week's session on
6 behalf of the government. Thank you.

7 CP [BG MARTINS]: Good morning, Your Honor. Representing
8 the United States, Brigadier General Mark Martins, Mr. Edward
9 Ryan, Mr. Clay Trivett, Mr. Jeffrey Groharing, and Major
10 Christopher Dykstra. Also at counsel table, Mr. Rudy Gibbs,
11 Ms. Heather Fulmines, Staff Sergeant Clifford Johnson,
12 Ms. Devi Modha. Also in the courtroom, Your Honor, William
13 Beecham and Brianna Hearn of the Federal Bureau of
14 Investigation.

15 Your Honor, these proceedings continue to be
16 transmitted to locations in the United States by
17 closed-circuit television pursuant to the commission's orders.

18 MJ [Col COHEN]: All right. Thank you, sir. Appreciate
19 it.

20 Mr. Sowards, good morning. Good to see you again.
21 Would you please announce who is here this week representing
22 Mr. Mohammad, who I recognize in the courtroom.

23 LDC [MR. SOWARDS]: Good morning, Your Honor. Good to see

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1 you again. Gary Sowards on behalf of Mr. Mohammad. I'm
2 joined by David Nevin, Rita Radostitz, Denise LeBoeuf, and
3 [REDACTED].

4 MJ [Col COHEN]: Thank you, sir. I appreciate it.

5 Ms. Bormann, good morning. I recognize that
6 Mr. Bin'Attash is here. Who else is here to represent him?

7 LDC [MS. BORMANN]: On behalf of Mr. Bin'Attash, myself;
8 Captain Simon Caine, United States Air Force; Mr. William
9 Montross; Mr. Edwin Perry.

10 MJ [Col COHEN]: All right. Thank you, ma'am.

11 Mr. Harrington, good morning. I recognize
12 Mr. Binalshibh is here. Would you please announce the counsel
13 representing him here this week.

14 LDC [MR. HARRINGTON]: Yes, Judge. Good morning.

15 MJ [Col COHEN]: Thank you.

16 LDC [MR. HARRINGTON]: On behalf of Mr. Binalshibh, James
17 Harrington and Army Captain John Balouziyeh; and also, Judge,
18 we have Donna Cline, who we will be filing papers for her
19 admission on the record.

20 MJ [Col COHEN]: All right. Thank you. Once that's
21 completed, I'll swear her in.

22 Mr. Connell, good morning. I recognize Mr. Ali here
23 in the courtroom. Would you please announce the counsel

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1 representing him here this week -- or at least this morning.

2 LDC [MR. CONNELL]: Good morning, Your Honor.

3 MJ [Col COHEN]: Good morning.

4 LDC [MR. CONNELL]: On behalf of Mr. al Baluchi, myself,
5 James Connell; Alka Pradhan; and Captain Mark Andreu of the
6 United States Air Force.

7 MJ [Col COHEN]: Thank you, sir.

8 Mr. Ruiz, good morning. I recognize you and your
9 team. I note that Mr. al Hawsawi is absent this morning.

10 LDC [MR. RUIZ]: Yes, that's correct, Judge. Good
11 morning.

12 Ms. Suzanne Lachelier, Lieutenant Colonel Jennifer
13 Williams, Major Joseph Wilkinson, Mr. Sean Gleason, and myself
14 are here on behalf of Mr. al Hawsawi.

15 MJ [Col COHEN]: Thank you, sir.

16 Mr. Harrington.

17 LDC [MR. HARRINGTON]: Just for the court reporters.
18 Ms. Donna Cline, her last name is spelled C-L-I-N-E.

19 MJ [Col COHEN]: Thank you very much. I appreciate it.

20 It's good to see that you have another person here
21 this week. This is good. I know that you've had a lot of
22 transition recently, so ----

23 All right. With respect to Mr. al Hawsawi's absence,

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1 is there a witness who will testify on this matter?

2 Major Dykstra, you may call the witness.

3 ATC [Maj DYKSTRA]: If you could stand and please raise
4 your right hand.

5 MAJOR, U.S. ARMY, was called as a witness for the prosecution,
6 was sworn, and testified as follows:

7 **DIRECT EXAMINATION**

8 **Questions by the Assistant Trial Counsel [Maj DYKSTRA]:**

9 Q. Just a couple of matters before we begin. You are
10 currently a major in the United States Army?

11 A. I am.

12 Q. And you are assigned as an assistant staff judge
13 advocate at Joint Task Force-Guantanamo; is that correct?

14 A. Yes, sir.

15 Q. Now, you had the opportunity to advise Mr. al Hawsawi
16 of his right to attend today's proceedings; is this correct?

17 A. This morning, yes.

18 ATC [Maj DYKSTRA]: Your Honor, permission to approach the
19 witness?

20 MJ [Col COHEN]: You may.

21 WIT: Thank you.

22 Q. I've just handed you what has been marked as
23 Appellate Exhibit 660H. Could you please tell me what that

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1 form is?

2 A. It's a statement of understanding of right to be
3 present at commissions proceedings.

4 Q. Is that the form that you used this morning to advise
5 Mr. Hawsawi of his right to attend?

6 A. Yes, sir.

7 Q. And what time did you advise Mr. Hawsawi this
8 morning?

9 A. At 6:16.

10 Q. And what language did you advise him of -- in this
11 morning?

12 A. English.

13 Q. And what did he tell you after you advised him?

14 A. He didn't say anything. He simply signed the form.

15 Q. And on the form, does he indicate whether he waives
16 his attendance this morning or that he wished to attend this
17 morning?

18 A. The form indicates that he waived his attendance.

19 Q. And do you have any question about his voluntariness
20 of his choice this morning?

21 A. I do not.

22 ATC [Maj DYKSTRA]: Your Honor, I have no further
23 questions.

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1 MJ [Col COHEN]: Thank you, Major Dykstra.

2 Ma'am, may I see that document?

3 WIT: Yes, sir.

4 MJ [Col COHEN]: Thank you. Mr. Ruiz, did you get the
5 opportunity to see AE 660H?

6 LDC [MR. RUIZ]: Yes.

7 MJ [Col COHEN]: Do you have any questions of the witness?

8 LDC [MR. RUIZ]: I do not.

9 MJ [Col COHEN]: Okay. Standing objections are noted with
10 respect to identity. If there are no further questions, you
11 are excused. Thank you.

12 WIT: Thank you, sir.

13 **[The witness was excused.]**

14 MJ [Col COHEN]: The commission finds that Mr. al Hawsawi
15 has knowingly and voluntarily waived his right to be present
16 at today's session.

17 ACC [MR. BINALSHIBH]: Judge, good morning.

18 MJ [Col COHEN]: Good morning.

19 ACC [MR. BINALSHIBH]: Can you give me two minutes?

20 MJ [Col COHEN]: Yes, Mr. Binalshibh.

21 ACC [MR. BINALSHIBH]: Yes. As you may know, I am -- I'm
22 suffering from a lot of pain and a lot of things that is
23 happening to me ----

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1 MJ [Col COHEN]: Okay.

2 ACC [MR. BINALSHIBH]: ---- 24 hours every day. The
3 vibration first, and then the next is they start attacking me
4 with -- assaulting me electronically with sharp pain in my
5 head, in my body, in my private area, day and night. I cannot
6 sleep. I cannot pray. I cannot read. I cannot do anything
7 in the meetings with my lawyers in the courtroom, everywhere.

8 I complain -- I complain to everybody at the
9 Camp VII. Everyone is ignoring. The meds, the doctor said,
10 "I cannot do anything for you. We try everythings. I cannot
11 help you anymore." The psych said he cannot do anythings.
12 Camp commander, he is ignoring me, and he walks away every
13 time I talk with him about this stuff. The watch commander
14 back at the camp, every time I talk with them, they make it
15 worse and worse and worse.

16 So I didn't sleep the night before. Every night --
17 every night, I have to fight with the guard. I have to yell
18 at somebody to stop just disturbing me at 1:00 in the morning,
19 2:00 in the morning, 3:00 in the morning. And nobody cares.
20 No one cares. We tried everything, nobody wants to stop it.

21 These new Sharpie pens that they are assaulting me
22 with, day and night, they started it in January 8 this year.
23 And the one who started -- who was behind it, I think it is

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1 the ops trooper, they call it trooper, a bad ops, she was back
2 at the camp. She wants to do some things to me.

3 The psych at that time, she came to me and she said,
4 she was warning me that, "You need to be calm because they are
5 going to do some things to you. I don't want you to get
6 hurt."

7 So later on, two weeks later, they started these
8 things. My private area, my private things, they keep causing
9 vibrations, bite sensations, sharp sensations, just like a
10 needle. And they keep saying, "Well, we don't do any things."

11 I talk to the psych again. She was talking about
12 some things about what they call it microwave weapon. She
13 suggest that maybe that's the cause, but she didn't give me
14 any more or further informations. So I have no evidence if
15 the government can say, oh, give me evidence. I don't have --
16 I don't have any evidence. I am a prisoner here. I cannot
17 prove it because I cannot -- I don't have access to the
18 control room. That doesn't mean it is not existing. It is
19 existing.

20 You need please to do something to stop these people
21 from harassment because every time they harass me, and then we
22 get in fight, and then they put me in this. They put me in
23 discipline, in discipline, in discipline. My entire life at

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1 Camp VII is just discipline.

2 I'm sure I'm going back today. It going to get
3 worse. It going to get in this. That's the whole things. We
4 need some relief. Thanks.

5 MJ [Col COHEN]: Thank you, sir. I'll discuss it with
6 your counsel. Thank you very much.

7 All right. On Thursday evening and then again on
8 Friday morning, the commission held an R.M.C. 802 conference
9 with counsel to discuss what ultimately became AE 661, setting
10 forth general procedures for all objections and particular
11 procedures for objections to classified questions and answers.

12 I'd like to generally describe what occurred during
13 that R.M.C. 802 session on Thursday and Friday, and then I'll
14 give the parties an opportunity to add further to that if they
15 wish to do so.

16 The focus of both the R.M.C. 802 conferences was to
17 discuss procedures the commission was considering for this
18 week's witness testimony as well as next week's, particularly
19 in the areas of procedures for general objections and for
20 questions that might elicit a classified response.

21 I advised counsel procedures I was considering. I
22 asked for their input in an open dialogue with respect to
23 those various proposals were made by the defense and the

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1 prosecution. I reached no conclusions in that meeting, in
2 those conferences, because they were R.M.C. 802 conferences,
3 and that is not the place where a ruling should be made.

4 Counsel for both the government and the defense
5 articulated their thoughts and concerns that they had on the
6 matter. Counsel confirmed with me, and I agreed, the 802 was
7 procedural in nature and not substantive in nature. I
8 reminded counsel it was only to discuss some issues, but not
9 to hold argument on the matter, and I -- and we all agreed
10 that that was correct.

11 I reminded counsel during those R.M.C. 802 sessions
12 that they would have the opportunity to supplement my
13 summaries this morning as we -- with respect to the 802, as
14 that was -- when I asked that question of counsel, that's
15 specifically what is -- it is an actual question, if there's
16 something else they want to add.

17 We talked about the fact that during testimony of
18 witnesses, that some counsel might have objections to
19 questions by other defense counsel, and that there would need
20 to be a process for handling that. I have attempted to do
21 that in AE 661.

22 We talked about the one counsel per cause rule and
23 any modifications that might need to be made with respect to

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1 that.

2 Trial counsel proffered the idea that perhaps that we
3 might need the ability to have -- with respect to protecting
4 classified information, the ability of at least more than one
5 person asserting a privilege. I believe that that AE 661 was
6 intended to address that matter as well. Any person in the
7 courtroom can raise an objection to protect classified
8 information from either side, to include the Court.

9 Those are some general discussions. We talked about
10 the idea of the defense, because the scope of the testimony
11 would be allowed to address limitations placed on the defense
12 as a result of classified information or existing protective
13 orders, that how would we -- how would we be able to address
14 those and create that record.

15 We talked generally about the idea that -- particular
16 lines of questioning being off limits to a certain extent
17 could be asked in this session, and then we had a discussion
18 about, again, what were the left and right limits of what
19 those might need to be to -- to still protect the classified
20 information at issue.

21 I took all of those considerations and discussion,
22 which was very helpful to the commission, and I want to thank
23 all of the counsel for their -- for their comments in that

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1 discussion. And then I issued, based on those discussions and
2 just my general thoughts of trial procedure, AE 661 on Friday,
3 13 September 2019, which is an unclassified document.

4 Counsel, those are my recollections of the
5 substantive -- well, I guess, the significant portions of the
6 R.M.C. 802 conferences that we had on Thursday and Friday, but
7 if either side would like to add anything else, you may do so
8 at this time.

9 Trial Counsel.

10 CP [BG MARTINS]: United States has nothing further, Your
11 Honor.

12 MJ [Col COHEN]: Okay. Defense Counsel, anyone who would
13 like to add something further to my summary?

14 LDC [MR. RUIZ]: May I have a moment, Judge?

15 MJ [Col COHEN]: You may.

16 [Pause.]

17 LDC [MR. RUIZ]: Yes, Judge. Generally, I would just like
18 to add that during that conference, Mr. Sowards made an
19 objection -- Mr. Harrington also made some comments -- with
20 regard to the discussion surrounding the issue of procedures
21 for questioning of witnesses as well as lines of inquiry that
22 may be off limits.

23 The general nature of the objection, as I recall it,

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1 or the statements as I recall them, was to highlight the fact
2 that this is, in fact, a capital trial with heightened due
3 process which applies. And there was a concern specifically
4 about cutting off lines of examination or adding extra layers
5 of protection that do not exist in the rules that cuts off the
6 ability of counsel to raise legitimate issues on the record in
7 an open setting as opposed to taking that to a closed setting.
8 We, on behalf of Mr. al Hawsawi, join those objections.

9 There was also a discussion about whether defense
10 counsel should take on additional responsibility of raising
11 their hand, or something to that effect, as Mr. Connell had at
12 one point suggested. On behalf of Mr. al Hawsawi, I indicated
13 that, as defense counsel, I would not take on additional
14 obligations aside from the ones imposed by law, which, of
15 course, are to protect classified information.

16 Because of the nature of the questioning, there are
17 times where even specific questions that deal very closely and
18 specifically with a question that should be answered as a
19 nonclassified answer may elicit a classified answer, and that
20 to take on that responsibility, which is not one that is
21 required by law was one that we were not going to do on behalf
22 of Mr. al Hawsawi.

23 MJ [Col COHEN]: All right. Thank you, sir. I appreciate

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1 that. Those additions, I take no issue with what you just
2 said.

3 Mr. Connell.

4 LDC [MR. CONNELL]: Thank you, sir.

5 Mr. al Baluchi's position is that the government
6 should have to invoke national security privilege in open
7 court if the existence of the information over which national
8 security privilege is invoked is itself is not classified.
9 Meaning that, if it's an area that can be identified -- its
10 existence is unclassified, they should have to invoke their
11 national security privilege in open court. The government
12 took the opposite position.

13 The military commission resolved that debate in
14 AE 661, principally ruling against our position but offering a
15 workaround. I have received AE 661, understand it, and will
16 comply.

17 MJ [Col COHEN]: All right. Thank you, sir.

18 LDC [MR. CONNELL]: With respect to directions that the
19 military commission gave at the 802, the government and I met
20 and conferred regarding 658 for a substantial, long period of
21 time after the 802. We were able to at least articulate the
22 areas that I believed we had very clear guidance on and I
23 understood where the limits were, and then also some areas

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1 that were a little less clear and that were danger areas. So
2 I think at least the parties have a good understanding of each
3 other's positions, and that may help.

4 Finally, I will let you know that, following the
5 government's comments in the 802 regarding its offer of
6 stipulation in AE 538K, the parties exchanged proposed
7 stipulations over the weekend in an attempt to reach a
8 stipulation around the issue in 538K, which is, in sort of a
9 general sense, the flow of information from the CIA to the
10 FBI.

11 Unfortunately, we did not reach an agreement under
12 the time and security constraints that we were operating
13 under. Both parties bargained in good faith, and hope springs
14 eternal, we may get there yet. But at this time, despite good
15 faith effort on both parties, we were not able to reach a
16 stipulation.

17 MJ [Col COHEN]: Understand. Thank you, sir. I
18 appreciate it.

19 Yeah, to the extent that -- yeah, AE 661 was an
20 attempt by the commission to strike a balance between
21 presenting the ability of the defense in an open session to
22 indicate what national security privileges have been invoked
23 and what areas of -- lines of inquiry, which may also include

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1 specific questions, may have been off limits as a result of
2 that or for which no further information can be provided;
3 while at the same time drawing a balance between questions
4 which themselves would call for classified information.

5 So we're going to see how this works out. It is an
6 attempt by the commission -- I specifically limited it to this
7 session for that reason. We're going to see how it works and
8 to what extent in particular, Mr. Connell, since I think, at
9 least initially, you will be doing the majority of the
10 questioning, what kind of limitations that goes on to it, and
11 then that's always another discussion that we can all have,
12 and then we'll proceed to that point. All right.

13 Mr. Sowards.

14 LDC [MR. SOWARDS]: Thank you, Your Honor. And appreciate
15 Mr. Ruiz for reminding us of some of the things we discussed
16 in the 802.

17 MJ [Col COHEN]: Right.

18 LDC [MR. SOWARDS]: Our position at this point is, first
19 of all, as Mr. Ruiz indicated, we have general -- a general
20 concern that the invocation of classification privilege in
21 these proceedings on this issue is, in our view, respectfully
22 being used by the government to shield from public discussion
23 and public disclosure the details of what we regard as

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1 illegitimate government activity. That is their right to do
2 that, and you have obligations when they do it, and we
3 understand that. And we understand also how you are trying to
4 handle it in an expeditious fashion.

5 Nevertheless, as it becomes more directly important
6 to us when we, in the future, take on some of these witnesses,
7 we may have further things to say about that to litigate the
8 restrictions. And -- but for the purposes probably of this
9 week and next, we indicated in the 802 that one of our
10 concerns -- or one of our thoughts is that it might be helpful
11 just to see how this plays out and then ask the military judge
12 to modify it accordingly. And so ----

13 MJ [Col COHEN]: Yeah. No, I agree with that. I think
14 it's -- as this will be the first lengthy, substantive
15 testimony on an issue that we will have, that's why I wanted
16 to limit it initially to the September session. If it becomes
17 unworkable, it's also something that I can go back and look at
18 later this week.

19 So we'll let the parties -- like said, I'm always
20 open to feedback. The idea here is to strike a balance
21 between this -- a national security privilege but then the
22 right to a fair trial. And I'm endeavoring. We're going to
23 see how well we do and then, like I said, also what

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1 limitations are on there.

2 LDC [MR. SOWARDS]: Right. And the only thing we would
3 ask in that regard, Your Honor, is that, while that process is
4 going, it may, in fact, prove to be very efficient and run
5 things smoothly; at the same time we would ask you to monitor
6 to what extent you think that that nevertheless results in the
7 public being deprived of information in terms of how the
8 classification and national security privilege is affecting
9 the right to a public trial and their right to know.

10 MJ [Col COHEN]: I completely agree with you. That's
11 definitely something that I'm aware of and want to make sure
12 that I -- I maximize public disclosure to the extent that the
13 law allows. That is the idea here. So thank you, sir.

14 LDC [MR. SOWARDS]: Thank you, Your Honor.

15 MJ [Col COHEN]: And I -- I heard those words from the
16 government, so I'm taking them at their word that that's their
17 goal, too. We're just going to see where -- ultimately the
18 call will be mine, but we're going to see how this plays out.

19 Any additional comments? Like I said, I think
20 Mr. Ruiz' comments, Mr. Sowards' comments, those are
21 consistent with what was said yesterday. I -- like I said, I
22 was hoping you guys would supplement. I was trying to
23 encapsulate it, but rephrasing, with everything you guys had

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1 to say would have been more -- you're much more eloquent about
2 what your thoughts are than me summarizing what your thoughts
3 were, so ----

4 Apparently not. Okay.

5 Did everyone get a copy -- last question I have: If
6 anyone did not get a copy of AE 661, or if there are any
7 outstanding questions with respect to AE 661, now would be the
8 time, initially, to ask about that.

9 Negative response from all parties. All right.

10 Mr. Harrington, is -- I am being informed that
11 Ms. Cline has entered a written appearance before the
12 commission. Or has she not?

13 DC [MS. CLINE]: I am, Your Honor.

14 MJ [Col COHEN]: Okay. All right. Then why don't you
15 come up here and we'll let you put in your detailing and your
16 qualifications on the record, and then I will administer the
17 oath to you.

18 DC [MS. CLINE]: Thank you, Judge.

19 MJ [Col COHEN]: Thank you.

20 CLINE: Good morning.

21 MJ [Col COHEN]: Good morning.

22 CLINE: My name is Donna Cline. I am admitted to practice
23 in the state of Florida, the District of Columbia, and before

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1 the Supreme Court of the United States.

2 I am not subject to any disciplinary or
3 administrative proceedings with respect to my plenary license
4 to practice law. Sorry. I'm trying to slow down.

5 MJ [Col COHEN]: That's okay.

6 CLINE: I am familiar with the Rules of Military
7 Commission, and I do hold all of the necessary security and
8 administrative clearances to appear before this commission.

9 MJ [Col COHEN]: All right. Thank you, ma'am. Would you
10 like to swear or affirm?

11 CLINE: I will swear.

12 MJ [Col COHEN]: Okay. Please raise your right hand.

13 [Counsel was sworn.]

14 MJ [Col COHEN]: Thank you, ma'am. You may be seated.
15 Thank you.

16 Is the government ready to call your first witness?

17 CP [BG MARTINS]: Yes, Your Honor.

18 MJ [Col COHEN]: You may do so.

19 LDC [MR. CONNELL]: Sir?

20 MJ [Col COHEN]: Yes, Mr. Connell.

21 LDC [MR. CONNELL]: I have just a few introductory
22 remarks. I don't know if the government has any or not, but
23 before we call the first witness, I have just a few points I'd

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1 like to make to the court about what to watch out for.

2 MJ [Col COHEN]: Okay. I'm not opposed to that. I mean,
3 it's going to be a long process, so that will be fine.

4 Trial Counsel, let me -- do you have any or would you
5 like to make yours after Mr. Connell makes his, or you don't
6 have to make any at all.

7 TC [MR. GROHARING]: We don't intend to make remarks, Your
8 Honor.

9 MJ [Col COHEN]: Okay. Mr. Connell, can you keep them to
10 about five minutes?

11 LDC [MR. CONNELL]: Yes, sir, I can.

12 MJ [Col COHEN]: Okay. Great.

13 LDC [MR. CONNELL]: Sir, I'm not one for grand speeches,
14 but I would be remiss if I did not remark on the historic
15 occasion of the first public adversarial inquiry into the
16 decision of the United States, my government, to use torture
17 as an instrument of policy and investigation. At the same
18 time, we'll hear important testimony today about the events of
19 9/11, a mass murder in which many people were killed. The
20 trajectory of our history was changed and many people, some of
21 whom are in this courthouse, suffered.

22 The key to this hearing, and I would suggest as on a
23 policy matter above my pay grade, to the healing of our

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1 country is to understand that both of those narratives are
2 true at the same time. Our nation suffered a grievous wound,
3 and it failed to live up to its principles afterward. Both of
4 those things are true at the same time.

5 Now, how will this occur? Essentially, with today's
6 testimony, this inquiry will begin with the last phase of this
7 process, and it will in general terms work backwards.

8 There are 16 law enforcement and Department of
9 Defense witnesses that have been agreed between the parties.
10 This week we expect to hear from Special Agent Fitzgerald,
11 Special Agent Perkins, followed next week by Special Agent
12 McClain, Mr. -- Judge Delury, Mr. Antoon, Mr. Fife, and the
13 Camp VII commander.

14 The -- my expectation, after our meeting on Friday,
15 is that the government will present its testimony from Special
16 Agent Fitzgerald today. I expect -- and this is super rough,
17 but just so you have an idea of what I am thinking -- that
18 there will probably be open cross-examination on Tuesday and
19 Wednesday and then on Thursday, there would be closed both
20 direct examination by the government and cross-examination by
21 Mr. al Baluchi.

22 Additional witnesses will be coming on the law
23 enforcement/DoD side. Special Agent Fitzsimmons and Special

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1 Agent Drucker already agreed to testify. We've notified the
2 government that all 16 of the witnesses on their list that we
3 would like to call, and then in January, Drs. Mitchell and
4 Jessen, followed in the course of this process, we will be
5 addressing with the military commission what witnesses we
6 think we can drop from our list, what witnesses we think are
7 important. That, just by the nature of it, has to be kind of
8 an iterative process.

9 But in ----

10 MJ [Col COHEN]: And that would be fine. I told the
11 parties that I foresaw that that would be the case.

12 LDC [MR. CONNELL]: Yes, thank you, sir. There will be in
13 general medical testimony about the investigation process and
14 the impact on it.

15 Just to let you know, we expect to then next week to
16 propose what we think will be happening with witnesses going
17 forward, and it will probably include a suggestion that the
18 February hearing take place in the National Capital Region for
19 the taking of depositions.

20 The -- a couple of issues that I want to point out to
21 you. The first is with respect to scope. This hearing is
22 actually on a number of witnesses -- a number of issues: 628,
23 the motion to suppress; 502, the question of personal

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1 jurisdiction; 645 and 645A, the admissibility of certain
2 evidence of conversations, some of which the government will
3 be introducing today; 655 about psychiatric examinations of
4 Mr. al Baluchi; and 524, of course, about the government's, at
5 that time, invocation of national security privilege over
6 parts of the investigation.

7 The massive expansion of national security
8 privilege -- or maybe it wasn't expanded, maybe it was just
9 brought into the light -- was -- in AE 658 will also be
10 explored. That will affect the military commission's
11 resolution of the 574, 586, and 641 series.

12 One other procedural issue I want to let the military
13 commission know is I want to direct its attention to
14 AE 502ZZZ, an order with respect to how to proceed under
15 R.M.C. 914 in this personal jurisdiction hearing.

16 We believe, for example, that the government has not
17 complied with respect to Special Agent Fitzgerald, it having
18 produced only one set of handwritten notes and zero e-mail
19 communications, both of which are specifically addressed in
20 502ZZZ after argument and briefing by the parties.

21 Last week we argued AE 538 and 561, both of which
22 will have a substantial impact. If additional evidence, as we
23 think, will be ordered or should be ordered under that, it may

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1 affect the future examination of Special Agent Fitzgerald or
2 others.

3 Finally, Your Honor, at this point I would move under
4 R.M.C. 615 to exclude witnesses who will be testifying. I've
5 discussed this with the government. We don't have any
6 objection to the presence of Mr. Beechum and Ms. Hearn in the
7 courtroom as we don't expect them to be witnesses. We don't
8 have any objection to Mr. O'Malley's presence in the courtroom
9 who was here last week. Intelligence Analyst Waltz, who was
10 here last week we do think will be a witness; we are going to
11 be following up with a formal witness request.

12 The one point of clarification I would ask the
13 military commission for is what the military commission
14 considers to be the scope of restriction under R.M.C. 615,
15 because different judges have different views of what is
16 included in a rule of exclusion.

17 I do understand the scope of the people who are
18 involved because it's laid out with fair precision in the
19 rule. But in my view, for whatever it is worth, the rule of
20 exclusion would prevent witnesses in this case from watching
21 the testimony remotely as well as being present in the
22 courtroom or from reading the transcripts of the testimony.

23 I have instructed our witnesses accordingly. I spoke

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1 with the government, and they said that they have instructed
2 the -- their witnesses accordingly. In my view, the rule of
3 exclusion does not stop counsel from either party from talking
4 to a witness. I don't know if the military commission has
5 other inclusions or exclusions. I ask only so that we can
6 follow what the military commission's understanding of the
7 rule is.

8 MJ [Col COHEN]: Okay.

9 LDC [MR. CONNELL]: Thank you.

10 MJ [Col COHEN]: Thank you very much. I appreciate it.
11 All right.

12 First of all, does any defense counsel disagree with
13 the request for exclusion of witnesses under M.C.R.E. 615?

14 Negative response from all defense counsel.

15 Trial Counsel, do you wish to be heard? Do you agree
16 or disagree?

17 MTC [MR. TRIVETT]: Sir, we would ask that Mr. Ed Ryan
18 address the issue of exclusion, but Mr. Groharing to address
19 any other questions that you may have.

20 MJ [Col COHEN]: That would be fine. Mr. Ryan, you may do
21 so.

22 TC [MR. RYAN]: Good morning, sir.

23 MJ [Col COHEN]: Good morning.

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1 TC [MR. RYAN]: Your Honor, counsel adequately and
2 accurately stated our conversation. The witnesses present in
3 the general area right now who will follow Agent Fitzgerald
4 include former Special Agent Abigail Perkins and Intelligence
5 Analyst Kimberly Waltz.

6 They have been instructed not to be present in the
7 courtroom. They have been instructed not to -- to place
8 themselves in such a place and position that they cannot
9 follow any feed from the courtroom. And they have been
10 instructed not to read any transcripts of the testimony. And
11 with that, I think that satisfies our obligation.

12 MJ [Col COHEN]: All right. Thank you, sir.

13 Yeah, at the request of counsel, I will -- I will
14 order that witnesses be excluded, that they cannot hear the
15 testimony of other witnesses, or review the testimony of other
16 witnesses in this particular case. The rule specifically says
17 that the following people are allowed to be here: I can't
18 authorize the exclusion of the accused, member of any -- an
19 armed service or employee of the United States designated as a
20 representative the United States by trial counsel, a person
21 whose presence is shown by a party to be essential to the
22 presentation of the party's case -- I have not had that
23 presented to me -- a person authorized by statute to be

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1 present at military commissions, or any victim of an offense
2 from the trial of an accused for that offense on the grounds
3 that such victim may testify or present any information in
4 relation to the sentence for that offense during the
5 presentencing proceedings.

6 I did not take Mr. Connell's request to exclude any
7 victims or -- of the 9/11 events from the courtroom, and I did
8 not take the trial counsel's assertion as such, either, but
9 merely just fact witnesses in this case.

10 I do interpret 615 to mean that fact witnesses should
11 not be watching what's going on or be informed about what's
12 going on. Their testimony should be based on their
13 recollection of events or any evidence that they are -- is
14 used to refresh their recollection.

15 Mr. Ruiz.

16 LDC [MR. RUIZ]: Yes, Judge. I just wanted to, for the
17 purposes of the scope as defined by Mr. Connell, I just wanted
18 to articulate that I took that to mean the scope as he defines
19 it for Mr. al Baluchi. And to the extent part of the scope is
20 motion to suppress, our position on behalf of Mr. al Hawsawi
21 is that there is no such issue before this commission at this
22 time.

23 MJ [Col COHEN]: Okay. All right.

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1 All right, then. Yeah, so please inform your witnesses,
2 whoever they may be, that they should not be watching what's
3 going on in any location or discussing the facts of the -- or
4 reviewing the transcripts of the case.

5 TC [MR. RYAN]: Understood, Your Honor.

6 One point of -- that I left open. As far as
7 witnesses who are in the course of their testimony, it has
8 been the general practice of the prosecution team to
9 understand rule -- including 615, but rules similar to it in
10 other courts to say that we are able to speak with witnesses,
11 our own witnesses, while they are in the course of direct
12 examination; however, we cease discussion about their
13 testimony once they have been tendered to the other side.

14 I'm not sure if that's the exact same way the defense
15 saw it, but I wanted to state it to Your Honor to the extent
16 you need to make a decision on that. I don't think it's an
17 issue that needs to be decided right at this moment, if you
18 want to table it for now. But I just wanted to put it out
19 there, sir.

20 MJ [Col COHEN]: All right.

21 Mr. Connell.

22 My general practice -- I just want to let you know
23 what my general practice is. My general practice is once

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1 someone's on the stand, during a break, they don't discuss
2 their testimony with anyone. If they need to be recalled
3 later, then after that, that's a different issue, if there
4 needs something to be clarified. But once someone's on the
5 stand, they're on the stand, and we don't discuss their
6 testimony while they're on the stand.

7 LDC [MR. CONNELL]: Yes, sir. And that's the procedure
8 that we have followed previously when we called Lieutenant
9 Newman to the stand. We -- it was our understanding that we
10 couldn't talk with him during direct on anything other than
11 purely administrative, here's a binder or here's the next
12 slide kind of thing.

13 MJ [Col COHEN]: Yeah. I'm -- on a purely procedural
14 thing, but substantive discussions of their testimony, no.
15 No, they're -- once they're on the stand, substantive
16 discussions should cease until they're no longer on the stand.
17 They need to be held subject to recall. You can ask that they
18 be held subject to recall. Given the location, I'll be very
19 lenient on what that recall means. They don't necessarily
20 have to stay in the local area. We'll figure out how we're
21 going to deal with those issues. But any substantive
22 discussions about their testimony should occur after they're
23 no longer in the state of testifying.

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1 LDC [MR. CONNELL]: Yes, sir.

2 MJ [Col COHEN]: All right. Thank you.

3 TC [MR. RYAN]: Understood, sir.

4 MJ [Col COHEN]: All right. Thank you.

5 LDC [MR. SOWARDS]: Your Honor?

6 MJ [Col COHEN]: Yes, Mr. Sowards.

7 LDC [MR. SOWARDS]: I know this is a little earlier than
8 you would normally do this, but it would assist us before we
9 settle in with this witness if we could have just a 10- or
10 12-minute break.

11 MJ [Col COHEN]: You know what, a comfort break, knowing
12 the witness is going to be -- a preemptive comfort break is
13 probably not a bad idea. So let's go ahead and let's take a
14 15-minute break, and then we're going to call the witness.

15 All right. Thank you.

16 [The R.M.C. 803 session recessed at 0939, 16 September 2019.]

17 [The R.M.C. 803 session was called to order at 0951,
18 16 September 2019.]

19 MJ [Col COHEN]: The commission is called to order. We
20 will try to take an additional recess in place until
21 Ms. Bormann returns. We're in recess.

22 [The R.M.C. 803 session recessed at 0951, 16 September 2019.]

23 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 0953,
2 16 September 2019.]

3 MJ [Col COHEN]: Commission is called to order. Parties
4 are present. Members are absent.

5 Trial Counsel, you may call your first witness.

6 CP [BG MARTINS]: Your Honor, I'll note up front that
7 Mr. Ryan has left the court on commission business and he will
8 probably return in the next few minutes.

9 MJ [Col COHEN]: Okay. Thank you, sir.

10 CP [BG MARTINS]: Inform the witness to come to the
11 courtroom.

12 [The witness entered courtroom.]

13 CP [BG MARTINS]: Would you please proceed to the witness
14 area. Remain standing and raise your right hand for the oath.
15 JAMES M. FITZGERALD, civilian, was called as a witness for the
16 prosecution, was sworn, and testified as follows:

17 **DIRECT EXAMINATION**

18 Questions by the Chief Prosecutor [BG MARTINS]:

19 Q. Would you please state your full name and then spell
20 it for the record?

21 A. My name is James; middle initial is M., as in
22 Michael; last name Fitzgerald, I spell F-I-T-Z-G-E-R-A-L-D.

23 Q. What is your state of residence?

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1 A. My state of residence is Massachusetts.

2 Q. And what is your occupation?

3 A. I'm an FBI agent.

4 MJ [Col COHEN]: Mr. Groharing, your witness.

5 TC [MR. GROHARING]: Good morning, Your Honor. Jeff
6 Groharing for the United States.

7 MJ [Col COHEN]: Good morning.

8 **Questions by the Trial Counsel [MR. GROHARING]:**

9 Q. Special Agent Fitzgerald, you mentioned that you
10 currently work for the FBI. How long have you worked for the
11 Bureau?

12 A. Approximately 23 and a half years.

13 Q. And what is your current assignment?

14 A. I'm assigned to the Boston Field Office.

15 Q. What do you do at the Boston Field Office?

16 A. I'm a supervisor of a surveillance squad.

17 Q. What is your educational background?

18 A. I graduated in 1987 from Norwich University with a
19 bachelor's degree.

20 Q. What did you do after you graduated from college?

21 A. I worked for a bank for several years and then I was
22 employed with the Massachusetts State Police.

23 Q. What did you do for the Massachusetts State Police?

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1 A. I was a trooper.

2 Q. And how long did you serve as a trooper?

3 A. A little bit over three years.

4 Q. And how were you employed after being employed by the
5 Massachusetts State Police?

6 A. In June of 1996, I entered the FBI.

7 Q. Could you please summarize for the military judge the
8 training that you've received just generally with the FBI?

9 A. Yes. In general terms, I received training in
10 Quantico at the FBI Academy, approximately four or five
11 months, and since that time, several in-service trainings and
12 other trainings as well.

13 Q. And what type of training have you received related
14 to conducting interviews of individuals suspected of
15 committing offenses?

16 A. I received training during the State Police Academy.
17 I also received training while in the State Police at an
18 interview interrogation course, then I received training in
19 interview and interrogation while at the FBI Academy.

20 Q. And how many interviews would you estimate that you
21 have conducted over the course of your career?

22 A. I would say dozens.

23 Q. What was your first assignment with the FBI?

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1 A. I was assigned to an organized crime squad in
2 New York City.

3 Q. And at some point were you reassigned to another
4 section?

5 A. Yes.

6 Q. And when was that?

7 A. After the attacks of September 11th, I began -- maybe
8 two weeks or so after the attacks, I began working on the
9 counterterrorism side.

10 Q. Where were you on the day of September 11th, 2001?

11 A. The morning of September 11th, I was at home in
12 New Jersey, and then drove in to New York City.

13 Q. Did you come to learn that planes had flown into the
14 World Trade Center that day?

15 A. Yes, I did.

16 Q. What did you do once that occurred?

17 A. After the first plane struck, traffic was at a
18 standstill, and I couldn't get through. So I turned around
19 and drove back to my apartment. I got a bag, I put clothes
20 and food in the bag, turned back around and drove back towards
21 the city. By that time, a lot of the traffic had cleared off
22 the highways. I was able to get into the city and was in the
23 city for most of the rest of the day.

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1 Q. And how did the September 11th attacks impact your
2 duties as an FBI agent?

3 A. They changed it from working on the criminal squad to
4 working counterterrorism from that point on.

5 Q. And did the FBI investigation into the September 11th
6 attacks begin on that day?

7 A. Yes.

8 Q. What agents from the FBI were involved initially in
9 the investigation?

10 A. Initially, I would estimate virtually the entire FBI
11 was working the case.

12 Q. And then at some point you were officially assigned
13 as an agent to the attacks?

14 A. Yes.

15 Q. Were you assigned to a unit called the PENTTBOM team?

16 A. Yes, I was.

17 Q. What did PENTTBOM stand for?

18 A. Pentagon -- or PENTTBOM stood for -- the P-E-N for
19 the crash in Pennsylvania, and then P-E-N-T for the attack on
20 the Pentagon. And it's spelled P-E-N-T-T-B-O-M. So the TT
21 was for twin towers, so it represented each of the three crash
22 sites, and BOM for a terrorist attack or bombing.

23 Q. Out of what FBI office was the PENTTBOM case

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1 investigated?

2 A. Initially out of the New York Office.

3 Q. And generally, how did the PENTTBOM investigation
4 unfold?

5 A. The way it unfolded is roughly in October of 2001,
6 agents and other personnel from the FBI located in the -- one
7 of the rooms at FBI Headquarters, there were agents from
8 New York, from Baltimore, from Newark, and other field
9 offices; and they began to serve as a central unit for
10 attempting to coordinate the investigation into 9/11.

11 Q. Is it fair to say that the first part of the
12 investigation after September 11th was identifying who
13 hijacked the aircraft?

14 A. Yes.

15 Q. And what type of investigative techniques were used
16 to determine who hijacked the planes?

17 A. Initially the available evidence began with phone
18 calls from flight attendants on the aircraft. Some of those
19 phone calls identified -- or at least tentatively identified
20 possible hijackers on those aircraft. After that, a review of
21 flight manifests and other business records were able to link
22 several of the individuals together through common telephones
23 and other data.

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1 Q. How long did you work as a member of the PENTTBOM
2 team?

3 A. Until approximately 2006.

4 Q. And during that time, approximately how many agents
5 worked on the PENTTBOM team?

6 A. The number reduced over time. I would say initially,
7 it was probably 30 agents. At the end in -- by roughly
8 February 2006, I was on a trial team for Zacarias Moussaoui
9 and we were -- probably had eight or nine agents.

10 Q. And who was Zacarias Moussaoui?

11 A. Zacarias Moussaoui was a person who was arrested in
12 August of 2001 up in Minnesota. He was arrested after he
13 was -- aroused the suspicion of several individuals at a 747
14 flight training center, a simulator training center. He was
15 interviewed by members of the FBI, JTTF, including an INS
16 agent and an FBI agent. He was found to be a visa overstay,
17 so he was placed into INS custody.

18 After the attacks of September 11th, an additional
19 investigation, he was later charged with being part of a plot
20 to crash airliners into targets in the United States.

21 Q. And what role did you play in that investigation and
22 ultimate prosecution?

23 A. I was -- I mentioned there were approximately eight

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1 or nine case agents. I was one of those case agents.

2 Q. How long did you work on that case?

3 A. Until roughly May or June of 2006, at the end of the
4 trial.

5 Q. Did you ultimately testify in that case?

6 A. Yes.

7 Q. What was the subject matter of your testimony?

8 A. In general terms, my subject matter concerned the
9 actions of the hijackers while in the United States.

10 Q. Did you also testify before the 9/11 Commission?

11 A. Yes, I did.

12 Q. And what was the 9/11 Commission?

13 A. The 9/11 Commission was a group of academics, public
14 servants, scholars, others, whose mission was to determine
15 what happened before 9/11, find out what the government knew
16 regarding the plot and the plotters, to put together a summary
17 of information known about what happened and how it happened,
18 and to make recommendations for future corrective actions to
19 be taken.

20 Q. Over the course of your career, how much time have
21 you spent investigating the attacks on the United States on
22 September 11th, 2001?

23 A. Between 2001 and now, I would say roughly 15 or 16 of

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1 those years would be working the attacks of 9/11.

2 Q. I would like to turn your attention now specifically
3 to Ali Abdul Aziz Ali. Do you recognize or see Mr. Ali in the
4 courtroom today?

5 A. I would have to stand up to look.

6 Q. Could you?

7 A. Yes, I do.

8 Q. Could you please tell the military judge where you
9 see Mr. Ali?

10 A. Yes, he's towards the back of the court on the
11 right-hand side. He's wearing some sort of head wear, and
12 he's looking at me right now.

13 MJ [Col COHEN]: What color head wear?

14 WIT: It's gray around the side and white on the top.

15 MJ [Col COHEN]: Thank you. Positive identification of
16 the accused.

17 Q. When did Mr. Ali become a person of interest in this
18 case?

19 A. I would estimate roughly September of 2001.

20 Q. What caused Mr. Ali to become a person of interest?

21 A. The item -- there might be several ways that he could
22 become a person of interest, but one specifically was a money
23 transfer that was conducted and a person came forward to speak

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1 about that money transfer.

2 Q. Were materials gathered related to Mr. Ali that
3 connected him to the 9/11 attacks?

4 A. Yes.

5 Q. What types of materials?

6 A. Wire transfer materials and the documents that go
7 along with them, IDs that relate to them, things of that
8 nature.

9 Q. How did the FBI come into receipt of those documents?

10 A. Those specific documents that I'm referring to were
11 obtained through FBI liaison with banks overseas.

12 Q. During the investigation, was the FBI able to
13 determine how al Qaeda transferred money used to support the
14 operation to the United States?

15 A. In part, yes.

16 Q. And what means did they use.

17 A. The means that they used in part were transfers via
18 businesses such as Western Union and MoneyGram. Also, what I
19 would call bank-to-bank transfers, money being wired from one
20 location to another, amongst other methods.

21 Q. And what all means did the FBI use to collect this
22 information?

23 A. Many different means specifically for financial

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1 records. Oftentimes it was a subpoena. Sometimes information
2 may have been volunteered. Information may have been obtained
3 through FBI liaison with banks and governments overseas.

4 Q. And, Special Agent Fitzgerald, did you bring an item
5 of evidence with you to court here today?

6 A. Yes, I did.

7 Q. And do you have it at the witness stand?

8 A. Yes.

9 TC [MR. GROHARING]: Okay. Your Honor, at this point, I
10 would like to ask that Special Agent Fitzgerald open the
11 envelope and examine the contents.

12 MJ [Col COHEN]: Okay.

13 A. Okay. I have the item here.

14 Q. Could you please describe the envelope for the court
15 that the evidence came in?

16 A. Yes. It's a Redweld, a document holder, with a
17 barcode and a number on it.

18 Q. And what number is on the document?

19 A. The evidence number is 1B2296.

20 Q. And what is a -- is it 1B number on ----

21 A. Yes, that's correct.

22 Q. ---- the document?

23 A. A 1B number and a barcode.

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1 Q. What is a 1B number?

2 A. A 1B number is an evidence number in the FBI. It's
3 something where, when a chain of custody is required, an item
4 is assigned a 1B number and a chain is initiated.

5 Q. And in this case, originally there were additional
6 materials that were packaged with that document; is that
7 accurate?

8 A. Yes.

9 Q. And could you please describe for the military judge
10 what a split is, when you need to split a 1B for evidence?

11 A. Yes. I'll provide an example. If a box with five
12 items is seized and that item is put into evidence, and let's
13 say, for example, it's given the number 1B1; if upon
14 consideration of those five items, it's decided that one of
15 those items needs, for instance, to go to the lab for
16 additional processing, I would generate a communication and
17 request one of those items, quote, to be split out -- meaning
18 it's taken out of the original box so the four items remain --
19 that one item gets its own barcode and its own 1B number, and
20 that item in this case would be sent down to the lab. So it
21 gets its own tracking number and 1B number so it can go down
22 and be processed and tracked.

23 TC [MR. GROHARING]: Your Honor, I would ask for

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1 permission to have the feed from Table 3.

2 MJ [Col COHEN]: You may do so.

3 TC [MR. GROHARING]: Your Honor, the government has a
4 number of slides within the Trial Director platform. It's my
5 understanding that all but one of our exhibits that we'll be
6 discussing in Trial Director have been approved for public
7 display, and that's AE 628A [sic] Attachment KKKK.

8 Is the court okay, once you grant permission, to
9 display the document to the public, for the entire
10 Trial Director presentation, or would you like me to ask on
11 each occasion? We don't intend to call up KKKK until the end
12 of the presentation, so it would only be that one time, I
13 believe, that we would need to cut the feed to the gallery.

14 MJ [Col COHEN]: Okay. Give me one second.

15 Mr. Connell?

16 LDC [MR. CONNELL]: Your Honor, it sounds like we might be
17 moving on from IB2296. I was just going to ask to see the
18 item because I haven't seen it.

19 MJ [Col COHEN]: Okay. That seems very reasonable. So
20 it's not admitted into -- nothing has been offered to me yet,
21 but yes, most definitely, you can see it. You may.

22 [Witness and counsel away from microphone; no audio.]

23 TC [MR. GROHARING]: My understanding, for the record,

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1 that the court reporter is going to take a photograph of the
2 envelope of the 1B and preserve that image into the record.

3 MJ [Col COHEN]: Okay.

4 TC [MR. GROHARING]: I would just ask that that be
5 assigned the next appellate number.

6 MJ [Col COHEN]: I will authorize the court reporters to
7 do so. And then I'll let them tell me what that's going to
8 be.

9 TC [MR. GROHARING]: The second document, the actual
10 document that's contained within the Redweld, I would ask that
11 the court reporter also take an image of that document, the
12 original piece of evidence that's contained in the Redweld,
13 either as the same exhibit or a subsequent appellate exhibit.
14 The court's preference.

15 MJ [Col COHEN]: It can be -- it could be a two-page
16 exhibit.

17 TC [MR. GROHARING]: Thank you, Your Honor.

18 MJ [Col COHEN]: Absolutely. I'll just let them tell me
19 what that's going to be. AE 628BB (Gov).

20 Then I ask that during the next break, if any defense
21 counsel wants the opportunity to review AE 628BB for whatever
22 reason, if they feel the need to do so, that the government
23 make that available for them to review. All right.

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1 And with respect to the other exhibits, if -- for
2 everything that's been cleared, you can just let me know what
3 we're referring to, what page of AE 628A we're looking at and
4 then what attachment to that. And then obviously the
5 instruction would be for anything that has not been cleared,
6 that will not be authorized for public display until it has
7 been offered.

8 TC [MR. GROHARING]: Thank you, Your Honor.

9 LDC [MR. CONNELL]: Your Honor.

10 MJ [Col COHEN]: Mr. Connell.

11 LDC [MR. CONNELL]: Sir, counsel mentioned the possibility
12 of two AE numbers. Can we identify for the record what AE
13 628BB is?

14 MJ [Col COHEN]: It should be the actual certificate
15 that's within the plastic as well as the folder that came with
16 it, should be the two pages, the pictures of those two things.

17 LDC [MR. CONNELL]: So it will be pictures of the item
18 which is IB2296, barcode E4310326.

19 MJ [Col COHEN]: Sir, are those the correct numbers?

20 WIT: E4310236.

21 LDC [MR. CONNELL]: 0236; is that right?

22 WIT: 0236, that's correct.

23 MJ [Col COHEN]: Okay. And then the 1B number on that is?

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1 WIT: IB2296.

2 MJ [Col COHEN]: Okay, which will be -- so pictures of the
3 folder and the certificate, both front and back, possibly at
4 least need a three, however many pages it ends up for all of
5 the pictures, but there should be front and backs of all the
6 documents. All of those together.

7 Counsel, you should inform me how many pages that
8 will be, but that will be marked as AE 628BB (Gov).

9 LDC [MR. CONNELL]: Thank you, sir.

10 MJ [Col COHEN]: You are welcome.

11 TC [MR. GROHARING]: Request permission to display the
12 feed to the gallery from prosecution Table 3.

13 MJ [Col COHEN]: You may do so.

14 TC [MR. GROHARING]: Judge, this is 628AA Attachment EEEE.

15 MJ [Col COHEN]: All right. Thank you.

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

17 Q. Special Agent Fitzgerald, do you recognize this
18 document?

19 A. Yes, I do.

20 Q. I would just ask for the next slide so you can call
21 out the information on the top. What is this document?

22 A. It's a chain of custody.

23 Q. And how does that document relate to the information

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1 that was contained inside the Redweld?

2 A. This document here, 1B2296, was formally part of
3 1B2046.

4 Q. Okay. And what does this document represent?

5 A. That represents the date that the evidence was
6 entered -- the items were entered into evidence with the FBI
7 evidence control unit.

8 Q. Okay. And that document is now in evidence here at
9 Guantanamo Bay in the FBI evidence room?

10 A. 1B2046?

11 Q. Correct.

12 A. I don't know where ----

13 Q. Is it your understanding ----

14 A. ---- the actual location of the original 1B is.

15 Q. Okay.

16 A. Simply tracked this one that I have here.

17 Q. Okay. Are you able to determine, based on that
18 document, when the FBI obtained the evidence inside that 1B
19 that you discussed here today?

20 A. The date -- I can obviously read the date that it
21 shows that it was collected and entered into evidence. So,
22 yes, I differentiate that.

23 The chain starts when the item's actually entered

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1 into evidence. So, for instance, if I collect something
2 today, and I have to drive to the evidence room and get it
3 there two days from now, it's entered into evidence two days
4 from now. So the date collected is the date that it is
5 entered into the evidence control facility.

6 Q. And what is that date for this particular item?

7 A. It's April 6, 2002.

8 Q. And are there similar documents for the other items
9 of evidence that we'll discuss here today?

10 A. Yes, there are.

11 Q. And the FBI, it's fair to say they maintain records
12 of those types of things?

13 A. Yes.

14 Q. First, the actual evidence that is inside the 1B,
15 what is that piece of evidence?

16 A. This evidence is a money transfer receipt from the
17 U.A.E. Exchange Centre.

18 Q. And what's the date on that document of the actual
19 transfer?

20 A. The handwritten date on it is 29 August 2000.

21 Q. Okay. And is there a corresponding document like
22 that one that's in the presentation that we're about to
23 discuss?

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1 A. Yes, there is.

2 LDC [MR. CONNELL]: Your Honor.

3 A. There is an image of this.

4 MJ [Col COHEN]: Yes, Mr. Connell.

5 LDC [MR. CONNELL]: I object merely to the form of the
6 question. It is the third question that is similar or like
7 that one or things like this, and I object to the form of the
8 question in that we don't know what the basis of comparison
9 is. Perhaps we could just have a more precise question.

10 MJ [Col COHEN]: Okay. Counsel, if you would repeat your
11 question along those lines. I will sustain for now.

12 Q. Did you, in fact, compare that document to a similar
13 document that's in the financial presentation?

14 A. Yes.

15 Q. And with the exception of being in a plastic evidence
16 envelope, are they identical?

17 A. Yes. There is a -- what I would call a photographic
18 image of this document in the financial presentation, and
19 there are other money transfer receipts, similar in nature to
20 this one; in other words, from either the U.A.E. Exchange
21 Centre or potentially other exchange centers.

22 TC [MR. GROHARING]: Okay. Could I have the next slide,
23 please. Your Honor, this is AE 628AA Attachment XXX.

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1 Q. Do you recognize this document, Special
2 Agent Fitzgerald?

3 A. Yes, I do.

4 Q. What is this?

5 A. This is a listing of the documents that were used to
6 prepare the financial presentation.

7 Q. And did I ask you to compare the documents within the
8 financial presentation to the Bates numbers of the documents
9 that have been provided to the defense in discovery before
10 your testimony today?

11 A. Yes.

12 Q. Did you, in fact, do that?

13 A. Yes.

14 Q. And are there documents -- Bates numbers on this
15 document that you are able to reference to determine which
16 document in the financial presentation corresponds to which
17 document in defense discovery?

18 A. Yes.

19 Q. And did you do that for every single document in the
20 financial presentation?

21 A. Yes, I did.

22 Q. All right. Thank you.

23 And the financial presentation about which we have

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1 been speaking, that's AE 628AA Attachment WWW. Are you
2 familiar with that presentation?

3 A. Yes, I am.

4 TC [MR. GROHARING]: Judge, at this point I'd just ask for
5 the feed to move from the Trial Director presentation to the
6 actual financial presentation exhibit, and we can do that at
7 Table 3.

8 MJ [Col COHEN]: You may do so.

9 Q. What do we see on the screen, Special
10 Agent Fitzgerald?

11 MJ [Col COHEN]: Before you go down this road. Defense
12 Counsel, have you had the opportunity to see this before?

13 LDC [MR. CONNELL]: Good enough, Your Honor.

14 MJ [Col COHEN]: All right.

15 LDC [MR. CONNELL]: I don't mind counsel proceeding.
16 They've been very forthcoming over this weekend with
17 information.

18 MJ [Col COHEN]: Okay. Great. Thank you very much. All
19 right.

20 Counsel, please proceed.

21 Q. What do we see on the screen?

22 A. This is a financial presentation, and it depicts a
23 map on the left-hand side showing the United States

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1 highlighted, and on the right-hand side it shows the United
2 Arab Emirates highlighted in white.

3 Q. And are you familiar with how this presentation was
4 created?

5 A. Yes, I am.

6 Q. Could you summarize for the court how it was created?

7 A. Yes. It was created with the assistance of the FBI
8 Laboratory Special Projects Unit, which was able to take
9 financial documents provided by the FBI and organize them into
10 this presentation, much like a PowerPoint.

11 Q. Okay. And again, do all of the documents that are
12 within this presentation, are they all on the spreadsheet that
13 you previously discussed?

14 A. Yes, they are.

15 TC [MR. GROHARING]: I'd ask at this point that Staff
16 Sergeant Johnson click on the 16 April tab on the bottom of
17 the screen, and let the record reflect that a red arrow has
18 appeared on the screen.

19 Q. Special Agent Fitzgerald, what does that red arrow
20 represent?

21 A. That red arrow shows or depicts a money transfer from
22 the area of Dubai, United Arab Emirates, to a location in
23 Southern California.

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1 TC [MR. GROHARING]: Okay. Could I now please -- Staff
2 Sergeant Johnson, could you click on the \$5,000 tab on the
3 upper left-hand corner of the document.

4 Q. Do you recognize the document that's on the screen?

5 A. Yes, I do.

6 Q. What is that document?

7 A. It's a receipt from a place called the Wall Street
8 Exchange Centre depicting a transfer from a person named Ali
9 to a person named Adel Rafeea.

10 Q. And how was that document obtained?

11 A. The FBI obtained this document through liaison with
12 banks in the United Arab Emirates.

13 Q. Next slide, please. Let the record reflect there is
14 text highlighted in red in five boxes. And the next slide,
15 slide 3, that same text is called out.

16 Special Agent Fitzgerald, what's the significance of
17 the text on this document?

18 A. The top box says, A/C, and then the abbreviation for
19 number, meaning account number, and it lists an account number
20 and then there's a name, and I'll say it and spell it. Adel,
21 A-D-E-L; last name, Rafeea, R-A-F-E-E-A. That's the
22 beneficiary of the wire. Below that it states, USD, for U.S.
23 dollars, 5,000. And below that, it states, Applicant Name,

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1 Ali, P.O. Box 16958. Then it says, Tel, for telephone number
2 and it states 0506745651. Then it states Fax, and in fax it
3 actually states the name or the city, Dubai. Below that, the
4 applicant's signature -- or the sender's signature, and to the
5 right, a stamp from the Exchange Centre saying that the cash
6 was received.

7 Q. With regard to that P.O. Box you mentioned, were you
8 able to connect that P.O. Box to Mr. Ali throughout the course
9 of the investigation?

10 A. Yes, I was.

11 Q. And was that P.O. Box significant to your
12 investigation?

13 A. Yes, it was.

14 Q. Next slide, please.

15 Do you recognize this document?

16 A. Yes.

17 Q. What is this document?

18 A. This is an internal Wall Street Exchange Centre
19 document which simply lists the information within their
20 system concerning this wire transfer that I just spoke of.

21 Q. Okay. Slide 5, please. Again, there is text
22 highlighted in four red boxes on slide 5, and that text will
23 be called out on slide 6.

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1 Special Agent Fitzgerald, what's the significance of
2 that information?

3 A. This lists much of the same information I spoke of.
4 The amount of the transfer was 5,000 U.S. dollars. The
5 sender's name was Ali with a P.O. Box of 16958, a telephone
6 number of 0506745651. Again, under fax, the city of Dubai is
7 listed. And then under beneficiary, it lists an account
8 number and the name Adel Rafeea that I previously mentioned.

9 Q. And was that telephone number you mentioned that ends
10 in 5651, was that significant to your investigation as well?

11 A. Yes, it was.

12 Q. How so?

13 A. That telephone number was found on bank account
14 opening documents associated with the accused, Mr. Ali Abdul
15 Aziz Ali.

16 Q. Move to slide 7, please.

17 Do you recognize this document?

18 A. Yes.

19 Q. How was this document obtained?

20 A. This document was obtained with the other two wire
21 transfer documents that we just spoke of, the initial
22 handwritten receipt and the internal bank document. This
23 document here was a photocopy of an ID that was provided when

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1 the \$5,000 wire transfer was sent.

2 Q. Slide 8, please. I have again highlighted certain
3 text in red boxes. That text will be called out in slide 9.

4 And what's the significance of this information?

5 A. This states that the ID which was provided to send
6 the wire transfer identifies the person as Mr. Ali, identifies
7 that person's nationality as Pakistan, and identifies that
8 person's passport number as E, as in Echo, 911562.

9 Q. And was that passport number significant to your
10 investigation?

11 A. Yes.

12 Q. How so?

13 A. There were at least two bank accounts that were
14 opened in the name of Mr. Ali Abdul Aziz Ali. In each of
15 those instances, when the accounts were opened, a passport was
16 provided as identification to open the account. The passport
17 on those two occasions for Dubai Islamic Bank and for Emirates
18 Bank, the passport reflected the number of E911562. So it's
19 the same passport number and same nationality.

20 Q. Slide 10, please.

21 Do you recognize this document?

22 A. Yes.

23 Q. What is this document?

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1 A. It's an application for a U.S. visa fill out by --
2 filled out by Ali -- or in the name of Ali Abdul Aziz Ali.

3 Q. Slide 11, please. Again, there are three boxes
4 highlighted in red, and they're called out on slide 12.

5 What's the significance of this information?

6 A. This shows the name of the visa applicant is Ali
7 Abdul Aziz Ali. This individual provided a passport number of
8 E911562, and this individual was of Pakistani nationality,
9 this information matching the previous ID that I spoke of; in
10 other words, the same passport number, same nationality.

11 Q. Are you able to tell, based on this document, when
12 Mr. Ali requested to travel?

13 A. Yes, I'm able to tell that.

14 Q. When was that?

15 A. In the lower right-hand corner, the date of
16 September 4th, 2001, is indicated as the date of arrival in
17 the United States -- or I should say requested date of
18 arrival.

19 Q. And how long from September 4th did Mr. Ali request
20 to stay in the United States?

21 A. One week, until approximately September 11th.

22 Q. If approved, what would have been the last day that
23 he would have been authorized to be in the United States?

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1 A. According to this visa application, September 11th.

2 Q. Slide 13, please.

3 Do you recognize this document?

4 A. Yes. This is the same document that we just viewed,
5 except it's the reverse side.

6 Q. Okay. Slide 14, please. Again, there are two boxes
7 that highlight -- that highlight text and information or
8 material in red -- slide 15, please -- and calls out that
9 information.

10 What's contained in those boxes?

11 A. A signature and a photograph.

12 Q. Is that signature consistent with other materials
13 obtained during the course of the investigation?

14 A. Although I'm not a handwriting expert by any stretch,
15 it appears to me to be consistent.

16 Q. And whose photo appears in the other box?

17 A. It's a photo of Mr. Ali Abdul Aziz Ali.

18 Q. Slide 16, please.

19 Do you recognize this document?

20 A. Yes, I do.

21 Q. And how was this document obtained?

22 A. The FBI obtained this document from a bank in
23 Southern California.

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1 Q. Okay. Next slide, please. There are four boxes
2 highlighted in red here and called out on slide 18.

3 What's the significance of this information, Special
4 Agent Fitzgerald?

5 A. To go back to your previous question regarding this
6 document, up towards the top, it's not highlighted, but this
7 bank document is in the name of Adel Rafeea. That's the same
8 name I spoke of before, the recipient of the money transfer.

9 Going down to the red boxes, this shows that an
10 amount of \$4,980.50 was received from the Wall Street Exchange
11 Centre. That is less a \$19.50 fee. So in other words, \$5,000
12 came to the account. It was a \$19.50 fee, an amount of
13 \$4,980.50 was credited to the account, and then it states the
14 originator of the transfer by the name of Ali with a telephone
15 number ending in 5651, and the other information that I
16 mentioned, P.O. Box 16958, and under fax, the city of Dubai is
17 listed.

18 Q. Is it fair to describe this as a receiving-end
19 document?

20 A. Yes.

21 Q. And the documents we previously discussed, the
22 transfer document was a sending-end?

23 A. Yes, I would consider that a fair description.

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1 Q. Slide 19, please.

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. What is it?

5 A. It's a bank statement of Adel Rafeea?

6 Q. Slide 20, please. There's again information called
7 out or highlighted in the red box; it will be called out on
8 slide 21.

9 What's the significance of that information?

10 A. This shows that on April 18th, a wire transfer was
11 received in the amount of \$4,980.50, into the account of Adel
12 Rafeea.

13 Q. Next slide, please. Do you recognize that document?

14 A. Yes.

15 Q. It's the second page of that same bank statement?

16 A. Yes, it is.

17 Q. Slide 23, please. Again, there's information
18 highlighted in the red box, and it will be called out on
19 slide 24.

20 What's the significance of that information?

21 A. This shows that on the next day, April 19th, there
22 was a withdrawal made for the exact amount, \$4,980.50.

23 Q. Are you able to determine whether that withdrawal was

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1 in cash or via cashier's check or some other means based on
2 your investigation?

3 A. Based on the investigation, it was withdrawn in cash.

4 Q. Next slide, please.

5 Do you recognize that document?

6 A. Yes, I do.

7 Q. What is it?

8 A. It's a Bank of America bank document regarding Khalid
9 al Mihdhar.

10 Q. Slide 26, please. Again, there's text highlighted in
11 red in two boxes that will be called out in slide 27.

12 What's the significance of that information?

13 A. This identifies the name on the account, again Khalid
14 al Mihdhar, and it provides an identifying number for a visa
15 and a passport.

16 Q. This is the first time that you mentioned Khalid
17 al Mihdhar. What role did Khalid al Mihdhar play in the
18 attacks on the United States on September 11th, 2001, based
19 upon your investigation?

20 A. Based upon the investigation, Khalid al Mihdhar was a
21 hijacker aboard American Airlines Flight 77.

22 Q. Was that passport number contained in this document
23 significant to your investigation?

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1 A. The visa number in the passport was significant, yes.

2 Q. Slide 28, please.

3 Do you recognize this document?

4 A. Yes, I do.

5 Q. What is it?

6 A. It's a bank statement for Khalid al Mihdhar from
7 Bank of America.

8 Q. Slide 29, please. There's text contained in one red
9 box on slide 29 that's called out on slide 30.

10 What's the significance of that information?

11 A. This shows that on April 20th, 2000, the day after
12 Adel Rafeea withdrew and cashed \$4,980.50, the day after, an
13 amount of \$4,300 was deposited into the account of Khalid al
14 Mihdhar.

15 Q. Slide 32, please.

16 Do you recognize this document?

17 A. Yes.

18 Q. Slide -- what is it, first?

19 A. This document is a photocopy of the visa page from
20 the passport of Khalid al Mihdhar obtained later in the
21 investigation.

22 Q. And slide 33, please. Again there's information
23 highlighted in four red boxes, and that will be called out in

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1 slide 34.

2 What's the significance of that information?

3 A. This shows the name Khalid al Mihdhar with a date of
4 birth of 16 May 1975, and a visa control number -- or what I
5 would term a visa control number of 14436479.

6 This document is significant because it matches the
7 information on the Khalid al Mihdhar Bank of America account.
8 It allows me to know that the Khalid al Mihdhar who was a
9 hijacker is the same Khalid al Mihdhar who owned and was
10 responsible for the Bank of America account.

11 Q. You just testified about a collection of documents.
12 Based on your experience and the investigation, is it fair to
13 say that the evidence that we have just discussed represents a
14 wire transfer from Dubai, United Arab Emirates, by an
15 individual by the name of Ali to an account in the United
16 States held by a man named Adel Rafeea, followed by a
17 subsequent deposit in the account of Khalid al Mihdhar, one of
18 the hijackers?

19 LDC [MR. CONNELL]: Objection.

20 MJ [Col COHEN]: Basis?

21 LDC [MR. CONNELL]: Leading.

22 MJ [Col COHEN]: I'll overrule.

23 Q. Do you want me to continue the question or repeat it?

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1 A. I ----

2 Q. Why don't I repeat it.

3 A. Okay.

4 Q. You just testified about a collection of documents.

5 And based on your experience and investigation, is it fair to
6 say that the evidence that we have just discussed represents a
7 wire transfer from Dubai, UAE, by an individual by the name of
8 Ali to an account in the United States held by a man named
9 Adel Rafeea, followed by a subsequent deposit in the account
10 of Khalid al Mihdhar, one of the hijackers on American
11 Airlines Flight 77?

12 A. That's accurate.

13 Q. Based on your investigation, at the time of this
14 transfer, where was Khalid al Mihdhar?

15 A. He was in the area of San Diego.

16 Q. What was he doing?

17 A. Approximately April of 2000, living in the area of
18 San Diego. He and the person who was living with him, Nawaf
19 al Hazmi, also later a hijacker aboard American Airlines
20 Flight 77, took several introductory flight lessons at a local
21 flight school. When I say flight lessons, they didn't
22 actually enroll, but they went to a flight school and spoke to
23 people and took a flight.

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1 Q. Throughout the course of the investigation, were you
2 able to learn in what country Mr. Ali lived on 16 April 2000?

3 A. Yes.

4 Q. Where was that?

5 A. In the United Arab Emirates.

6 Q. Where this transfer initiated?

7 A. Yes.

8 Q. Were you able to learn where Mr. Ali was employed?

9 A. Yes.

10 Q. Where was that?

11 A. A business called the Modern Electronics Centre.

12 Q. Where was the Modern Electronics Centre in relation
13 to the Wall Street Exchange Centre?

14 A. It was in the Jebel Ali Free Zone, which is,
15 relatively speaking, a short distance from the Wall Street
16 Exchange Centre. I don't know precisely how far, but within
17 driving distance.

18 Q. Thank you, Special Agent Fitzgerald.

19 TC [MR. GROHARING]: I would now ask Staff Sergeant
20 Johnson, if you could just return to the home screen, and
21 click in the bottom on 5 August, 2000. Let the record reflect
22 that a red arrow has appeared on the screen.

23 Q. Special Agent Fitzgerald, what does that red arrow

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1 represent?

2 A. That represents a wire transfer from Dubai, UAE, to
3 the area of Venice, Florida.

4 Q. I note that we are not discussing these transactions
5 in chronological order.

6 A. That's correct.

7 Q. Why is that?

8 A. It's easier for me to explain the -- the money
9 transfers out of chronological order based upon the
10 similarities of different transfers.

11 Q. Please click on the \$9,500 tab in the upper left-hand
12 corner. Thank you.

13 Do you recognize that document?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's a money transfer from a person named Isam
17 Mansour, last named spelled M-A-N-S-O-U-R, to a person named
18 Marwan al Shehhi with an account ending in 9772.

19 Q. Based on your investigation, when is the information
20 contained on this form added to the form?

21 A. It was added to the form on -- I'm reading from the
22 date of the form -- August 5 of 2000, so it was handwritten
23 August 5th, 2000.

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1 Q. Is it fair to say that that's from the origination of
2 the transfer; that's where the information comes from?

3 A. That's correct.

4 Q. Slide 2, please. Again, there is information
5 highlighted in four red boxes, and it will be called out on
6 slide 3.

7 What is the significance of the information
8 highlighted in these boxes, Special Agent Fitzgerald?

9 A. This shows the sender, Isam Mansour, referencing or
10 using a post office box of 16958, sent a \$9,500 approximately
11 money transfer to Marwan al Shehhi from account 0573000 to
12 59772 at the SunTrust Bank.

13 Q. This is a little different than the previous
14 transaction we discussed. What type of transaction is this?

15 A. This is -- I will call it a bank-to-bank transfer,
16 meaning there's a wire transfer fee that is sent, and it's
17 sent from the institution of the U.A.E. Exchange Centre by fed
18 funds wire to the bank account of Marwan al Shehhi?

19 Q. So that bank account, the SunTrust Bank account
20 there, was that significant to your investigation?

21 A. Yes, it was.

22 Q. How so?

23 A. It's the joint account of Marwan al Shehhi and

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1 Mohamed Atta. Mohamed Atta, who was later determined to be a
2 hijacker aboard American Airlines Flight 11.

3 Q. What role did Marwan al Shehhi play in the attacks on
4 the United States September 11, 2001?

5 A. Marwan al Shehhi was a hijacker aboard United
6 Airlines 175 and likely the hijacker pilot when it crashed.

7 Q. And this document includes P.O. Box 16958. Is that
8 the P.O. Box you previously mentioned?

9 A. Yes, it is. It's the post office box that I stated
10 was on the bank account-opening documents of Mr. Ali Abdul
11 Aziz Ali when he opened his Dubai Islamic Bank account and his
12 Emirates Bank account.

13 Q. Throughout the course of the investigation, were you
14 able to determine whether certain banks required documentation
15 on these sending and of transfers, as far as documentation
16 from the person initiating the transfer?

17 A. Yes.

18 Q. What did you find?

19 A. The investigation found that the U.A.E. Exchange
20 Centre, if they did require identification, then they did not
21 record it.

22 Q. Okay. Are you aware of the results of any
23 fingerprint examination on this document?

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1 A. Yes.

2 Q. What were those results?

3 A. At least one latent fingerprint was developed on this
4 original document, which was matched to the known fingerprints
5 of the accused, Mr. Ali Abdul Aziz Ali.

6 Q. Slide 4, please.

7 Do you recognize this document?

8 A. If you could enlarge it, I could see it a little bit
9 easier.

10 Q. Blow it out, please. Whoa. Let the record reflect
11 that on slide 5 there were two red boxes highlighted, and
12 slide 6 actually calls out the text in those two red boxes.

13 By looking at that, Special Agent Fitzgerald, are you
14 able to determine what this document is?

15 A. Yes. It's a bank account statement of the account of
16 Marwan al Shehhi and Mohamed Atta.

17 Q. And what's the significance of the information that's
18 highlighted on the document?

19 A. This shows the receipt of a wire transfer on August
20 7th in the amount of \$9,485, an incoming fed wire.

21 Q. Based on your investigation, are you aware whether
22 there were any fees associated with that transfer?

23 A. Yes.

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1 Q. What were those?

2 A. There was a \$15 fee taken out, so the original amount
3 would have been \$9,500, less the \$15 fee, resulting in the
4 deposit that you see of \$9,485.

5 Q. Fair to say the sender would have to provide the
6 \$9,500 on the sending end, and then the recipient gets
7 9485 ----

8 A. Yeah, it's ----

9 Q. ---- bank gets ----

10 A. The money is deducted from the total wire, correct.

11 Q. Slide 7, please.

12 Do you recognize this document?

13 A. Yes.

14 Q. What is it?

15 A. This is an internal SunTrust Bank document showing
16 the wire details regarding the deposit into the account, the
17 transfer into the account of the wire amount.

18 Q. Slide 8, please. Again, there's text highlighted in
19 five red boxes, and that text will be called out on slide 9.

20 What's the significance of this information?

21 A. This shows an amount of \$9,485 was received into the
22 joint account of Marwan al Shehhi or Mohamed Atta residing at
23 516 Laurel Road in Nokomis, Florida. It lists the beneficiary

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1 and the beneficiary account, which is the same account number
2 that we saw on the original document in the name Marwan al
3 Shehhi, and this was originated by Isam Mansour from the
4 U.A.E. Exchange Centre.

5 Q. So is it fair to say that, based on your
6 investigation and expertise, the documents that we just
7 discussed established that on 5 August 2000, \$9500 was
8 transferred by an individual using the name Isam Mansour ----

9 LDC [MR. CONNELL]: Objection.

10 Q. ---- to Marwan al Shehhi ----

11 MJ [Col COHEN]: Get the question?

12 Q. ---- deposited directly into the account he held with
13 Mohamed Atta?

14 MJ [Col COHEN]: One second, sir.

15 Counsel.

16 LDC [MR. CONNELL]: Same leading objection, Your Honor, to
17 this summary.

18 MJ [Col COHEN]: I'll overrule.

19 You may answer the question.

20 A. Yes, I can confirm that an amount of \$9500, less a
21 \$15 wire transfer fee, was originated by a person using the
22 name Isam Mansour, M-A-N-S-O-U-R, to send -- and a post office
23 box of 16958, to send that amount to the joint account of

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1 Marwan al Shehhi and Mohamed Atta, who at that time were
2 currently residing in and around the area of Venice, Florida.

3 Q. And the receipt for this transaction -- or, I'm
4 sorry, the sending document for this transaction contained a
5 fingerprint from Mr. Ali?

6 A. That's correct.

7 Q. Throughout your investigation, were you able to
8 determine in what country Mr. Ali resided on 5 August 2000?

9 A. Yes.

10 Q. Where was that?

11 A. In the area of Dubai, United Arab Emirates.

12 Q. Still employed by Modern Electronics Centre?

13 A. To the best of my knowledge, yes.

14 Q. You mentioned that the account that received these
15 funds was held jointly by Marwan al Shehhi and Mohamed Atta.
16 What role did the investigation reveal that Mohamed Atta
17 played in the attacks on the United States on September 11th,
18 2001?

19 A. Atta was likely the leader of the hijackers within
20 the United States. He was a hijacker on board American
21 Airlines Flight 11 and likely the hijacker pilot.

22 Q. And what were Marwan al Shehhi and Mohamed Atta doing
23 related to the investigation -- related to the attacks when

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1 they were sent this money on 5 August 2000?

2 A. They were enrolled in a business called Huffman
3 Aviation taking flight lessons in the area of Venice, Florida.

4 Q. Return to the home screen, please. Please click on
5 the 18 July 2000 tab on the bottom of the screen. Let the
6 record reflect that a red arrow has again appeared on the
7 screen.

8 What's the significance of this arrow?

9 A. This shows a money transfer from Dubai to the area of
10 Venice, Florida.

11 Q. Please click on the \$10,000 tab on the upper
12 left-hand corner of the screen.

13 Do you recognize this document?

14 A. Yes, I do.

15 Q. What is this?

16 A. It's a receipt for a wire transfer from Isam
17 Mansur -- this name spelled M-A-N-S-U-R -- to the account of
18 Marwan al Shehhi.

19 Q. Slide 2, please. Information again is highlighted in
20 six red boxes, and it will be called out on slide 3.

21 Special Agent Fitzgerald, what's the significance of
22 this information?

23 A. This shows a name of Isam Mansur, again, slightly

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1 different from the previous transfer that I spoke about, using
2 or referencing a post office box of 16958, sending an
3 approximate \$10,000 wire transfer to the account of Marwan al
4 Shehhi, account number ending in 9772 at the SunTrust Bank.
5 And this was on July 18, 2000.

6 Q. Is that the same joint account held by Marwan al
7 Shehhi and Mohamed Atta that you previously discussed?

8 A. Yes, it is.

9 Q. And is that the same P.O. Box associated with Mr. Ali
10 that you previously discussed?

11 A. Yes, it is.

12 Q. Is the name Isam Mansour significant to your
13 investigation?

14 A. It's significant in that the name spelled similarly
15 was on the previous transaction that I just spoke of.

16 Q. Next slide, please.

17 Do you recognize this document?

18 A. Yes.

19 Q. What is this?

20 A. It's a SunTrust Bank statement for Marwan al Shehhi
21 or Mohamed Atta.

22 Q. Is that the same SunTrust Bank account that you
23 previously discussed?

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1 A. It's a different statement, but same bank, yes.

2 Q. Same bank?

3 A. Yes.

4 Q. Slide 5, please. Again there are four boxes
5 highlighted in red, and they will be called out on slide 6.

6 What's the significance of the information called out
7 in these boxes?

8 A. This shows the joint account of Marwan al Shehhi or
9 Mohamed Atta residing at 516 Laurel Road West in Nokomis,
10 Florida, with an account ending in 9772. That's the same
11 account number that I previously mentioned was written on the
12 original sending document that on July 19th of 2000, received
13 an incoming wire in the amount of \$9,985, and there was also a
14 fed wire fee of \$15 charged. So out of the original \$10,000
15 amount, a \$15 fee, leaving the net of \$9,985 being credited to
16 the account.

17 Q. Was that Laurel Road, Nokomis, Florida, address
18 significant to your investigation?

19 A. Yes.

20 Q. How so?

21 A. The investigation revealed that it was leased to
22 Marwan al Shehhi and Mohamed Atta.

23 Q. Next slide, please.

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1 Are you able to recognize that document?

2 A. Yes.

3 Q. What is it?

4 A. This is an internal SunTrust Bank document showing
5 the wiring instructions from their database similar to the
6 previous one I spoke of.

7 Q. Next slide, please. Again, there are four boxes
8 highlighted on slide 8, and they will be called out on
9 slide 9.

10 What's the significance of this information?

11 A. This shows the money transfer from Isam Mansur,
12 M-A-N-S-U-R, at the U.A.E. Exchange Centre being credited to
13 the beneficiary of Marwan al Shehhi, for the account ending in
14 9772.

15 Q. Next slide, please.

16 Do you recognize this document?

17 A. Yes.

18 Q. What is it?

19 A. It's a signature card from the SunTrust Bank for the
20 account of Marwan al Shehhi and Mohamed Atta.

21 Q. Next slide, please. Again, there are three boxes
22 highlighting text in red, and they'll be called out in
23 slide 12.

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1 What's the significance of this information?

2 A. This shows the bank account document from the
3 signature card for Atta and al Shehhi for the ownership of the
4 joint account.

5 Q. Next slide, please.

6 Do you recognize this document?

7 A. Yes.

8 Q. What is it?

9 A. It's one of the lease documents for 516 Laurel Road
10 in Nokomis, Florida.

11 Q. Next slide, please. There's information highlighted
12 in red in two boxes on slide 14 that will be called out on
13 slide 15.

14 What's the significance of that information?

15 A. This shows the lease transmittal information. It
16 lists the names Mohamed Atta and al Shehhi, Marwan, for the
17 address of 516 West Laurel Road. It states, Venice, Florida,
18 as opposed to Nokomis, Florida, that it has on some of the
19 previous finance documents that we've seen.

20 Q. And is there a difference between -- well, what is
21 the difference between Venice, Florida, and Nokomis, Florida?

22 A. Nokomis, Florida, as I understand it, is an
23 unincorporated part of Venice. It's in Venice, Florida.

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1 Q. Special Agent Fitzgerald, based on your
2 investigation, is it fair to say that the series of documents
3 that we discussed established that on 18 July, 2000, \$10,000
4 was wired from an individual in Dubai, UAE, using the name
5 Isam Mansour ----

6 LDC [MR. CONNELL]: Objection.

7 MJ [Col COHEN]: All right, carry on. I'll get the
8 question and then I'll hear the objection.

9 Q. ---- to a SunTrust Bank account jointly held by
10 Marwan al Shehhi and Mohamed Atta?

11 MJ [Col COHEN]: Before you answer, Counsel, basis?

12 LDC [MR. CONNELL]: Same summary. Leading objection, sir.

13 MJ [Col COHEN]: Okay. Overruled.

14 You may answer the question.

15 A. You asked in one comment I would make, it's the
16 \$10,000 less the fed wire fee for a net amount of \$9,985
17 credited to the account.

18 Q. Were you able to determine in what country Mr. Ali
19 was residing at the time of the transfer?

20 A. Yes.

21 Q. And was he also at that point employed by Modern
22 Electronics Centre?

23 A. To the best of the investigation, yes.

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1 Q. Where were Marwan al Shehhi and Mohamed Atta at the
2 time of the transfer?

3 A. They were in the area of Venice, Florida.

4 Q. Based on your investigation, what activities were, if
5 any, Mr. Marwan al Shehhi and Mohamed Atta participating in
6 related to the attacks on the United States on September 11th,
7 2001, at the time of this transfer?

8 A. They had just started flight training within the last
9 week or two of that time at Huffman Aviation in Venice,
10 Florida.

11 Q. And did your investigation ultimately reveal that
12 they both became pilot hijackers on September 11th, 2001?

13 A. Yes, they had both received flight training, were
14 both identified to be hijackers, and are believed to be at the
15 controls of those aircraft.

16 Q. Can you please return to the home screen. Can you
17 now click on the 29 June 2000 tab. Let the record reflect a
18 red arrow appears on the screen again.

19 Special Agent Fitzgerald, what's the significance of
20 that red arrow?

21 A. It shows a wire transfer from Dubai, UAE, to New York
22 City, New York.

23 Q. Could you please click on the \$5,000 tab in the upper

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1 left-hand corner.

2 Do you recognize that document?

3 A. Yes, I do.

4 Q. What is it?

5 A. It's a Western Union transfer receipt.

6 Q. So this, again, is a sending document?

7 A. Yes, it is.

8 Q. Slide 2, please. There's, in this case, seven boxes
9 highlighted in red on slide 2, and they will be called out on
10 slide 3.

11 Special Agent Fitzgerald, what's the significance of
12 this information?

13 A. This shows an individual named Isam Mansar -- this
14 name is spelled M-A-N-S-A-R -- from Dubai sending an amount of
15 \$5,000 to the credit or benefit of Marwan al Shehhi in
16 New York City, and it also lists on the right-hand side a
17 money transfer control number and shows an amount of cash
18 received, as stamped.

19 Q. Throughout the course of your investigation, were you
20 ever able to locate an individual by the name of Isam Mansar?

21 A. No one who matched this -- the circumstances around
22 this individual here or these money transfers.

23 [Alarm in courtroom went off.]

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1 MJ [Col COHEN]: Everyone, please take a moment and make
2 sure that no one coming and going has entered with a cell
3 phone or similar device.

4 [Pause.]

5 MJ [Col COHEN]: Go ahead, Counsel.

6 Q. Special Agent Fitzgerald, were you able to determine
7 whether identification was required for this transaction?

8 A. On the receiving end, yes.

9 Q. How about on the sending end?

10 A. I don't recall information on the -- receiving any
11 information on the sending end?

12 Q. Okay. Next slide, please.

13 Do you recognize this document?

14 A. Yes.

15 Q. What is this?

16 A. This is an internal Western Union document regarding
17 the transfer we just spoke of.

18 Q. Slide 5, please. Again, there is text highlighted in
19 five boxes, and that text will be called out on slide 6.

20 What's the significance of this information?

21 A. This confirms all of the information we saw on the
22 handwritten receipt, a person with the first name of Isam
23 sending a \$5,000 transfer to a person with the first name of

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1 Marwan. It shows the dollar amount and the money transfer
2 control number.

3 Q. Slide 7, please.

4 Do you recognize this document?

5 A. Yes, I do.

6 Q. What is it?

7 A. This is another internal Western Union document
8 identifying sender and receiver and additional information.

9 Q. Next slide, please. There's text again highlighted
10 in five boxes. That text will be called out on slide 9.

11 What's the significance of that information?

12 A. This shows that on June 29th of 2000, sender, Isam
13 Mansar -- last name spelled M-A-N-S-A-R -- sent to payee,
14 Marwan al Shehhi, an amount of \$5,000. The pickup location is
15 identified as New Work, New York, clearly a typographical
16 error, but that's what's represented here, and the name Marwan
17 al Shehhi. Further below, you see a red box, and there's a
18 2 with a slash, and then the letter A, Alpha, 0460773\ARAB.

19 Q. And is this a document that would have been obtained
20 from the receiving end of this transaction?

21 A. Correct.

22 Q. Was that information significant to your
23 investigation that you just -- about which you just spoke?

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1 A. Yes.

2 Q. How so?

3 A. That number, A0460773, was able to be matched to the
4 passport number of Marwan al Shehhi.

5 Q. Slide 10, please.

6 Do you recognize that document?

7 A. Yes.

8 Q. What is it?

9 A. This is a photocopy of the passport of Marwan al
10 Shehhi, and it shows the U.S. visa. This was collected not at
11 the time of this money transfer, but during the course of the
12 investigation.

13 Q. Slide 11, please. Two red boxes are highlighted,
14 they'll be called out on slide 12.

15 What's the significance of this information?

16 A. This shows that Marwan Yousef Mohamed R. Lekrab
17 al Shehhi, with passport number 0 -- correction, A, as in
18 Alpha, 0460773, is identical with the person later identified
19 as the hijacker aboard American -- correction, United Airlines
20 Flight 175. And that passport number also matches the
21 passport number of the person who received that Western Union
22 transfer. So investigatively, it allows me to positively
23 identify the receiver of that transfer.

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1 Q. So this transaction reflects someone in the UAE using
2 the name Isam Mansar transferring \$5,000 to Marwan al Shehhi?

3 A. Correct.

4 Q. And according to the investigation, did Mr. Ali still
5 reside in Dubai at the time of this transfer?

6 A. To the best of my knowledge, based upon the
7 investigation, yes.

8 Q. And was he employed at MEC?

9 A. Again, to the best of my knowledge, based upon the
10 investigation, yes.

11 MJ [Col COHEN]: Counsel, by MEC, you mean -- would you
12 please clarify that for us, please?

13 TC [MR. GROHARING]: Sorry, Your Honor.

14 MJ [Col COHEN]: You may use an acronym, but we need to
15 put in the record what the acronym reflects.

16 Q. Is MEC an acronym for Modern Electronics Centre?

17 A. Yes, it is.

18 MJ [Col COHEN]: Thank you, Counsel.

19 Q. And based on your investigation, where was Marwan al
20 Shehhi at the time of this transfer?

21 A. He was in New York City.

22 Q. And what, if anything, was Marwan al Shehhi doing
23 related to the attacks on the United States on September 11th,

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1 2001, when he received this money?

2 A. At this time he was in the area of New York City
3 taking English language lessons, and he and Mohamed Atta have
4 been identified at several different flight schools in the
5 area of both New York and New Jersey inquiring about flight
6 school information.

7 Q. Go back to the home screen, please. And could you
8 please click on the 17 September 2000 tab on the bottom of the
9 screen. Let the record reflect a red arrow has again appeared
10 on the screen.

11 What does that red arrow represent?

12 A. That represents a money transfer from Dubai to the
13 area of Venice, Florida.

14 Q. Would you please click on the \$70,000 tab on the
15 upper left-hand corner of the screen.

16 Do you recognize that document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's a U.A.E. Exchange Centre transfer document for a
20 transfer from Hani, parentheses, Fawaz Trading, to Marwan al
21 Shehhi.

22 Q. Slide 2, please. Again, there are six boxes in this
23 case highlighted on slide 2. They will be called out on

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1 slide 3.

2 What's the significance of this information?

3 A. This shows a person named Hani, H-A-N-I, parentheses,
4 Fawaz Trading -- and that's abbreviated T-R-D-N-G -- listing a
5 telephone number of 5845685, sent an amount of approximately
6 \$70,000, less a fee, to the account of Marwan al Shehhi,
7 account number ending in 9772, and referencing a telephone
8 number of 941-685-0468.

9 Q. Is that the same SunTrust account for Marwan al
10 Shehhi and Mohamed Atta that you -- about which you previously
11 testified?

12 A. Yes, it is.

13 Q. Was that telephone number significant to your
14 investigation?

15 A. Yes.

16 Q. And how so?

17 A. It was subscribed to by a person named Mohamed
18 Elsayed.

19 Q. Were you able to determine who Mohamed Elsayed was
20 during your investigation?

21 A. Yes.

22 Q. Who was that?

23 A. Mohamed -- investigative information indicates that

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1 Mohamed Elsayed was a name used by American Airlines hijacker
2 Mohamed Atta.

3 Q. There's another number in the middle of that
4 document, 5845685. What's the significance, if any, of that
5 information?

6 A. That same number was also found on another money
7 transfer.

8 Q. Do you know whether any fingerprints were obtained
9 from this document?

10 A. Yes, I know.

11 Q. Were there, in fact, fingerprints obtained from this
12 document?

13 A. Yes. At least one or more latent fingerprints was
14 developed on the original document.

15 Q. And do you know what the results of the forensic
16 examination of those fingerprints was?

17 A. Yes. There was at least one match from a latent
18 fingerprint developed on this original document to the known
19 fingerprints of the accused, Mr. Ali Abdul Aziz Ali.

20 Q. Slide 4, please.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. What is this?

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1 A. It's a bank statement for the account of Marwan al
2 Shehhi or Mohamed Atta.

3 Q. Next slide, please. Again, there's information
4 called out in three red boxes -- or, I'm sorry, highlighted in
5 three red boxes on slide 5 that will be called out on slide 6.

6 What's the significance of this information?

7 A. The top right-hand corner is the account number that
8 I mentioned previously several times, the account ending in
9 9772. It's the joint account of Marwan al Shehhi or Mohamed
10 Atta, residing at 516 Laurel Road, W, as in west, Nokomis,
11 Florida. This shows on September 18, an amount of \$69,985 was
12 credited to this account from an incoming fed wire.

13 Q. Slide 7, please.

14 Do you recognize this document?

15 A. Yes.

16 Q. What is it?

17 A. These are -- it's a SunTrust Bank internal document
18 memorializing the wiring instructions for this wire.

19 Q. Next slide, please. There are six boxes highlighting
20 text on slide 8 that will be called out in slide 9.

21 What's the significance of this information.

22 A. This shows an amount of \$69,985 was sent by Hani at
23 Fawar Trading -- again, the name is spelled slightly

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1 differently than the handwritten receipt -- that amount was
2 sent by Hani at Fawar Trading via the U.A.E. Exchange Centre
3 and credited to the account ending in 9772. That's the joint
4 account of Marwan al Shehhi or Mohamed Atta. And down below,
5 it lists the beneficiary as Marwan al Shehhi.

6 Q. Is it fair to say that, based on your investigation
7 and expertise, that the documents that we just discussed
8 establish that on 17 September 2000, \$70,000 was transferred
9 from Dubai, United Arab Emirates, by an individual using the
10 name Hani ----

11 LDC [MR. CONNELL]: Objection.

12 Q. ---- from Fawaz Trading to Marwan al Shehhi directly
13 into the account he held jointly with Mohamed Atta?

14 MJ [Col COHEN]: Before you answer the question,
15 objection?

16 LDC [MR. CONNELL]: Same objection, sir.

17 MJ [Col COHEN]: All right. Overruled.

18 You may answer the question.

19 A. Yes. Less the \$15 fed wire fee, yes.

20 Q. And the sending document for this particular
21 transaction obtained -- or contained the fingerprint matching
22 known prints of Mr. Ali, the accused seated here in this
23 courtroom?

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1 A. That's correct.

2 Q. Can you return to the home screen, please. Could you
3 please click on the 29 August 2000 tab. Let the record
4 reflect a red arrow has again appeared on the screen.

5 Special Agent Fitzgerald, what's the significance of
6 that arrow?

7 A. Shows a transfer, a money transfer from Dubai to the
8 area of Venice, Florida.

9 Q. Could you please click on the \$20,000 tab in the
10 upper left-hand corner of the screen.

11 Do you recognize that document?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's a transfer from a person named Mr. Ali to the
15 account of Marwan al Shehhi. It's in the \$20,000, less a wire
16 fee.

17 Q. Next slide, please. There are five red boxes
18 highlighting text on slide 2. That text will be called out on
19 slide 3.

20 What's the significance of this information?

21 A. This shows a name of Mr. Ali. It shows a different
22 P.O. Box than I've stated previously. This lists a P.O. Box
23 of 16385, again, which is different than the one I had been

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1 talking about before.

2 It also lists a telephone number of 5845685. That's
3 the same telephone number that was listed on the last transfer
4 that I spoke about, the \$70,000, approximately, transfer. And
5 this was to be credited -- this amount here, the \$20,000 less
6 a fee, was to be credited to the account of Marwan al Shehhi,
7 account number ending in 9772.

8 Q. And is that account number the same SunTrust Bank
9 account that you have discussed on a number of occasions?

10 A. Yes, it is.

11 Q. Next slide, please.

12 Do you recognize that document?

13 A. Yes, I do.

14 Q. What is it?

15 A. It's a SunTrust Bank account statement for the joint
16 account of Marwan al Shehhi and Mohamed Atta.

17 Q. Next slide, please. There's text highlighted in
18 three red boxes on slide 5, and that will be called out on
19 slide 6.

20 What's the significance of that information?

21 A. This represents the account number ending in 9772
22 that identifies the joint account of Marwan al Shehhi or
23 Mohamed Atta, and it reflects the net deposit of \$19,985 from

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1 an incoming fed wire on August 30th of 2000.

2 Q. Slide 7, please.

3 Do you recognize that document?

4 A. Yes.

5 Q. What is it?

6 A. This is an internal SunTrust Bank document reflecting
7 the wiring instructions that I just mentioned.

8 Q. Slide 8, please, is information highlighted in six
9 boxes on slide 8 that will be called out on slide 9.

10 What's the significance of this information?

11 A. This wire confirmation sheet shows an amount of
12 \$19,985 was credited to the joint account of Marwan al Shehhi
13 or Mohamed Atta, and it lists the sender as Mr. Ali, from the
14 U.A.E. Exchange Centre.

15 Q. Slide 10, please.

16 Do you recognize this document?

17 A. Yes.

18 Q. What is it?

19 A. It's a telephone subscriber record.

20 Q. Next slide, please. There are seven red boxes
21 containing text highlighted in red on slide 11 that will be
22 called out on slide 12.

23 Please, what's the significance of that information?

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1 A. This shows the telephone number 941-685-0468, which
2 is the same telephone number that we've seen referenced on
3 several of the wire transfers that I just spoke of. It is
4 subscribed to by a person named Mohamed Elsayed at 516 Laurel
5 Road in Nokomis, Florida.

6 Q. And based on your investigation, were you able to
7 determine who Mohamed Elsayed was?

8 A. Yes.

9 Q. Who was that?

10 A. 9/11 hijacker, Mohamed Atta.

11 Q. Slide 13, please.

12 Do you recognize that document?

13 A. Yes.

14 Q. What is it?

15 A. This is a photocopy of the passport of Mohamed Atta
16 obtained elsewhere in the investigation that shows Atta's full
17 name as Mohamed Mohamed el-Amir Awad Elsayed Atta.

18 Q. Is it fair to say that based on your investigation
19 and expertise that the documents that we just discussed
20 establish that on 29 August 2000, \$20,000 was transferred from
21 Dubai, UAE, by an individual using the name Mr. Ali to Marwan
22 al Shehhi, directly into the account he held jointly with
23 Mohamed Atta?

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1 MJ [Col COHEN]: Before you answer the question, Counsel,
2 same objection?

3 LDC [MR. CONNELL]: Yes, sir.

4 MJ [Col COHEN]: All right. Noted. Overruled.

5 You may answer the question.

6 A. Correct. Less the \$15 wire transfer fee.

7 Q. And what were -- were you able to determine during
8 the investigation what Marwan al Shehhi and Mohamed Atta were
9 doing around 29 August ----

10 A. Yes.

11 Q. ---- 2000?

12 What were they doing related to the 9/11 attacks?

13 A. They were still at Huffman Aviation taking flight
14 training lessons in the area of Venice, Florida.

15 Q. And where was Mr. Ali at the time of this transfer?

16 A. Based upon investigation, in the area of Dubai, UAE.

17 Q. Can you return to the home screen, please. Please
18 click on the menu button in the upper right-hand corner of the
19 screen, and within that menu please click on the Ali tab.

20 Special Agent Fitzgerald, what do you -- what do we
21 now see on that screen?

22 A. On this screen, there are documents on the left-hand
23 side from Dubai Islamic Bank, from a U.S. visa application,

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1 and from a 16 April 2000 money transfer, compared to on the
2 right-hand side are the -- five of the transactions that we
3 just spoke of, money transactions.

4 Q. Okay. In the bottom right-hand corner, do you see a
5 key?

6 A. Yes.

7 Q. What's the significance of the information in that
8 corner?

9 A. That key, when those boxes are highlighted, shows the
10 common threads between the documents on the left known to
11 belong to Mr. Ali Abdul Aziz Ali compared to the money
12 transfers on the right that we just spoke of.

13 TC [MR. GROHARING]: Okay. Staff Sergeant Johnson, would
14 you please click on the P.O. Box 16958 tab? Let the record
15 reflect that red boxes have appeared on four documents.

16 Q. Special Agent Fitzgerald ----

17 TC [MR. GROHARING]: And, Your Honor, I would ask that
18 when Special Agent Fitzgerald testifies, that Staff
19 Sergeant Johnson hover over the particular document about
20 which he's testifying, and then it will highlight the
21 particular text in question. As opposed to document in the
22 record, I would just do it ahead of time, if that's okay with
23 Your Honor.

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1 MJ [Col COHEN]: That will be fine. Just make sure, sir,
2 whenever you are doing that, make sure you explain which
3 documents you are referring to.

4 WIT: Yes, Your Honor.

5 MJ [Col COHEN]: Thank you.

6 WIT: Yes, sir. Looking first at account application in
7 the upper left-hand corner, the red box there.

8 MJ [Col COHEN]: That's the one that says Dubai Islamic
9 Bank?

10 WIT: Yes, Your Honor.

11 MJ [Col COHEN]: Thank you.

12 WIT: It states "Translation, 16958," and that is a post
13 office box associated with Mr. Ali Abdul Aziz Ali in the
14 account-opening documents for Dubai Islamic Bank. And that's
15 established by the document on the right which is a copy of
16 the passport that was provided when the account was opened.

17 Going down to the bottom left page under K3192,
18 16958, that is the P.O. Box number that was provided by
19 Mr. Ali for the 16 April 2000 transfer, and that is
20 established by the employment card to the left, which shows
21 Mr. Ali, a computer technician of Pakistani nationality, with
22 a passport number of E911562, which is corroborated again by
23 the passport that was recovered.

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1 So what it's saying is that P.O. Box 16958 is
2 associated with the ID, and the ID is positively associated
3 with the accused by virtue of the same passport number,
4 Pakistani passport E911562.

5 Going to the right side of the screen, under
6 August 5th, 2000, K3173. That money transfer referenced Post
7 Office Box 16958, again, the same post office box I was just
8 testifying to.

9 To the right on July 18 of 2000, another money
10 transfer, one of the transfers I just spoke about, also
11 referencing Post Office Box 16958.

12 Q. Could you please click on the next tab, the Isam
13 Mansour tab on the bottom right corner. Let the record
14 reflect four -- or three boxes have been highlighted in orange
15 on the right side of the document.

16 Special Agent Fitzgerald could you please describe
17 the significance of that information?

18 A. I'm going up to August 5th, 2000, K3173, the name
19 Isam Mansour, last name spelled M-A-N-S-O-U-R, was used in a
20 money transfer to Marwan al Shehhi. On this particular
21 transfer, as I testified to previously, at least one latent
22 fingerprint was developed, which was compared and matched to
23 the accused, Mr. Ali Abdul Aziz Ali.

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1 Going to the right, to July 18th, 2000, this name is
2 slightly different. The name is Isam Mansur; I spell
3 M-A-N-S-U-R. So the similarity that I'm trying to describe
4 here is the similarity in first name and similarity in last
5 name.

6 Going down to the June 29 of 2000, the name is listed
7 as Isam Mansar; again, same first name, the last name is
8 spelled slightly different, M-A-N-S-A-R.

9 Q. Thank you.

10 Could you please again go to the bottom right-hand
11 corner and click on the 5845684/5685 tab. Let the record
12 reflect that information has been highlighted in yellow boxes
13 on three of the documents on the right side of the exhibit.

14 A. Yes. Going first to the transaction K3170, dated
15 September 17th, 2000. On that money transfer that was from
16 Hani to Marwan al Shehhi, a telephone number of 5845685 was
17 listed. I also testified previously that a latent
18 fingerprint -- at least one latent fingerprint was developed
19 from this original document and compared and matched to the
20 known fingerprints of the, accused Mr. Ali Abdul Aziz Ali.

21 Going down to August 29th of 2000, number K3172, that
22 same telephone number is referenced, 5845685.

23 Finally, going up to August 5th of 2000, a similar

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1 telephone number -- it's off by one digit -- is listed on the
2 money transfer, and that number is 5845684.

3 TC [MR. GROHARING]: Staff Sergeant Johnson, could you
4 please now click on the Ali tab in the bottom right-hand
5 corner.

6 Q. Let the record reflect that green boxes have appeared
7 highlighting text on -- text or information on six documents
8 in the exhibit.

9 A. Yes. Going to the account application, green box, in
10 the Dubai Islamic Bank, the translation of the name when the
11 account was opened was translated as Ali Abdul Aziz Ali. And
12 this is identified as being associated with or belonging to
13 the accused, Mr. Ali Abdul Aziz Ali, by virtue of, at least in
14 part, the same Pakistani passport number, E911562.

15 Going down to the U.S. visa application, page 1, you
16 see the name Ali Abdul Aziz Ali. Again, that name, the
17 passport number, and the photograph are all identifiable with
18 the accused, Ali Abdul Aziz Ali.

19 Going down to document 3194, the top green box, the
20 accused here -- this particular ID card has been associated
21 with the accused, Mr. Ali Abdul Aziz Ali, by virtue of the
22 name, Mr. Ali; the nationality, which is listed as Pakistan;
23 and the passport number, reflected as E911562.

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1 Finally, going down to K3192, that wire transmittal
2 document reflects the name Ali. And then going to the right,
3 to the green box on August 29th of 2000, that reflects a
4 person using the name Mr. Ali sending a wire transfer to
5 Marwan al Shehhi.

6 TC [MR. GROHARING]: All right. Staff Sergeant Johnson,
7 would you please now click on the Marwan al Shehhi on the
8 bottom right corner.

9 Q. Let the record reflect that information has been
10 highlighted in blue boxes on five documents on the right-hand
11 part of the exhibit.

12 A. Going first to August 5 of 2000, that shows the
13 beneficiary of that wire transfer as Marwan al Shehhi.

14 Moving to the right for July 18th, it shows the
15 beneficiary as Marwan al Shehhi.

16 Going down to September 17th of 2000, it shows the
17 beneficiary as Marwan al Shehhi.

18 Going to the left for June 29th of 2000, it shows the
19 beneficiary as Marwan al Shehhi.

20 And finally, going down to August 29th of 2000, this
21 shows the beneficiary as Marwan al Shehhi.

22 TC [MR. GROHARING]: Staff Sergeant Johnson, would you
23 please click on the final tab, the 0506745651 tab. Let the

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1 record reflect that information has been highlighted in two
2 boxes on the exhibit.

3 Q. Special Agent Fitzgerald, what's the significance of
4 that information?

5 A. Going first to the account application form under
6 Dubai Islamic Bank, written in Arabic is a telephone number
7 that, when translated, translates to 0506745651. And again,
8 this account application is associated with the accused
9 through the copy of the passport with the photograph and the
10 passport number matching.

11 Going down to the bottom, K3192, it shows that this
12 same telephone number, 0506745651, was listed on the
13 April 16th, 2000 money transfer from Ali to Adel Rafeea.

14 Q. In addition to all of the information that you've
15 highlighted and discussed on the screen, is there any other --
16 anything else that allowed you to connect Mr. Ali to these
17 transfers?

18 A. As I previously testified to, the fingerprints on the
19 September 17th, 2000 transfer and the fingerprints on the
20 August 5, 2000 transfer.

21 Q. Thank you.

22 TC [MR. GROHARING]: Your Honor, I note we have been going
23 for a while. I don't know if it's an opportune time to take a

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1 comfort break. I do need to change the presentation to the
2 podium for the remainder of the presentation.

3 MJ [Col COHEN]: Okay. That will be fine. Yeah, let's go
4 ahead and take a 15-minute comfort break.

5 [The R.M.C. 803 session recessed at 1126, 16 September 2019.]

6 [The R.M.C. 803 session was called to order at 1142,
7 16 September 2019.]

8 MJ [Col COHEN]: Commission is called to order.

9 Parties are present for -- accused are present in the
10 courtroom who were previously present. All learned counsel
11 are present. All right.

12 I advised -- in case it didn't get picked up on the
13 record, I advised the witness, consistent with my earlier
14 ruling under M.R.E. 615, that he could go up -- get up and use
15 the restroom, but he was not to have a substantive discussion
16 about his testimony with the parties during the recess.

17 Counsel, your witness.

18 TC [MR. GROHARING]: Thank you, Your Honor. I would ask
19 permission for the courtroom feed to the podium now.

20 MJ [Col COHEN]: You may.

21 TC [MR. GROHARING]: I do note for the record that I'm now
22 running this from the podium, Your Honor. We had some
23 technical difficulties, it would normally be Staff Sergeant

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1 Johnson, my extraordinary paralegal, who is much better at the
2 system than I am. I hope it won't be necessary for him to
3 come. He's given me great PME. Any mistakes in the
4 presentation will be mine as opposed to Staff
5 Sergeant Johnson's, but I will do my best.

6 MJ [Col COHEN]: All right. No problem. All right.
7 Thank you.

8 **DIRECT EXAMINATION CONTINUED**

9 **Questions by the Trial Counsel [MR. GROHARING]:**

10 Q. Special Agent Fitzgerald, do you recognize the
11 document you see on the screen?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's the reverse side of an application for a U.S.
15 visa, by Ali Abdul Aziz Ali.

16 Q. Judge, and I just note that this document is AE 628AA
17 Attachment PPP?

18 MJ [Col COHEN]: Okay.

19 Q. Let record reflect that I have called out a box on
20 the document.

21 Special Agent Fitzgerald, what's the significance of
22 the information contained in that box?

23 A. That's a number that is -- I'll use the term

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1 "applied" to the evidence item by the FBI Lab.

2 Q. You mentioned the FBI Lab. During your testimony,
3 you mentioned prints were obtained from Mr. Ali's visa
4 application, this application.

5 Although a fingerprint examiner will testify
6 regarding the examination of those prints, can you just
7 explain briefly for the military judge the process that an
8 agent would go through to get -- to request to have prints
9 examined?

10 A. Yes, I'll describe the typical process. When an
11 evidence item is seized, it is brought to typically the FBI
12 Field Office to an evidence control unit or an evidence
13 control room where it's logged in. The agent turns custody of
14 the evidence item over to the evidence technician. The
15 evidence technician at that time will go into the system and
16 electronically assign a 1B number, like I previously
17 explained.

18 MJ [Col COHEN]: And you're referencing the folder that
19 you previously -- we talked about?

20 WIT: Correct. Yes, sir.

21 LDC [MR. RUIZ]: Judge, just for your information, I can't
22 hear when you are speaking up there. I'm not sure if your mic
23 is not picking up, but it's been happening for a while. Just

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1 letting you know.

2 MJ [Col COHEN]: Okay.

3 LDC [MR. RUIZ]: Thank you.

4 MJ [Col COHEN]: I will move it closer to me. I think
5 that's probably what the problem is. I think we've realized
6 these are much more directional than we thought.

7 Yeah, I was saying that he would hold up the folder
8 that he previously talked about, which is the 1B, and he
9 confirmed that that was the case.

10 Carry on, sir.

11 WIT: Yes, Your Honor.

12 So I was stating in typical -- the way things often
13 happen is, you seize an item, you take it to a field office to
14 an evidence control room, turn it over to an evidence control
15 technician. They log it in, they apply a 1B number to that
16 for tracking purposes.

17 Then if later on if I wanted to send that item
18 someplace such as the FBI Lab, I would write an internal
19 communication to the evidence control unit and ask them to
20 transfer that item, in my case, typically from New York, down
21 to the FBI Lab for processing.

22 And within that internal document, I would typically
23 describe the test that I was looking for. So if it was a gun

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1 that was seized, I might request toolmarks to look at the gun
2 and people to evaluate the firing pin, that sort of thing. In
3 the case of a document, typically, it's going to go to the
4 Questioned Documents Unit and the Latent Fingerprint Unit.

5 I use the term "typically" because there have been
6 instances where, especially in a case of life and safety, if
7 an item is obtained, it may be driven or flown directly to the
8 FBI Lab before a 1B number is assigned, and that's -- that
9 would be on a case-by-case basis.

10 MJ [Col COHEN]: Thank you, sir.

11 Q. Special Agent Fitzgerald, do you recognize this
12 document?

13 A. Yes, I do.

14 Q. All right. What is this document?

15 A. This is a money transfer that I previously testified
16 and spoke about from Isam Mansour, M-A-N-S-O-U-R, to Marwan al
17 Shehhi dated August 5th of 2000.

18 Q. And when you testified before, the document didn't
19 have a ruler on the bottom of the document, and now it does.
20 What's the significance of that ruler?

21 A. The significance of the ruler and the K number on the
22 piece of paper with it shows to me that this is a laboratory
23 photograph, something that would have been taken

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1 contemporaneous with submission to the lab.

2 Q. Let the record reflect that I've again called out a
3 box of text.

4 What do you see on the screen?

5 A. A laboratory number, K3173.

6 Q. Is that the K number assigned by the FBI Laboratory?

7 A. To this specific piece of paper, yes.

8 Q. Do you recognize this document?

9 A. Yes, I do.

10 Q. What is this?

11 A. This is a transfer from Hani at Fawaz Trading to the
12 account of Marwan al Shehhi in the amount of approximately
13 \$70,000. This transfer was on September 17th of 2000.

14 Q. I just note for the record this is 628AA
15 Attachment VVV.

16 This is a transfer about which you've previously
17 testified?

18 A. Yes, it is.

19 MJ [Col COHEN]: Counsel, will you move your microphone
20 like I did just a little bit to the left. It will catch when
21 you are leaning over. Yes, you're right, I'm sorry, my left,
22 your right. Thank you.

23 Q. Let the record reflect that I've again called out

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1 text from the document.

2 What's the significance of that text?

3 A. That identifies this particular piece of paper, the
4 \$70,000 receipt, I will term it, has lab number K3170.

5 Q. And again, does that represent a number applied by
6 the FBI Lab?

7 A. Yes.

8 Q. Thank you.

9 Let the record reflect I've displayed AE 628AA
10 Attachment BBBB.

11 Special Agent Fitzgerald, do you recognize this
12 document?

13 A. I do recognize this item, yes.

14 Q. What is it?

15 A. It's a box for a videotape, specifically a CityBird
16 Boeing 767-300 video.

17 Q. And where was this video recovered?

18 A. It was recovered overseas in Pakistan.

19 Q. Was this video significant to your investigation?

20 A. A like video was, yes.

21 Q. Did your investigation reveal any connection between
22 Mr. Ali and a CityBird video?

23 A. Yes, it revealed an investigative connection between

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1 Mr. Ali and an identical video. So I'm not stating this box
2 necessarily, but I'm saying the same style video.

3 Q. Okay. Do you recognize this document?

4 A. Yes, I do.

5 Q. For the record, it's AE 628AA Attachment 000.

6 What is it, Special Agent Fitzgerald?

7 A. This is a document received from a business in the
8 United States named Just Planes Videos. On the top it
9 provides order information, and on the bottom it provides a
10 credit card receipt.

11 Q. I have called out the top half portion of that
12 document. What is the significance of the information that
13 has been called out on this document?

14 A. The significance is the person who ordered this is a
15 person named Ali, last name A., address is P.O. Box 16958,
16 Dubai, United Arab Emirates, referencing an e-mail of
17 ali77@coolmail.net. The method of payment was a credit card
18 ending in 1102. That P.O. box that I stated is the same
19 P.O. box that I have previously associated with the accused,
20 Mr. Ali Abdul Aziz Ali, through Dubai bank account-opening
21 documents as well as other documents.

22 Q. Was that e-mail address also significant to your
23 investigation?

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1 A. Yes, it was.

2 Q. How so?

3 A. Subscriber information was obtained from a business
4 in the United States after the attacks of September 11th. The
5 subscriber information regarding ali77@coolmail.net is
6 consistent in general terms with the information that I
7 investigatively know about the accused, Mr. Ali Abdul Aziz
8 Ali.

9 Q. And was that credit card number significant to the
10 investigation?

11 A. Yes, it was.

12 Q. How so?

13 A. That credit card number, and I'll read it, it's
14 4483-5620-1000-1102, is a credit card that investigatively is
15 associated with Marwan al Shehhi.

16 Q. Same Marwan al Shehhi about whom you've previously
17 testified?

18 A. That's correct.

19 Q. I've now called out the bottom half of AE 628AA 000.
20 Do you recognize the information on that document?

21 A. Yes, I do.

22 Q. What's the significance of the information on that
23 document?

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1 A. The significance of this document, again, it's a
2 receipt obtained from Just Planes Videos in the United States.
3 It shows that on January 3rd of 2000, a customer recorded by
4 the name of M.A. Lekrab, account number -- the same account
5 number I just mentioned before ending in 1102, a Visa number,
6 paid for the purchase of the video that was ordered, a flight
7 deck video.

8 Q. Let the record reflect -- let the record reflect I've
9 now pulled up AE 628AA Attachment CCCC. Do you recognize this
10 document?

11 A. Yes, I do.

12 Q. What is it?

13 A. This is a completely different business record. This
14 is a car rental document form that was obtained by
15 investigation after September 11th.

16 Q. I've called out information from that document and
17 displayed it. What's the significance of that
18 investigation to -- that information to your investigation?

19 A. This shows that the person who rented the car, the
20 person's name was Marwan Yousef al Shehhi, an address of 192
21 12th Street in Brooklyn, New York, a date of birth of May 9th,
22 1978, with a telephone number of 646-479-0432.

23 Looking further down, it says, "Employer Address,

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1 TUHH." And then below, it has an authorized additional driver
2 by the name of Mohamed Atta with the number 0003531. That
3 specific number, 0003531, can be identified with an Egyptian
4 driver's license -- international driver's license in the name
5 of Mohamed Atta.

6 Going back up to the name that I just mentioned,
7 Marwan Yousef al Shehhi, I described a date of birth of
8 May 9th, 1978. That is consistent with the date of birth of
9 hijacker Marwan al Shehhi, whom I previously identified.

10 Further, looking to the right, telephone number
11 646-479-0432, the subscriber information was obtained for that
12 telephone number, and the person who subscribed to that
13 telephone was Mohamed Atta.

14 Q. Let the record reflect I've pulled up AE 628AA
15 Attachment CCCC, page 2. Is this the receipt that you
16 previously mentioned?

17 A. This is a separate receipt. So this receipt is
18 associated with that Ramp Motors vehicle rental. I don't know
19 if you have a callout or if I can continue.

20 Q. Let the record reflect that I've called out
21 information from the receipt. What's the significance of this
22 information?

23 A. The significance of this information is this receipt

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1 is associated with the car rental that I just mentioned. The
2 true name of Marwan Yousef al Shehhi, matching with his date
3 of birth, and also the name of Mohamed Atta and the Egyptian
4 international driver's license number that I mentioned, and
5 also the telephone number. So I can say with good authority
6 that the rental car receipt that is associated with this is
7 identifiable with hijackers Marwan al Shehhi and Mohamed Atta.

8 Further, looking at this receipt, although it is a
9 poor copy of it right now, the same credit card that I
10 referenced in the Just Planes Video purchase is reflected
11 here, that same credit card ending in 1102. Again, this is a
12 poor copy, but I have verified with the seizing agent and with
13 the documentation that it is the same credit card. Further,
14 the name listed is Marwan al Shehhi Lekrab when this credit
15 card impression was taken.

16 And if you recall, for the purchase of the Just
17 Planes Videos 767 video -- it listed the purchaser, again the
18 credit card ending in 1102, and it identified the purchaser as
19 M.A. Lekrab, again corroborating the information in this
20 receipt.

21 Q. Thank you. Clear the screen, please.

22 At some point, did you learn that Mr. Ali and the
23 other accused had been captured and were being detained by the

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1 CIA?

2 A. Yes.

3 Q. When was that?

4 A. In general terms, sometime after their capture. I
5 think it varied with each individual capture.

6 Q. At that point, were you working as a case agent on
7 the United States v. Moussaoui case?

8 A. In 2003, yes, I was.

9 Q. What impact did the captures of the accused have on
10 the Moussaoui case?

11 A. It was significant because several of the
12 individuals, it was deemed by the court at that time, likely
13 had information that was relevant to the prosecution of
14 Moussaoui. So there was a long process that occurred that
15 attempted to determine how substitute testimony for more than
16 one of the high-value detainees, more than one of the
17 individuals captured during the course of 2002 and 2003, how
18 their testimony could be relevant and used in the prosecution
19 of Moussaoui.

20 Q. Is it fair to say that Mr. Ali was of interest to the
21 FBI, based on the investigation conducted prior to his
22 capture?

23 A. Yes.

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1 Q. During your work on the PENTTBOM investigation or the
2 Moussaoui case or otherwise, what access did you have to CIA
3 materials?

4 A. Initially, I had access to statements from Ramzi
5 Binalshibh through the FBI system of records. Thereafter, my
6 access to statements made by the accused would have been
7 sporadic, but I would have had access through colleagues and
8 coworkers.

9 Q. Okay. Specifically, do you recall obtaining access
10 to statements made by Mr. Ali while he was in CIA custody
11 during that time frame?

12 A. I don't recall like getting a specific access
13 regarding Mr. Ali of a CIA database circa 2003. Again, my
14 expectation and best recollection is I would have had some of
15 those -- at least some of those statements available to me and
16 likely read some of those statements at that time, but I
17 don't -- I don't know that -- if I'm answering the question
18 correctly, that I had formal access to a CIA system of records
19 at that time.

20 Q. And did the -- what did the FBI want to learn from
21 Mr. Ali?

22 A. Most importantly at that time, the FBI wanted to
23 learn anyone associated with him based on perceived threats to

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1 life and safety at that time.

2 Q. Why would the FBI want to learn that information?

3 A. Based on the information that I've already testified
4 to, the investigation certainly indicated based upon those
5 money transfers that Mr. Ali was likely -- very likely
6 associated with the funding of the hijackers. And based upon
7 that, anyone who was connected to him would be of an interest
8 to the FBI and the entire intelligence community.

9 Q. What role, if any, did that play into the actual
10 investigation of Mr. Ali?

11 A. Can you be more specific?

12 Q. Did that information that the FBI was seeking to
13 learn from the CIA -- what role, if any, did that play into
14 the investigation of Mr. Ali?

15 A. I'm sure there was a back-and-forth between the FBI
16 and the CIA circa 2003. I'm sure that there were cables
17 exchanged. I know that I have sent cables back circa that
18 time frame to the CIA, so I'm sure that there was an exchange
19 of information. And it would be -- the purpose would be to
20 identify additional co-conspirators or threats.

21 Q. Are you familiar with the evidence that the
22 prosecution intends to present in this case to establish
23 Mr. Ali's involvement in the September 11th, 2001 attacks?

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1 A. Yes.

2 Q. Are you aware of any information from CIA
3 interrogations of Mr. Ali that helped the FBI obtain evidence
4 that will be used in the prosecution of Mr. Ali?

5 A. No.

6 Q. Did you ever have the opportunity to interview
7 Mr. Ali?

8 A. Yes.

9 Q. How were you selected to interview Mr. Ali?

10 A. I had knowledge of the 9/11 investigation based upon
11 my participation in the prosecution of Zacarias Moussaoui, so
12 I knew specifically of the actions of the hijackers within the
13 United States and I also had good knowledge of at least some
14 of the co-conspirators at that time.

15 Q. What involvement, if any, did the CIA have in that
16 process?

17 A. To the best of my knowledge, they had no involvement
18 in selecting me.

19 Q. How did you go about preparing for that interview?

20 A. I went through the FBI system of records trying to
21 identify items that I thought Mr. Ali would have been
22 associated with or related to, things that I could
23 investigatively ask him about, things such as the bank

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1 documents that I spoke of.

2 Q. Okay. What role, if any, did the CIA have in your
3 preparation for the Ali interview?

4 A. The CIA did not prepare me at all.

5 Q. Did the CIA ultimately review documents that you
6 intended to show Mr. Ali?

7 A. Yes.

8 Q. And what was the purpose of that review, as you
9 understood it?

10 A. As I understood it, the purpose of that review was
11 for them to review the documents for intelligence equities, to
12 make sure that they wouldn't compromise any classified
13 information.

14 TC [MR. GROHARING]: Your Honor, may I approach?

15 MJ [Col COHEN]: You may.

16 TC [MR. GROHARING]: Let the record reflect that I've
17 handed the witness AE 628 Attachment E. It's also
18 AE 628B (Gov) Attachment F.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. What is it?

22 A. It's a letterhead memorandum reflecting the results
23 of my interview/interrogation of Ali Abdul Aziz Ali in January

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1 of 2000.

2 Q. Is a letterhead memorandum sometimes referred to as
3 an LHM for short?

4 A. Yes.

5 Q. Does that document clearly and accurately represent
6 what Mr. Ali said to you during the interview?

7 A. Yes, to the best of my ability.

8 Q. Are you aware of any mistakes contained in the LHM?

9 A. Yes, I am.

10 Q. What are those?

11 A. There were two photographs marked H10 and H11,
12 depicting Bashir Bin Lap and Mohamed Farik Bin Amin, and I've
13 flipped those names.

14 Q. Are you otherwise aware of any other mistakes in the
15 document?

16 A. I am not.

17 Q. Is it common for the FBI to document interviews on an
18 LHM?

19 A. Not typically.

20 Q. Why was it done in this instance?

21 A. There were two reasons that I know of. One was
22 classification. At that time typically, FBI interviews would
23 be memorialized on an FD-302, and for this specific

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1 interrogation it was presumed that the detainee would provide
2 Top Secret information, which administratively could not be
3 contained on an FD-302, so at the time a document was needed
4 that could be classified up to TS level.

5 Additionally at that time, the FBI typically
6 disseminated information outside of the FBI via a letterhead
7 memorandum. So the choice of an LHM, or letterhead
8 memorandum, was looked to be something that would allow
9 appropriate classification, and also ease dissemination.

10 Q. How long after the interview was the LHM prepared?

11 A. Immediately after. I began writing it after the
12 first day of interrogation.

13 Q. Did you personally type up the LHM?

14 A. Yes.

15 Q. Was anyone else with you when the LHM was drafted?

16 A. Yes.

17 Q. Who was with you?

18 A. Special Agent Abigail Perkins and Special
19 Agent Stephen McClain.

20 Q. What role, if any, did they play in drafting the LHM?

21 A. While I drafted the LHM, I may have asked clarifying
22 questions of them at the time.

23 Q. How clear was your memory of the interview when you

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1 drafted the LHM?

2 A. It was very clear.

3 Q. How long is the document?

4 A. It's approximately 45 pages.

5 Q. And does it have attachments?

6 A. Yes, it does.

7 Q. Approximately how many attachments?

8 A. Approximately 137 pages of documents and another
9 64-odd pages of photographs.

10 Q. And are those the attachments that you showed Mr. Ali
11 during your January 2007 interviews?

12 A. Yes.

13 Q. Before getting into the substance of what you and
14 Mr. Ali discussed, I would like to ask you about how the FBI
15 obtained the materials that you ultimately showed Mr. Ali.

16 Does the FBI maintain records to establish when it
17 came into possession of materials related to an investigation?

18 A. Yes.

19 Q. What are those records called?

20 A. For an item needing a chain of custody, we would
21 maintain a chain of custody document showing when that
22 particular item was seized. There might be other business
23 records, say, flight records or something like that, that

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1 would -- the way that they were obtained was probably via
2 subpoena, so then there would be an FD-302 or report of
3 investigation memorializing when they were obtained.

4 Q. In anticipation of your testimony today, did I ask
5 you to review those records in order to determine when the FBI
6 identified the materials or the information contained in the
7 materials that you showed Mr. Ali?

8 A. Yes.

9 Q. All right. Did you, in fact, do that?

10 A. Yes.

11 Q. Were you able to determine when the FBI became aware
12 of that -- the information in those materials about which
13 Mr. Ali was ultimately asked during your interview?

14 A. Yes.

15 Q. Were any of the materials shown to Mr. Ali during
16 your interviews identified by the FBI after 30 April 2003?

17 A. No.

18 Q. You mentioned photos that were attached?

19 A. Yes.

20 Q. Did you obtain any of the photos after April --
21 30 April 2003?

22 A. Yes. So photos, I have been trying to put together
23 photos that were -- that I thought might be relevant to show

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1 Mr. Ali. In some cases, I would go to the Internet to obtain
2 the photos. The person like -- for instance, in the case of
3 the hijackers or alleged co-conspirators, the persons were
4 known, but I in several cases went onto the Internet to get
5 photos of some people.

6 Q. And is it fair to say that when preparing for
7 Mr. Ali's interview, you intentionally avoided showing Mr. Ali
8 any materials that the FBI became aware of prior or after his
9 capture?

10 A. Yes.

11 TC [MR. GROHARING]: Could I have the courtroom, again,
12 please?

13 MJ [Col COHEN]: You may.

14 Q. Let the record reflect I'm displaying AE 628AA
15 Attachment DDDD.

16 Special Agent Fitzgerald, do you recognize this
17 document?

18 A. Yes, I do.

19 Q. Is this the same document that we discussed a while
20 ago?

21 A. Yes, it is.

22 Q. Were you able to determine when the FBI obtained that
23 document?

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1 A. Yes, I was.

2 Q. Again, do you recognize this document?

3 A. Yes, I do.

4 Q. And what is this?

5 A. It's a chain of custody for that image you just
6 showed.

7 TC [MR. GROHARING]: And for the record, this is AE 628AA
8 Attachment EEEE.

9 MJ [Col COHEN]: Thank you.

10 TC [MR. GROHARING]: Let the record reflect that I've
11 called out certain text from the document.

12 MJ [Col COHEN]: Thank you.

13 Q. What's the significance of that information?

14 A. This shows that that item was entered into
15 evidence -- collected as the reason is listed here, on
16 April 6, 2002. Again, I will note, as I noted previously,
17 this is one that the item was actually presented to the
18 evidence technician.

19 Q. Okay. Cut the feed, please.

20 Did you conduct a similar type of review for every
21 document that you showed Mr. Ali?

22 A. Yes. All of the business records that I just
23 mentioned, yes.

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1 Q. Okay. And what were the results of that review?

2 A. All of those items were identified or obtained prior
3 to the arrest of Mr. Ali.

4 Q. Prior to interviewing Mr. Ali, do you recall
5 receiving guidance from the FBI Office of General Counsel in
6 January 2007?

7 A. Yes.

8 Q. Did this guidance apply to all of the FBI agents who
9 were interviewing high-value detainees in 2007?

10 A. Yes.

11 Q. And to your knowledge, were all of these high-value
12 detainees to be interviewed at Guantanamo Bay in early 2007
13 previously in the custody of the CIA?

14 A. Yes.

15 TC [MR. GROHARING]: Could I have the feed again, please?

16 MJ [Col COHEN]: You may.

17 TC [MR. GROHARING]: I apologize in advance for the poor
18 quality of this document, but it is able to be read once we
19 perform the callouts that we'll perform with Special
20 Agent Fitzgerald.

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

22 Q. Are you able to recognize this document, Special
23 Agent Fitzgerald?

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1 A. Yes.

2 Q. What is it?

3 A. It's an OGC memorandum regarding conduct of
4 interviews and interrogations of high-value detainees.

5 Q. And for the record, it's AE 628AA Attachment C.

6 How many pages is this document?

7 A. Approximately six pages.

8 Q. Was this guidance followed up with any briefing?

9 A. Yes, it was.

10 Q. What was your impression as to why you were given
11 this formalized guidance?

12 A. Because it was different than other FBI interviews or
13 interrogations I had been involved in.

14 Q. Did you, in fact, follow that guidance?

15 A. Yes.

16 Q. I'm going to ask you some specific questions about
17 the guidance and your understanding of it.

18 Could you please read the text that's been called
19 out?

20 A. It states, "1. Persons who will conduct the
21 interviews. Interviews of the HVDs will be conducted jointly
22 by the FBI and the Department of Defense (DoD)
23 Criminal Investigative Task Force (CITF) agents who are

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1 subject matter experts on the detainee. No agent who has
2 previously interviewed a detainee or detainees will conduct an
3 interview of that same detainee or detainees. An interview
4 team should consist of two to three agents with one agent
5 designated as a note-taker. Additional agents may observe the
6 interview."

7 TC [MR. GROHARING]: Your Honor, I'm going to call out a
8 series of paragraphs from the same document and just have
9 Special Agent Fitzgerald read them and then explain the
10 significance of them.

11 MJ [Col COHEN]: That will be fine, Counsel. If you can
12 just let us know which page you're doing when you do so, or
13 what paragraph will be fine. This is all from Attachment C?

14 TC [MR. GROHARING]: Yes, Your Honor.

15 MJ [Col COHEN]: Okay. Thank you.

16 TC [MR. GROHARING]: I'm now on page 2 of the document,
17 and I'm going to call out a paragraph from that page.

18 MJ [Col COHEN]: Thank you.

19 Q. Could you please read that text.

20 A. "All classified materials to be used during a
21 detainee interview will be reviewed by the appropriate agency
22 for authorization to use the information in an interview.
23 Agents should discuss their interview strategy with the

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1 assigned DoD/DoJ prosecutor prior to the interview to identify
2 areas of questioning necessary to meet the elements of the
3 military commission offense."

4 Q. Did you provide materials to the CIA for review?

5 A. Yes.

6 Q. What was the purpose -- what was your understanding
7 of the purpose of providing materials to the CIA or other
8 agencies prior to showing them to Mr. Ali?

9 A. They would review those materials for intelligence
10 equities.

11 Q. I've called out additional text from page 2. Could
12 you please read that text?

13 A. "No statement made by detainee while that detainee
14 was in the custody of an intelligence agency, or any evidence
15 obtained as a result of such statement, will be used in an
16 interview unless approved in advance by the assigned
17 prosecutor and the appropriate intelligence agencies."

18 Q. Did you actually review any of the statements Mr. Ali
19 made to the CIA in order to prepare for your interview?

20 A. I did not review them in order to prepare for the
21 interview.

22 Q. At any point did you ever seek approval in advance by
23 the assigned prosecutor and the appropriate intelligence

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1 agencies to use either statements or evidence derived from
2 statements?

3 A. I did not.

4 Q. Why not?

5 A. It was not allowed. It was -- it was not necessary
6 and, if it could be avoided, it was to be avoided.

7 Q. I've called out the next paragraph. Please read that
8 paragraph.

9 A. "3. Background Information. Interviewing agents may
10 be provided background briefings" ----

11 MJ [Col COHEN]: Sir, if you will just -- we have the
12 interpretation going on at the same time, so you're running
13 into the same problem I have as well. We just need to read
14 slower than we normally would so that they can catch up with
15 us.

16 WIT: Yes, Your Honor.

17 MJ [Col COHEN]: Thank you. Please start over with the
18 "Interviewing agents."

19 A. "Interviewing agents may be provided background
20 briefings on the detainees. The agents will also be given
21 limited access to CIA databases containing intelligence
22 reports that were previously disseminated to the intelligence
23 community, (i.e., TDs, TDXs, CIRs). Review of these materials

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1 will be at the discretion of the interviewing agent in
2 preparation of the interview."

3 Q. What, if any, background briefings were you provided
4 prior to your interview with Mr. Ali?

5 A. I do not recall receiving any biographical-type
6 background informations from anyone.

7 Q. When you were preparing for your interview of Mr. Ali
8 in 2007 and late 2006, what access did you have to CIA
9 databases?

10 A. I was granted access to a closed CIA system on
11 approximately October 17th, 2006.

12 Q. And do you recall previously testifying in this case
13 about your access to CIA materials?

14 A. Yes.

15 Q. And do you recall what you said on that occasion?

16 A. Yes. On that occasion, I was trying to recall when
17 exactly I received access. I estimated at that time that it
18 was January 2007. I wasn't certain. Since that time, I went
19 back and checked with the CIA and found out when I had access.

20 Q. When did you actually learn that your testimony might
21 not have been consistent with your recollection here today?

22 A. Within about the last week as I was preparing for
23 this testimony.

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1 Q. What, if anything, did you use this system for when
2 you were preparing to interview Mr. Ali?

3 A. What I primarily recall is a request system where I
4 would request to use certain documents in the interview. So
5 much like the business records that I mentioned or other
6 documents that were gathered, it would request use authority
7 to be able to present those, in this case, to Mr. Ali.

8 Q. Did you review any of the statements that had been
9 made by Mr. Ali in CIA custody?

10 A. I recall reviewing no statements by Mr. Ali while in
11 CIA custody in preparation for this interview interrogation.
12 Again, as I stated previously, I may have seen statements
13 prior to that time, I don't recall if I did or not; but I did
14 not review them in preparation for this interview
15 interrogation.

16 Q. What role, if any, did any statement made by Mr. Ali
17 to the CIA have in your interview preparations?

18 A. To the best of my knowledge, none.

19 Q. Did you discuss statements Mr. Ali had made to the
20 CIA with anyone in preparation for your interview?

21 A. To the best of my knowledge, I don't recall
22 discussing any of those things in preparation for the
23 interview.

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1 Q. I've called out the next paragraph on page 2. Could
2 you read just the highlighted text.

3 A. "Other than advisement of *Miranda*, interviews of the
4 detainees are subject to the same rules that govern FBI agents
5 who conduct custodial interviews in the United States."

6 Q. What was your understanding of why you would not be
7 providing *Miranda* warnings to Mr. Ali?

8 A. Because the law was different at that time in this
9 case.

10 Q. Could you please read the highlighted text?

11 A. "To that end, interviewing agents may not threaten or
12 coerce the detainees."

13 Q. Did you or anyone else threaten Mr. Ali in any way
14 during the interviews?

15 A. No.

16 Q. Did you or anyone else intentionally lie to Mr. Ali
17 about anything during the interview?

18 A. No.

19 Q. Did you use any ruses during the interview?

20 A. No.

21 Q. Did you attempt to coerce Mr. Ali in any way?

22 A. No.

23 Q. Could you please read the highlighted text?

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1 A. "The agents conducting the interview should identify
2 themselves using their true names (they may choose to use
3 their first names only) and their organizations."

4 Q. How did you and the other agents identify yourselves?

5 A. I walked in. I physically opened and presented my
6 FBI credentials to Mr. Ali, allowing him to read them, and
7 then I identified myself by first and last name.

8 Q. I've called out the next paragraph on page 2. Please
9 read that paragraph.

10 A. "Although interviewing agents are not required to
11 advise the detainee of the *Miranda* warnings, the agent should
12 determine that the detainee is willing to voluntarily answer
13 questions."

14 Q. Did you specifically ask Mr. Ali whether he was
15 willing to voluntarily answer questions?

16 A. Yes.

17 Q. And did you do that on each day of the interviews?

18 A. Yes.

19 Q. I've called out the next paragraph on page 2. Could
20 you please read that paragraph?

21 A. "The interviewing agents should ensure that the
22 detainee is aware of the changed circumstances of the
23 detainee's custody. The interviewing agents may, for example?

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1 (1) tell the detainee that the agents do not work for and are
2 independent of any organization that previously held the
3 detainee; (2) tell the detainee that he will not be returning
4 to the control of any of his previous custodians; or (3)
5 remind the detainee of the fact that they met with the ICRC."

6 Q. While we will get into more detail later, did you
7 tell Mr. Ali all three of those things during the interview?

8 A. Yes.

9 Q. In January 2007, were you personally aware of how
10 Mr. Ali was treated while he was in the CIA's RDI program?

11 A. I had some knowledge of how he was treated, yes.

12 Q. Did you ever ask him about it?

13 A. I did not.

14 Q. Why not?

15 A. Seemed like a bad way to start the interview.

16 Q. Did he ever bring it up in the course of the
17 interviews you had with him?

18 A. I did not -- or he did not, rather.

19 Q. Did he allege at any time that he had been mistreated
20 in the CIA's custody?

21 A. No.

22 Q. Would you have documented it if he did?

23 A. Yes.

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1 Q. What was your understanding of why you were to tell
2 the detainee that the agents do not work for and are
3 independent of any organization that previously held the
4 detainee?

5 A. So that he would feel free to speak to us and not
6 fear reprisal; that he wasn't going back to -- if he spoke ill
7 of someone, that he would not be going back to their custody.

8 Q. What was your understanding of why you were to remind
9 the detainee of the fact that they met with the ICRC?

10 A. So that he would understand that his detention at
11 that time was public and that he was not going to be at a CIA
12 black site.

13 TC [MR. GROHARING]: Your Honor, I'm about to call out
14 text on the bottom of page 2 that continues on to page 3.

15 MJ [Col COHEN]: That's fine.

16 TC [MR. GROHARING]: As Special Agent Fitzgerald's
17 testifying, I'll click through it to get to the next page, if
18 that's okay.

19 MJ [Col COHEN]: That's fine. The record will now let us
20 know where that is. Thank you.

21 Mr. Sowards.

22 LDC [MR. SOWARDS]: Again, we may not be -- I doubt if
23 we'll be questioning Agent Fitzgerald, but we just want to

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1 mark for discussion in closed session that the form of the
2 questions and some of the answers elicited from the special
3 agent would seem to be in contradiction of the evidence as we
4 know it ----

5 MJ [Col COHEN]: Okay.

6 LDC [MR. SOWARDS]: ---- with respect to custody.

7 MJ [Col COHEN]: All right.

8 LDC [MR. SOWARDS]: And I would ask the prosecution if
9 they could avoid piling on or continuing to create
10 misimpression in that regard until we've had an opportunity to
11 discuss it.

12 MJ [Col COHEN]: All right. Thank you.

13 TC [MR. GROHARING]: Your Honor, I assure you the
14 prosecution is not intentionally eliciting any false
15 information, and we're happy to discuss those matters in open
16 or closed session, subject to the Court's preference.

17 LDC [MR. SOWARDS]: Your Honor, and I didn't -- for the
18 record, I didn't say it was intentional, but I am saying it is
19 creating a misimpression, both in the terms of the form of the
20 questions and the answers that they are eliciting.

21 MJ [Col COHEN]: All right. Thank you. Yeah, I
22 anticipate that with respect to the custody at the time based
23 on the 658 guidance that there will be evidence also probably

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1 presented in open court with respect to some of that stuff.

2 I'm just going to let -- I'll let the counsel do
3 their job, and if they exhibit something I need to readdress
4 in open court at a later time because there's an issue that
5 something needs to be corrected and the law allows it, then I
6 will do so, but for now, you may proceed.

7 TC [MR. GROHARING]: Thank you, Your Honor.

8 **DIRECT EXAMINATION CONTINUED**

9 **Questions by the Trial Counsel [MR. GROHARING]:**

10 Q. Special Agent Fitzgerald, could you please read this
11 paragraph?

12 A. "If the detainee asks for an attorney, the agent
13 should inform the detainee that since he has not been charged
14 with a crime by the military, the detainee does not have the
15 right to speak to an attorney and that there is no attorney
16 immediately available for consultation. The agent should also
17 inform the detainee that if the detainee is charged with an
18 offense, at that time the detainee will be entitled to consult
19 with an attorney."

20 Q. Is this different than your typical practice as an
21 FBI agent?

22 A. Yes.

23 Q. What was your understanding of why you would advise

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1 him that he was not entitled to an attorney until he was
2 charged?

3 A. My understanding was that, based upon the Military
4 Commissions Act of 2006, a detainee was not entitled to an
5 attorney until they had been charged.

6 Q. Did Mr. Ali at any point ask for an attorney during
7 your interviews with him?

8 A. He did not.

9 Q. I have called out the next paragraph. Could you
10 please read that?

11 A. "If the detainee asks whether he is being or will be
12 charged with a crime, the agent should tell the detainee that
13 the agent does not make that decision."

14 Q. Did Mr. Ali ask whether he would be charged with a
15 crime?

16 A. He did not ask.

17 Q. Could you please read the next paragraph?

18 A. "If the detainee asks whether his statements can be
19 used against him at a future proceeding, the agent should
20 inform the detainee that such use of his statement is a
21 possibility."

22 Q. Did Mr. Ali ask you about that?

23 A. He did not.

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1 Q. I've called out the next paragraph on page 3. Could
2 you please read that, Special Agent Fitzgerald.

3 A. "If the detainee asks whether any prior statements
4 can be used against the detainee at a criminal proceeding, the
5 agent should tell the detainee that the decision will be made
6 by the court if he is charged with a crime."

7 Q. Did Mr. Ali ask you whether any of his prior
8 statements could be used against him?

9 A. He did not ask.

10 Q. I've called out the next paragraph on page 3. Could
11 you please read that paragraph.

12 A. "If the detainee asks whether there are any benefits
13 to be obtained by cooperating with the agent, the agent should
14 tell the detainee that the agent can provide no benefits to
15 the detainee, but will bring the detainee's cooperation to the
16 attention of the prosecutors."

17 Q. Did Mr. Ali ask you about that?

18 A. He did not.

19 Q. I've called out the next paragraph on page 3. Could
20 you please read that paragraph.

21 A. "If authorized by DoD, the agents may provide the
22 detainee with beverages, snack foods, et cetera. The
23 provision of beverages, et cetera, and the timing and duration

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1 of breaks should be documented."

2 Q. Did you, in fact, provide Mr. Ali with food and
3 beverages?

4 A. Yes.

5 Q. What types of food and beverages did you provide
6 Mr. Ali throughout the course of the interviews?

7 A. My recollection is that we provided McDonald's food,
8 such as hamburgers, fries, apple pies, drinks.

9 Q. Did Mr. Ali ever make any specific requests for food?

10 A. I believe at one point he asked for an apple pie, but
11 I'm not positive about that recollection. That's -- I seem to
12 think he requested one.

13 Q. And was he appreciative of the items -- did he seem
14 appreciative of the items that you provided?

15 A. Yes, he seemed so.

16 Q. Called out the next paragraph on page 3. Would you
17 please read that paragraph.

18 A. "5. Legal Support. Prosecutors from the Office of
19 Military Commissions (OMC), the Department of Justice (DoJ),
20 and FBI's NSLB will be present in GTMO and available for
21 immediate consultation, legal assistance and advice."

22 Q. Do you recall prosecutors from the Office of Military
23 Commissions, Department of Justice, and FBI National Security

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1 Law Branch being present during the interviews?

2 A. I recall OMC prosecutors and FBI attorneys.

3 Q. And, Special Agent Fitzgerald, is NSLB an acronym for
4 the National Security Law Branch?

5 A. Yes, it is.

6 Q. Who specifically do you recall being present?

7 A. I recall yourself being present at that time. I
8 recall Mr. Robert Swann being present. I recall Thomas
9 Swanton being present. I recall Mr. Trivett being present,
10 although I don't believe he was working specifically on any of
11 the detainees that I was interviewing at that time.

12 Q. What role did the prosecutors play?

13 A. They were available if I had legal questions.

14 Q. I have called out the next paragraph on page 3.

15 Could you please read the highlighted text.

16 A. "The interviewing agent should document the interview
17 in an FBI letterhead memorandum (LHM) prepared on a
18 CIA-supplied laptop. There will be the 'thumb drive' memory
19 chip for each detainee. The draft LHM will be electronically
20 transmitted to the CIA for classification review. The agent's
21 notes will also be pouched back to the CIA for classification
22 review."

23 Q. Did you, in fact, prepare the letterhead memorandum

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1 on a CIA laptop?

2 A. Yes, I did.

3 Q. Did the CIA have any role in editing the LHM?

4 A. They did not. They provided classification review,
5 but they did not edit my document.

6 Q. Did the CIA ever encourage you to add or remove any
7 information from the LHM?

8 A. No.

9 Q. Were Special Agent Perkins' notes ultimately sent to
10 the CIA for classification review?

11 A. Yes.

12 Q. And was that classification review conducted?

13 A. Yes.

14 Q. Did you review both the LHM and Special
15 Agent Perkins' notes following that classification review?

16 A. Yes.

17 Q. Were they changed in any way?

18 A. No.

19 Q. Were you ever encouraged to change the substance of
20 your letterhead memorandum in any way?

21 A. No.

22 TC [MR. GROHARING]: Judge, we have now moved to page 4 of
23 the document, and I've called out text from paragraph 7 on

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1 page 4.

2 Q. Special Agent Fitzgerald, could you please read that
3 text.

4 A. Yes. "7. Documenting Compartmented Information
5 Including Allegations of Mistreatment. During the interview
6 process, a detainee may provide the agents with information
7 concerning the interrogation techniques previously used on him
8 and his detention locations. Such information, even though
9 coming from a detainee, is deemed by the CIA to be
10 national security information. If the CIA determines that
11 compartmented information is contained in the LHM, the
12 interviewing agent should create a separate LHM. The newly
13 prepared LHM will contain the compartmented information while
14 the first LHM will contain all other information obtained
15 during the interview."

16 Q. Did Mr. Ali provide any information regarding
17 interrogation techniques used by the CIA during your
18 interview?

19 A. He did not.

20 Q. I've called out the next paragraph. Could you please
21 read it.

22 A. "If the detainee alleges misconduct related to his
23 detention and/or techniques used during interrogations prior

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1 to his arrival at GTMO, those allegations should be documented
2 in an FBI LHM prepared on a CIA-supplied laptop on a daily
3 basis. These LHMs will be electronically transmitted and/or
4 pouched back to the Washington, DC area for review and action
5 deemed appropriate by the Department of Justice. A copy of
6 these LHMs will also be delivered to the DoJ attorney present
7 at GTMO. Please note, once a particular allegation from a
8 particular detainee has been documented, it need not be
9 documented again if the detainee repeats the allegation,
10 unless there are new details that were not conveyed in the
11 initial report."

12 Q. Did Mr. Ali make any claims of mistreatment?

13 A. He did not.

14 Q. If he had, what would you have done?

15 A. I would have documented them according to this
16 guidance.

17 TC [MR. GROHARING]: Clear the screen, please.

18 Q. Where did you interview Mr. Ali?

19 A. Here at Guantanamo Bay.

20 Q. Could you please describe the room?

21 A. Yes. It was a -- I will call a single-person
22 cellblock, meaning it was an area where you go into -- I would
23 describe it as maybe 15 feet wide by maybe 20 or 25 feet long.

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1 On one side of the cellblock, there was what I would describe
2 as a caged area where there was metal mesh. Behind that metal
3 mesh there was a bed, a toilet, and a sink, and possibly a
4 shower area, to the best of my recollection.

5 That was -- that took up maybe a third of the cell
6 area. The other two-thirds of the area was an open space, in
7 this case where there were a table and chairs.

8 Q. What was the approximate temperature in the room?

9 A. I would estimate 70 to 72.

10 Q. How many chairs were in the room?

11 A. There were chairs for each of the agents. So three
12 chairs there, a chair for the detainee, Mr. Ali; so I'd
13 estimate four chairs.

14 Q. And what type of chairs were they?

15 A. To the best of my recollection, they were plastic
16 chairs.

17 TC [MR. GROHARING]: Could I have the feed again, please?

18 MJ [Col COHEN]: You may.

19 TC [MR. GROHARING]: I ask that that be displayed to the
20 gallery. Oh, it's coming.

21 MJ [Col COHEN]: Counsel, I'll just remind you, thinking
22 back earlier, paragraph 66 of AE 658, just be -- because of
23 the classified nature of that, please avoid any questions that

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1 address that particular area to the extent that we could not
2 discuss that in open session.

3 TC [MR. GROHARING]: My examination should be tailored
4 such to avoid that, Your Honor.

5 MJ [Col COHEN]: Okay. Yeah, I just -- I think that's
6 where Mr. Sowards was going, was paragraph 66 earlier, in
7 references to that kind of information, so -- all right.
8 Thank you.

9 Q. Do you recognize this photo?

10 A. Yes, I've seen this photograph before.

11 Q. And let the record reflect that's AE 628AA
12 Attachment QQQQ, and it's page 1 of that attachment.

13 What is this photo?

14 A. This photo appears to me to be an accurate
15 representation of the type of cell area that I spoke to
16 Mr. Ali in. So I don't -- I can't say for certain it's the
17 exact same cell area, but it appears in every way that I can
18 recall to be consistent with the same type of cellblock area.

19 Q. Okay. And the facility in which you interviewed
20 Mr. Ali, that was in a facility called Echo II; is that
21 correct?

22 A. That is correct.

23 Q. And does this photo accurately represent the room

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1 where you interviewed Mr. Ali from the interviewing agent's
2 vantage point?

3 A. Yes, it does. Again, I can't say that it's the exact
4 same cellblock, but it appears consistent in every way that I
5 can recollect it.

6 Q. It's a fair representation of how it would have
7 appeared during your interview?

8 A. Yes.

9 Q. Let the record reflect I have pulled up page 2 of
10 AE 628AA Attachment QQQQ.

11 Do you recognize this photo?

12 A. Yes.

13 Q. What is this photo?

14 A. Again, this is -- appears to me to be a fair
15 representation of the cellblock area where myself,
16 Agent Perkins, and Agent McClain interviewed Mr. Ali.

17 Q. Clear the screen, please.

18 Did Mr. Ali appear comfortable during the interview?

19 A. Yes. To the best of my ability to perceive it, he
20 appeared comfortable.

21 Q. Did he complain at any point about being
22 uncomfortable?

23 A. He did not complain about being uncomfortable. At

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1 one point, he did mention that he had a stomach problem, but
2 when asked clarifying questions, he stated that he was not
3 suffering from that at that time.

4 Q. How far were you from Mr. Ali during the course of
5 the interview?

6 A. I would estimate four or five feet.

7 Q. And who was present during the interviews?

8 A. Myself, Agent Perkins, and Agent McClain.

9 Q. Were there any guards present?

10 A. I don't recall any guards. During the entire course
11 of the interview, I was facing away from the door, but I don't
12 recall there being guards in there for any significant length
13 of time.

14 Q. Was Mr. Ali restrained?

15 A. Yes, he was.

16 Q. If so, how?

17 A. His legs were shackled to the floor.

18 Q. What language did you speak with Mr. Ali?

19 A. English.

20 Q. What did Mr. Ali say about his ability to speak
21 English?

22 A. When I inquired, he indicated he spoke English well.

23 Q. Did he indicate whether he had studied English?

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1 A. He stated, based upon my recollection, that he grew
2 up in Kuwait and Iran and had learned English in school and
3 also in a business environment.

4 Q. Did he state whether he spoke any other languages?

5 A. Yes, he did.

6 Q. What languages did Mr. Ali indicate he spoke?

7 A. He spoke Persian, Urdu, Arabic, and Baluchi, as well
8 as English.

9 Q. Did you offer him the services of a translator?

10 A. Yes.

11 Q. Did he state whether he would like a translator?

12 A. He advised he did not need one.

13 Q. At any point during any of the four days did he ask
14 for a translator?

15 A. He did not.

16 Q. And did he agree to conduct the interview in English
17 with you?

18 A. Yes, he did.

19 Q. Throughout the course of the interview, were you able
20 to communicate with him effectively using the English
21 language?

22 A. Yes.

23 Q. Did you ever have difficulty understanding him?

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1 A. I did not.

2 Q. Did Mr. Ali ever indicate that he had difficulty
3 understanding you or any of the other agents?

4 A. I don't recall him expressing any difficulty. There
5 may have been clarifying questions asked at times of different
6 things, but I don't recall any language barrier.

7 Q. How would you characterize his ability to speak
8 English?

9 A. He spoke good conversational English.

10 Q. And did you ask if he was taking any medications at
11 the time of the interview?

12 A. I did.

13 Q. And what was his response?

14 A. Initially, he said he was -- I believe the words were
15 "All set," meaning he was fine. And then later on he stated
16 that he took Prilosec for his stomach issues.

17 Q. Did his stomach issues ever affect the interview?

18 A. I asked him, and he stated that he felt okay. So to
19 the best of my knowledge, he was not in any discomfort at the
20 time.

21 Q. Did you ask him about his stomach issues throughout
22 the course of the four days of your interviews?

23 A. In general terms, I asked how he was feeling, if he

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1 had slept and that sort of thing. So I don't know if I
2 specified each day stomach issues, but I asked him if he was
3 feeling okay and would continue.

4 Q. Did he appear injured in any way?

5 A. He did not.

6 Q. Did he ever indicate whether he was in any pain?

7 A. He did not indicate that he was in any pain.

8 Q. Did he ever appear as if he was in pain?

9 A. He did not appear to me to be in pain.

10 Q. Did he ever appear uncomfortable?

11 A. He did not appear to me to be uncomfortable.

12 Q. How would you describe your rapport with Mr. Ali over
13 the course of your interviews?

14 A. I would describe it as courteous, professional,
15 respectful rapport.

16 TC [MR. GROHARING]: Judge, I'm about to move into the
17 rights advisement. This portion will take a while. I'm not
18 sure what time you envisioned ----

19 MJ [Col COHEN]: Yeah. No, I think this is probably -- I
20 was just waiting to see if there was, Counsel -- you were
21 wrapping up a particular area.

22 So let's go ahead and take a lunch break at this
23 time. We'll recess until 1400 hours.

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1 We're in recess.

2 [The R.M.C. 803 session recessed at 1248, 16 September 2019.]

3 [The R.M.C. 803 session was called to order at 1400,
4 16 September 2019.]

5 MJ [Col COHEN]: The commission is called to order. The
6 parties are present. Members are absent. The witness remains
7 on the stand.

8 For planning purposes, I will proceed to around 1645
9 this afternoon, and then we'll call it for the evening and
10 come back at 0900 tomorrow.

11 Mr. Groharing, you probably have much -- I know you
12 have a much better idea of where a natural break point will
13 be. If we've gone for at least an hour and it seems like an
14 appropriate time, please just notify me and I'll take a recess
15 at that point. To the extent that we can, we'll just take the
16 one recess between now and 1645.

17 TC [MR. GROHARING]: Thank you, Your Honor.

18 MJ [Col COHEN]: All right. Thank you. The witness is
19 yours.

20 TC [MR. GROHARING]: Thank you, Your Honor. Before I
21 proceed, I just want to note for the record that the
22 Trial Director presentation as a whole I believe is Appellate
23 Exhibit 628AA (Gov) Attachment LLLL.

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1 **DIRECT EXAMINATION CONTINUED**

2 **Questions by the Trial Counsel [MR. GROHARING]:**

3 Q. Special Agent Fitzgerald, we spoke earlier about a
4 memorandum from the FBI Office of General Counsel that
5 referenced certain rights advisements required to be provided
6 to detainees.

7 Did you document all of the warnings and
8 admonishments you provided to Mr. Ali?

9 A. Yes.

10 TC [MR. GROHARING]: Could I have the feed, please?

11 MJ [Col COHEN]: You may.

12 Q. Let the record reflect that I've displayed AE 628AA
13 Attachment DDDD [sic] .

14 Special Agent Fitzgerald, do you recognize this
15 document?

16 A. Yes.

17 Q. What is it?

18 A. It's the rights advisement form that I used in
19 January of 2007 for Mr. Ali.

20 Q. What was this document used for during the interview
21 of Mr. Ali?

22 A. To ensure that I advised him of each of the rights he
23 was entitled to at that time.

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1 MJ [Col COHEN]: Counsel, what did you say this attachment
2 was? Attachment D, thank you. I got it.

3 TC [MR. GROHARING]: All right.

4 MJ [Col COHEN]: I see it down here. Thank you. Carry
5 on, please. Thanks.

6 Q. Let the record reflect that I've called out text in
7 the middle of the document.

8 Special Agent Fitzgerald, would you please read that
9 text?

10 A. Number 1, "Assure the detainee that the agents do not
11 work for and are independent of any organization that
12 previously held the detainee."

13 Q. Did you, in fact, assure Mr. Ali that you and the
14 agents that you conducted the interview with do not work for
15 and are independent of any organization that previously held
16 Mr. Ali?

17 A. Yes.

18 Q. What did you say to him?

19 A. I asked him what his knowledge of the CIA was, and he
20 described them as basically an external agency, outside the
21 United States. I said that was correct. And he knew that the
22 FBI was an internal agency, and I advised him that that was
23 correct, and that we also do investigations and travel

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1 internationally. But Mr. Ali indicated that he understood the
2 difference between the FBI and the CIA.

3 Q. What, if anything else, did you tell Mr. Ali about
4 the difference between the FBI and the CIA?

5 A. I advised him that the FBI was a law enforcement
6 organization.

7 Q. Did Mr. Ali have any response to that?

8 A. When I told him that the FBI and the CIA were
9 different, he said words to the effect of that's what it
10 looked like to him.

11 Q. Did you describe what the FBI role was in regard to
12 the attacks on the United States on September 11th, 2001?

13 A. Yes.

14 Q. What did you tell him?

15 A. I advised him that as part of my investigation and
16 the FBI's investigation, that we collected documents both
17 domestically and internationally regarding him, and I wanted
18 to speak to him about those documents.

19 Q. Did you tell him what your specific role was in
20 regards to the investigation?

21 A. Yes. I advised him I was one of the agents assigned
22 to the 9/11 investigation.

23 Q. This document appears to have a written checkmark and

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1 someone's initials. Do you know whose initials are on that
2 document?

3 A. Yes.

4 Q. Whose are they?

5 A. Special Agent Abigail Perkins' initials.

6 Q. And again, was she taking notes during your
7 interview?

8 A. Yes.

9 Q. At the end of the third day of interviews, did
10 Mr. Ali seek clarification from you regarding what the
11 interviews would be used for?

12 A. Yes.

13 Q. What did he say?

14 A. He was asking about his legal case, I believe were
15 the words that he was using.

16 Q. And what did he ask about his legal case?

17 A. He asked a question -- these are my words, but
18 something to the effect of is this his legal case or for his
19 legal case.

20 Q. And when he asked you that question, how did you
21 respond?

22 A. I reminded him of the admonitions in the beginning
23 back on the 17th of January, that the FBI is a law enforcement

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1 organization, and that the results of this were regarding that
2 investigation.

3 Q. And did Mr. Ali indicate his understanding of the
4 difference between the two organizations?

5 A. Between the FBI and the CIA?

6 Q. Yes.

7 A. Yes, he did.

8 Q. Did Mr. Ali ask anything about the Department of
9 Justice?

10 A. Yes, he asked in substance if the Department of
11 Justice would be speaking with him.

12 Q. What did you tell him?

13 A. I advised him that the FBI is part of the Department
14 of Justice.

15 Q. I've called out the next paragraph on the exhibit.
16 Could you please read that paragraph?

17 A. Number 2, "Ascertain the detainee's belief or
18 knowledge regarding his changed circumstances and/or remind
19 the detainee that he is in the custody of the Department of
20 Defense and tell the detainee that he will not be returning to
21 the custody of any of his previous custodians."

22 Q. Did you ask Mr. Ali if he was aware of where he was
23 being detained?

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1 A. Yes.

2 Q. How did he respond?

3 A. He advised that he knew he was being held in
4 Guantanamo.

5 Q. Did he describe to you his understanding of whose
6 custody he was in at that time?

7 A. Yes.

8 Q. What did Mr. Ali say?

9 A. He stated that he was -- in general terms, Guantanamo
10 and he was under the control of the Army.

11 Q. What, if anything, did you tell him regarding whether
12 Guantanamo was controlled by the Army?

13 A. I advised that Guantanamo was controlled by both Army
14 and the Navy.

15 Q. Did you specifically tell him that he was no longer
16 in the custody of the CIA?

17 A. Yes.

18 Q. Did you tell him that he would not be going back to
19 the CIA?

20 A. Yes, I did.

21 Q. And how did he respond to you telling him that?

22 A. He indicated that he understood he would not be going
23 back to the custody of the CIA.

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1 Q. I've called out the next paragraph. Could you please
2 read the highlighted portion of the next paragraph.

3 A. Number 3, "Tell the detainee that the agent is aware
4 that the detainee may have made statements in the past and
5 that the agent is not interested in any of the previous
6 questioning or any answers the detainee may have given."

7 Q. What did you tell Mr. Ali with regard to this portion
8 of the rights advisement form?

9 A. I advised him that I did not have the benefit of any
10 of the previous conversations, as I had not been part of them,
11 and that I did not care what his answers were for any previous
12 questioning. I was only concerned with what his current
13 recollection was.

14 Q. And how, if at all, did Mr. Ali respond to that?

15 A. He indicated that he understood what I was saying.

16 Q. I note that there is text that is lined through. Do
17 you know why that text was lined through?

18 A. Because it did not apply to Mr. Ali.

19 Q. I've called out the next paragraph. Would you please
20 read that.

21 A. Number 4, "Determine whether the detainee is willing
22 to answer questions."

23 Q. What did you do to determine whether Mr. Ali was

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1 willing to answer questions?

2 A. I asked him if he would be willing to talk to me.

3 Q. And how did Mr. Ali respond?

4 A. He said, "Yes, let's get down to business."

5 Q. He replied, "Let's get down to business"?

6 A. That's correct.

7 Q. I've called out the last paragraph. Could you please
8 read that.

9 A. Number 5 -- and this is mandatory for documents and
10 photographs. "Tell the detainee that the detainee may or may
11 not have seen this document before, that the agent does not
12 care what the detainee may have said in the past about the
13 document, and that the agent is interested in the detainee's
14 current answers (or words to that effect)."

15 Q. What, if anything, did you tell Mr. Ali when advising
16 him regarding this paragraph?

17 A. I advised him, as I have stated previously, that the
18 FBI's investigation was both domestic and international, and
19 that I had collected many documents in trying to put together
20 information relevant to Mr. Ali, and that he may or may not
21 have seen some of these documents; but again, that I was only
22 interested in what his current recollection was and did not
23 care about any previous answers he may have made regarding

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1 those documents.

2 Q. Did he ask you if he was visited -- did you ask him
3 if he was visited by any other groups since September 2006?

4 A. Yes.

5 Q. What did he say?

6 A. The substance of the conversation was that he was
7 visited by the ICRC, although I don't know at what time period
8 he was visited by them.

9 Q. Did you describe for Mr. Ali what type of information
10 and documents that you had gathered?

11 A. I simply described them as part of the FBI's
12 investigation into him as a subject of the investigation as it
13 related to 9/11.

14 Q. Clear the screen, please.

15 Had any of the agents at the interview spoken with
16 Mr. Ali before?

17 A. No.

18 Q. Had any of the agents that were at the interview ever
19 seen Mr. Ali in person before?

20 A. No, not -- certainly not to my knowledge.

21 Q. Had any of the agents in the interview ever worked
22 for the CIA?

23 A. Not to my knowledge.

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1 Q. Had any of the agents who interviewed Mr. Ali ever
2 been to an overseas CIA detention site?

3 A. Not to my knowledge.

4 Q. Once Mr. Ali said "Let's get down to business," what
5 did you do next?

6 A. Started to show him some documents.

7 Q. Over how many separate days did the interview last?

8 A. Approximately four days.

9 Q. And approximately how long each day did you speak
10 with him?

11 A. I'd say roughly seven or eight hours each day. The
12 last day was a little bit shorter.

13 Q. How many hours total would you say that you and your
14 team spoke to him in January 2007?

15 A. Approximately 30 hours.

16 Q. And I believe you indicated before, you took breaks
17 during interviews?

18 A. Yes.

19 Q. Did Mr. Ali ever ask for breaks?

20 A. I don't recall him specifically asking for a break.
21 I know that we did take breaks for prayer for him and lunch
22 breaks, things of that nature. I don't recall him
23 specifically asking for something other than, in general

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1 terms, discussing prayer and meals.

2 Q. Did you discuss at the beginning of each day with
3 Mr. Ali when might be an appropriate time to take breaks?

4 A. Yes.

5 Q. What did he say about that?

6 A. He indicated -- I believe on the first day he was
7 fasting, so he didn't need a meal break but, obviously, needed
8 a prayer break.

9 Q. Was the timing of breaks something that you and
10 Mr. Ali decided together?

11 A. Yes.

12 Q. Did you inform Mr. Ali of his right to end the
13 interview at any time?

14 A. Yes.

15 Q. And did Mr. Ali have the opportunity to eat and drink
16 during the interviews?

17 A. Yes, he did.

18 Q. Was anyone other than the special agents you
19 referenced earlier present for any part of the interviews?

20 A. Not to my recollection.

21 Q. Did you have any difficulty communicating with
22 Mr. Ali over the 30 hours that you spoke with him?

23 A. I did not.

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1 Q. Did anyone ever raise their voice at Mr. Ali during
2 the interviews?

3 A. No.

4 Q. Did he ever appear disoriented or confused?

5 A. No.

6 Q. Did he ever appear depressed?

7 A. No.

8 Q. Did he ever appear anxious?

9 A. Not -- not to what I could discern, no.

10 Q. Were there any instances where you thought he was not
11 telling the truth?

12 A. There were times I suspected he might not be telling
13 the complete truth.

14 Q. And what did you do at those times?

15 A. I typically did not confront him because, in general
16 terms, I thought his information was forthcoming.

17 Q. Did he ever appear indifferent?

18 A. No.

19 Q. Did you see any physical signs throughout the course
20 of the interview that caused you concern with Mr. Ali's
21 ability to voluntarily participate in an interview?

22 A. No.

23 Q. Did you see any evidence that Mr. Ali lost the

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1 ability to offer statements that were favorable to him
2 throughout the course of the interview?

3 A. Could you restate that question, please?

4 Q. Did you see any evidence that Ali lost the ability to
5 offer statements that were favorable to him throughout the
6 course of the interview?

7 A. No, I -- I'm confident he felt free to speak.

8 Q. At any point, did Mr. Ali seem to have difficulty or
9 appear to have difficulty concentrating?

10 A. Not to me, no.

11 Q. Did he ever seem distracted?

12 A. He did not to me.

13 Q. Did you see any signs of Mr. Ali hallucinating?

14 A. Certainly not. Not that I could discern at all.

15 Q. Did you see any signs of him disassociating?

16 A. Again, I perceived nothing like that.

17 Q. Did Mr. Ali say things that were irrational?

18 A. No.

19 Q. Was he able to provide accurate details regarding the
20 information you and Mr. Ali discussed?

21 A. Yes.

22 Q. Did you or anyone else ever put their hands on
23 Mr. Ali during the interview?

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1 A. No.

2 Q. Did anyone ever threaten to do any harm to Mr. Ali
3 during the interviews?

4 A. No.

5 Q. Is it fair to say that you led the interview?

6 A. Yes.

7 Q. And one set of notes were created during the
8 interview?

9 A. That's correct.

10 Q. And those were written by Special Agent Perkins?

11 A. Correct.

12 Q. At the end of the interview on 19 January 2007, had
13 you planned on meeting with Mr. Ali again?

14 A. No.

15 Q. Did you ask him whether he would be willing to meet
16 with you again in the event that you did have questions?

17 A. Yes.

18 Q. How did he respond?

19 A. He said he'd be willing to speak.

20 Q. And did you ultimately decide that you did want to
21 speak with Mr. Ali again following the 19 January 2007
22 interview?

23 A. Yes.

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1 Q. What made you decide you wanted to go speak with him
2 again?

3 A. I -- I don't recall the exact reason. I believe
4 Mr. Ali related to us, to the interviewing agents, something
5 that he had some information to provide, but I don't recall
6 what initiated that.

7 TC [MR. GROHARING]: Okay. Permission for the feed?

8 MJ [Col COHEN]: You may.

9 Q. Let the record reflect I've pulled up AE 628AA
10 Attachment G.

11 Special Agent Fitzgerald, do you recognize this
12 document?

13 A. Yes.

14 Q. I've called out -- let the record reflect I've called
15 out text from the document.

16 Could you please read that text?

17 A. It says, "To: The FBI. Attention: Mr. Jim and
18 Mrs. Abbey. The downtown area name is Rowlah. From Ali."

19 Q. How did you come in possession of this note?

20 A. This note was, to the best of my knowledge as it was
21 explained to me, written by Mr. Ali -- again, apparently
22 written by Mr. Ali while he was in his detention quarters. It
23 was brought to the attention of the investigators, Special

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1 Agent Perkins and myself. I believe it was originally a
2 sticky note, and the information on it was forwarded to us.

3 Q. Prior to receiving that note, had you asked anyone to
4 ask Mr. Ali about that particular information?

5 A. No. It regarded something that we had been speaking
6 about, and he could not recall the name.

7 Q. Okay. Did you take any steps after your interview --
8 your last interview with him to contact him or to have someone
9 contact him on your behalf to ask him follow-up questions or
10 anything like that?

11 A. No.

12 Q. Had you asked anyone to contact him, indicating that
13 you wanted to speak to him again?

14 A. No, not at that -- certainly not at that time, and I
15 can't recall any other times.

16 Q. Clear the screen, please.

17 Earlier, you mentioned that the use of documents was
18 an important part of your interview with Mr. Ali.

19 A. Yes.

20 Q. After providing Mr. Ali his rights advisement and
21 ensuring that he would voluntarily agree to meet with you, did
22 you then begin the substantive portion of the interview by
23 showing him documents?

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1 LDC [MR. CONNELL]: Your Honor, objection to
2 characterization of "rights advisement."

3 MJ [Col COHEN]: Counsel, I will overrule the objection,
4 just noting that -- I'll let the parties say as to what this
5 actually -- what rights, if any, it actually constituted. And
6 I understand that the two parties could see this particular
7 piece of evidence in different lights. All right.

8 Q. So -- do you want me to ask the question again?

9 A. Yes, please.

10 Q. Earlier, you mentioned that the use of documents was
11 an important part of your interview with Mr. Ali. After
12 providing Mr. Ali his rights advisement and ensuring that he
13 would voluntarily agree to meet with you, did you begin the
14 substantive portion of the interview by showing him documents?

15 A. Yes.

16 Q. Why did you begin the interview that way?

17 A. I wanted the interrogation or interview to be led and
18 directed by showing of documents.

19 Q. How did you decide which documents to show him first?

20 A. I took what I considered some of the least
21 inculpatory, at least on their face, some of the least
22 inculpatory documents to present to him first.

23 Q. The LHM contains a number of documents that contain

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1 handwriting ----

2 A. Yes.

3 Q. ---- on them.

4 Throughout the course of the interview, did you ask
5 Mr. Ali to write on documents?

6 A. Yes, I did.

7 Q. Would you please describe that practice for the
8 military judge.

9 A. I said to the detainee, "If you recognize the
10 document, and if it's yours" -- because conceivably he could
11 recognize a document that's not his -- but, "if you recognize
12 a document, and if it's yours, would you so annotate that and
13 sign and date it."

14 Of course, there are -- I did eventually show him
15 photographs which would not be something that he authored, but
16 if he recognized it, again, to sign and date it.

17 Q. Were there materials and photographs shown to him
18 that he did not recognize?

19 A. Yes.

20 Q. What happened in those circumstances?

21 A. I moved on to the next document.

22 Q. Did you ever challenge him when he failed to
23 recognize a photo that you believed he should have based on

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1 your prior investigation?

2 A. I did not.

3 Q. Why not?

4 A. In the context of the interrogation, I believed that
5 Mr. Ali was telling me what I believed to be mostly truthful
6 and credible answers, and if there was a photo that he didn't
7 recognize, I understood that to be that he probably truly
8 didn't recognize it.

9 TC [MR. GROHARING]: All right. Could I have the feed
10 again, please.

11 MJ [Col COHEN]: You may.

12 Q. Special Agent Fitzgerald -- or let the record reflect
13 that I'm now -- I pulled up on the screen AE 628AA
14 Attachment CCCC [sic] .

15 Special Agent Fitzgerald, do you recognize this
16 document?

17 A. Yes.

18 Q. What is it?

19 A. This is one of the documents that I showed to Mr. Ali
20 during the course of the interview.

21 Q. Do you know where this document was found?

22 A. Yes.

23 Q. Where was it found?

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1 A. The original document -- and again, this is a
2 photocopy of it. The original document was found in an
3 apartment associated with Mustafa al Hawsawi.

4 Q. Whose handwriting appears on this document?

5 A. On the top and on the bottom, outside of the actual
6 certificate itself, are handwritten notes by Mr. Ali.

7 Q. Let the record reflect that I've called out text --
8 or handwriting from both the top and bottom portions of the
9 document.

10 What did Mr. Ali write on the document?

11 A. At the top he was describing some of his
12 certifications. He wrote, "MCSE/MCIE, Microsoft Certified
13 Systems Engineer and Microsoft Certified Internet Engineer."

14 And then down on the bottom he wrote some additional
15 notes. Should I read those other notes?

16 Q. Please.

17 A. "I recognize this doc, and it belongs to me." And
18 then he wrote, "Ali Abdul Aziz," and then he appears to have
19 signed and dated it.

20 Q. Was this item significant to your investigation?

21 A. Yes, it was.

22 Q. How so?

23 A. For the reason that I previously mentioned; it was

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1 found in an apartment associated with Mustafa al Hawsawi and
2 also because it was processed for latent fingerprints.

3 Q. And do you know what the results of that examination
4 was?

5 A. Yes.

6 Q. What were those results?

7 A. At least one latent fingerprint of value was
8 developed when this document was processed, and when compared
9 with the known prints of the accused, Mr. Ali Abdul Aziz Ali,
10 a match was effected.

11 Q. Let the record reflect that I've called up a second
12 document on the screen along with the document that we were
13 discussing. The second document is AE 628AA Attachment TTT.

14 Do you recognize the additional document on this
15 slide?

16 A. I do recognize the document on the left.

17 Q. What is that second photo?

18 A. The second photo on the left is a laboratory
19 photograph of the original certificate.

20 Q. And does that photo have a ruler on the bottom of it?

21 A. Yes, it does.

22 Q. What's the significance of that ruler?

23 A. It's to provide scale to the document and also, you

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1 can see the FBI Lab number on a piece of paper at the bottom.

2 Q. And what is that FBI Lab number?

3 A. In this case, it's K3311.

4 Q. Does that indicate that this item was sent to the FBI
5 Lab for processing?

6 A. Yes, it does.

7 Q. Let the record reflect that I've pulled up AE 628AA
8 Attachment DDD.

9 Do you recognize that document?

10 A. Yes, I do.

11 Q. What is it?

12 A. It's -- it is a Lucent Technologies letter.

13 Q. Did you show this document to Mr. Ali?

14 A. Yes, I did.

15 Q. Did he identify it?

16 A. Yes, he did.

17 Q. What did he say about it?

18 A. He said he recognized the document and it related to
19 a trade show that he was aware of.

20 Q. Let the record reflect that I've called out text from
21 the upper left-hand corner of the document.

22 What's the significance of that information that I've
23 highlighted?

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1 A. That information states Mr. Ali A. Aziz, system
2 engineer, ProLink, P.O. Box 16958, Dubai, U.A.E. That
3 information is consistent, although there is additional
4 information there with ProLink and system engineer, that
5 information is consistent with the accused, Mr. Ali Abdul Aziz
6 Ali.

7 Q. Is that also Mr. Ali's writing on the document?

8 A. There is writing by Mr. Ali on the document done at
9 the time of the interview.

10 Q. Let the record reflect that I've called out another
11 portion on the bottom of the document.

12 Is that Mr. Ali's writing?

13 A. Yes, it is.

14 Q. What did Mr. Ali write on this document?

15 A. He wrote the word "Recognized" and then signed and
16 dated the document.

17 Q. Do you know whether that document was examined for
18 fingerprints?

19 A. Yes, it was.

20 Q. What were the results of that examination?

21 A. At least one latent fingerprint of value was
22 developed on this original document, and it was compared to
23 the known fingerprints of the accused, Mr. Ali Abdul Aziz Ali,

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1 and a match was effected.

2 Q. Let the record reflect that I've again pulled up a
3 second photo, a second image of the same document. That's
4 AE 628AA Attachment SSS.

5 Do you recognize the additional document on the
6 slide?

7 A. Yes, I do.

8 Q. What is that second photo?

9 A. The photo on the right-hand side is a laboratory
10 photo of the original Lucent Technologies letter.

11 Q. I've called out a portion of that, the second
12 document, AE 628AA Attachment SSS.

13 What is the K number for that document?

14 A. That is K number 3319.

15 Q. And does that indicate that that document was
16 processed at the lab?

17 A. Yes, it does.

18 Q. I've pulled up AE 628AA Attachment EEE. Do you
19 recognize that document?

20 A. Yes, I do.

21 Q. Did you also show that document to Mr. Ali?

22 A. Yes.

23 Q. What did Mr. Ali say about that document?

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1 A. He said he recognized and authored this document.

2 Q. What is this document?

3 A. It appears to be a curriculum vitae of Mr. Ali.

4 Q. And do you know where this document was found?

5 A. Yes. It was found in an apartment associated with
6 Mustafa al Hawsawi.

7 Q. Is there handwriting on this document?

8 A. Yes, there is handwriting at the bottom conducted at
9 the time of the interview.

10 Q. Let the record reflect that I've called out the
11 handwriting from the bottom of the document.

12 Is that Mr. Ali's handwriting on that document?

13 A. Yes, it is.

14 Q. What did Mr. Ali write on that document.

15 A. He wrote, "I've authored this doc & recognize." And
16 then he signed and dated it.

17 Q. Do you know whether this document was examined for
18 fingerprints?

19 A. Yes, it was.

20 Q. Do you know the results of that examination?

21 A. Yes.

22 Q. What were they?

23 A. This document was processed by the lab. At least one

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1 latent fingerprint of value was developed, and it was compared
2 to the known fingerprints of the accused, Mr. Ali Abdul Aziz
3 Ali, and a match was effected.

4 Q. I've again pulled up a second document, a second
5 similar document. That's attachment -- that's AE 628AA
6 Attachment RRR.

7 Do you recognize -- it's on the right side of the
8 screen. Do you recognize that document?

9 A. Yes, I do.

10 Q. What is that document?

11 A. That's a laboratory photograph of the original CV
12 that was submitted to the lab.

13 Q. I've again called out a portion of AE 628AA
14 Attachment EEE [sic]. What's the K number on that document?

15 A. That's K number 3312.

16 Q. And does that indicate that this document was sent to
17 the FBI Laboratory for processing?

18 A. Yes, it does.

19 Q. I've now pulled up AE 628AA Attachment GGG [sic]. Do
20 you recognize this document?

21 A. Yes, I do.

22 Q. What is it?

23 A. It's a photocopy of a Jebel Ali Free Zone employment

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1 card.

2 Q. Where was this document found?

3 A. This document was found -- this photocopy was found
4 in an apartment associated with Mustafa al Hawsawi.

5 Q. Did you show this document to Mr. Ali?

6 A. Yes.

7 Q. What did he say about it?

8 A. He said he recognized this ID card.

9 Q. Is that also -- is there also handwriting on the
10 document?

11 A. Yes.

12 Q. Is that Mr. Ali's handwriting?

13 A. Yes, it is.

14 Q. What did Mr. Ali write on this document?

15 A. He wrote "Recognized this ID card," and then he
16 signed and dated it.

17 Q. Was this document significant to your investigation
18 of Mr. Ali?

19 A. Yes.

20 Q. How so?

21 A. A similar copy of this identical card was used in the
22 April 16, 2000 transfer of \$5,000 from a person named Ali to a
23 person named Adel Rafeea.

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1 MJ [Col COHEN]: Counsel, you referred to this as GGG, but
2 I do not -- in my GGG, I don't have that. Are we sure that
3 that's the right attachment?

4 TC [MR. GROHARING]: Let me double-check, Your Honor.

5 MJ [Col COHEN]: Please. In fact, this image you're
6 throwing up here now appears to be my GGG, but I may be wrong.

7 TC [MR. GROHARING]: It might ----

8 MJ [Col COHEN]: Let me see something. I have it as FFF.

9 TC [MR. GROHARING]: My apologies, Your Honor. I was off
10 by ----

11 MJ [Col COHEN]: Not a problem. I just needed to make
12 sure that the record is consistent. Thank you. All right.
13 So you were just referring to FFF, and now you have what
14 purports to be GGG.

15 Q. Now let the record reflect that I have pulled up
16 AE 628AA Attachment GGG. Do you recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's a photocopy of the passport of Ali Abdul Aziz
20 Ali.

21 Q. Where was this document found?

22 A. This was found in an apartment associated with
23 Mustafa al Hawsawi.

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1 Q. And did you show this document to Mr. Ali?

2 A. Yes.

3 Q. What did Mr. Ali say about it, if anything?

4 A. He identified that it was a copy of his passport.

5 Q. Is there also writing on this document?

6 A. Yes.

7 Q. Let the record reflect I've called out the

8 handwriting from the bottom of the document.

9 Is this Mr. Ali's handwriting again?

10 A. Yes.

11 Q. And what did Mr. Ali write on this document?

12 A. He wrote "This Pass-P Photo is mine," and then he
13 signed and dated it.

14 Q. Clear the screen, please.

15 During the interview, did you talk with Mr. Ali about
16 how he became involved with al Qaeda?

17 A. Yes.

18 Q. What did he say about that?

19 A. He stated that, through contact with his uncle, whose
20 name is Khalid Shaikh Mohammad, he started doing small things
21 for his uncle and over time became involved in things which
22 related to al Qaeda.

23 Q. What, if anything, did Mr. Ali say about what he knew

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1 about Mr. Mohammad's involvement in terrorism?

2 A. Before September 11th, his uncle, Khalid Shaikh
3 Mohammad, showed him a website where he was listed as a wanted
4 man in relation to the Philippines operation. So he
5 understood before September 11th that his uncle was wanted by
6 American authorities.

7 Q. And what did he say about Mr. Mohammad's, if
8 anything, about his relationship with al Qaeda?

9 A. He stated that Khalid Shaikh Mohammad recruited
10 operatives from al Qaeda, he obtained funding ----

11 LDC [MR. SOWARDS]: Excuse me, Your Honor.

12 MJ [Col COHEN]: Mr. Sowards?

13 LDC [MR. SOWARDS]: On behalf of Mr. Mohammad, both
14 objection to the relevance of this, and also if it's -- if
15 you're going to overrule that, that we're assured that it's
16 limited to Mr. Ali, not to Mr. Mohammad.

17 MJ [Col COHEN]: All right. Consistent with my orders, I
18 will note that objection, and I'll rule on it at a later
19 point. You're welcome.

20 You may continue.

21 WIT: Can you restate the question?

22 Q. What did Mr. Ali say about Mr. Mohammad's
23 relationship with al Qaeda?

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1 A. Mr. Ali advised that Mr. Mohammad essentially used
2 al Qaeda for its -- for his own purposes; that he used
3 operatives from al Qaeda, he used funding from al Qaeda, but
4 his ideas -- his, meaning Mr. Shaikh Mohammad's ideas, for
5 operations were his own.

6 Q. Are you familiar with an individual named Ramzi
7 Yousef?

8 A. Yes.

9 Q. Who is Ramzi Yousef?

10 A. I understand him to be a co-conspirator in the 1993
11 World Trade Center bombings attack.

12 Q. What is -- if you know, what is Mr. Ali's
13 relationship with Mr. Yousef?

14 A. I understand there may be a familial relationship. I
15 do not know the extent of any relationship, familial
16 relationship, if it exists. I am aware that, during the
17 course of the interview, Mr. Ali described Ramzi Yousef as an
18 inspiration and a mastermind.

19 Q. Did Mr. Ali talk about why Ramzi Yousef conducted
20 attacks against the United States?

21 A. Yes.

22 Q. What did Mr. Ali say about that?

23 A. He advised that Ramzi Yousef attacked the United

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1 States due to its support for Israel.

2 Q. And what, if anything, did Mr. Ali say about his own
3 views on that?

4 A. He said that, over time, he came to believe the same
5 thing.

6 TC [MR. GROHARING]: Could I have the feed again, please?

7 MJ [Col COHEN]: You may.

8 Q. Let the record reflect I've pulled up 628AA
9 Attachment NNN.

10 Do you recognize -- do you recognize what's on the
11 screen?

12 A. Yes, I do.

13 Q. What is that?

14 A. It's a photocopy of a videotape in a box labeled
15 CityBird Boeing 767-300.

16 Q. Did you show this videotape to Mr. Ali during the
17 interview?

18 A. Yes, I did.

19 Q. What, if anything, did Mr. Ali say about it?

20 A. He advised that he ordered one just like this.

21 Q. What were the circumstances under which Mr. Ali
22 ordered the tape?

23 A. He advised that he ordered it with Marwan al Shehhi.

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1 Mr. Ali advised that he was told to order this by Khalid
2 Shaikh Mohammad, his uncle, and he advised that Marwan al
3 Shehhi paid for the purchase of this videotape.

4 Q. Is that the same Marwan al Shehhi who was the pilot
5 hijacker of Flight 175?

6 A. Yes, it is.

7 Q. Did Mr. Ali -- one second, please.

8 And do you recognize this document?

9 A. Yes.

10 Q. What is this document?

11 A. This is a photocopy of the CityBird video. To
12 clarify, in the previous image, we had ordered an actual
13 videotape, and got the same video. So we showed him the
14 physical video, and then we presented him with this photocopy
15 of the video.

16 Q. Okay. And that's 628AA Attachment R, for the record.

17 Did Mr. Ali write on this document?

18 A. Yes, he did.

19 Q. What did Mr. Ali write on this document?

20 A. He wrote, "I did order & received this item in my
21 P.O. Box 16958 in Dubai," and then he signed and dated it.

22 Q. What did Mr. Ali say about how he was introduced to
23 Marwan al Shehhi?

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1 A. He advised that he was introduced to Marwan al Shehhi
2 through his uncle, Khalid Shaikh Mohammad.

3 Q. What, if anything, did Mr. Ali say Mr. Mohammad told
4 him about Marwan al Shehhi?

5 A. He related that Khalid Shaikh Mohammad contacted him
6 and advised him to assist one of the brothers who he came to
7 understand -- with the arrival of Marwan al Shehhi -- who he
8 came to understand would be -- or was Marwan al Shehhi.

9 Q. He used the term "brothers." What was the
10 connotation of Mr. Ali's use of the term "brother"?

11 A. "Brother" in general referred to someone who had been
12 to Afghanistan and possibly been to Afghanistan, including
13 attending a training camp at Afghanistan.

14 Q. Let the record reflect I've pulled up AE 628AA
15 Attachment TT.

16 Do you recognize this photo?

17 A. Yes.

18 Q. Who is this?

19 A. This is Marwan al Shehhi.

20 Q. Did you show this photo to Mr. Ali?

21 A. Yes.

22 Q. What did he say about the photo?

23 A. He identified him and advised this was the person

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1 that he saw and ordered the video for in January in the UAE.

2 Q. Did Mr. Ali write on the photo?

3 A. Yes, he did.

4 Q. Let the record reflect that I've called out
5 handwriting from the top of the document. Is that Mr. Ali's
6 writing?

7 A. Yes, it is.

8 Q. What did Mr. Ali write on this photo.

9 A. He wrote the words, "Marwan Al-Shihri," and then he
10 signed and dated it.

11 Q. Did Mr. Ali indicate whether he had purchased any
12 additional items with Marwan al Shehhi?

13 A. Yes.

14 Q. What did he say?

15 A. He said that he also ordered flight software, like a
16 flight simulator software program, and also had that sent to
17 his same post office box. And that was also on behalf of
18 Marwan al Shehhi.

19 Q. Was Marwan al Shehhi, based on the investigation, in
20 Dubai at the time this purchase was made?

21 A. The two elements that I used to determine that he was
22 in or around Dubai or specifically in the United Arab Emirates
23 at this time were the purchase itself of the videotape, and

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1 there's also a record of him departing the UAE. I'd have to
2 refresh my memory, but approximately about a week or so after
3 this purchase.

4 Q. Okay. And did the investigation reveal that Mr. Ali
5 was in Dubai at the time this purchase was made?

6 A. Again, speaking in general terms based upon
7 conversations with past employers, things of that nature, in
8 general terms, I can say that he was in Dubai on or about this
9 time.

10 Q. Were the statements that Mr. Ali made about his
11 purchases of flight simulator videos or flight deck videos
12 with Marwan al Shehhi, were those statements consistent with
13 your prior investigation?

14 A. Yes.

15 Q. Did you find Mr. Ali's statements reliable when
16 viewed in the context of the investigation?

17 A. Yes.

18 Q. Please clear the screen.

19 Did you and Ali ----

20 LDC [MR. CONNELL]: Objection.

21 Q. ---- discuss whether Mr. Mohammad ever provided ----

22 LDC [MR. CONNELL]: Objection.

23 MJ [Col COHEN]: Counsel?

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1 LDC [MR. CONNELL]: I understand "reliable" to be just a
2 general statement as opposed to a legal conclusion. With
3 that, it's fine, but I just didn't want counsel to rely on --
4 I mean, I understand why he's asking "reliable." He wants a
5 legal opinion, but -- so I guess my objection is calls for a
6 legal opinion.

7 MJ [Col COHEN]: Okay. I will not consider it as such,
8 merely that he was able to compare it to that and was left
9 with a warm fuzzy or something in that sense. But that legal
10 conclusion is mine and mine alone.

11 LDC [MR. CONNELL]: Yes, sir. If I could just have that
12 continuing, that way I won't have to object each time counsel
13 asks that question.

14 MJ [Col COHEN]: That's fine. Yeah, no witness will be
15 allowed to testify as to a legal conclusion. That will be
16 mine and mine alone.

17 LDC [MR. CONNELL]: Thank you, sir.

18 MJ [Col COHEN]: All right. Thank you.

19 Q. Did you and Mr. Ali discuss whether Mr. Mohammad ever
20 provided Mr. Ali with any funds?

21 A. Yes.

22 Q. What did he say?

23 A. Mr. Ali advised that Khalid Shaikh Mohammad, his

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1 uncle, had provided him with approximately \$100,000 in cash
2 initially.

3 Q. And did Mr. Ali say what the purpose of those funds
4 was?

5 A. He advised that he knew it was for funding of the
6 brothers in the United States.

7 Q. And in that context, how did Mr. Ali define
8 "brothers"?

9 A. Brothers would be someone from Afghanistan who
10 traveled to the United States, in many cases specifically
11 going through the UAE, but brothers going from Afghanistan to
12 the United States for an operation.

13 Q. Did Mr. Ali say where he kept this money?

14 A. Yes, he did.

15 Q. Where was that?

16 A. He advised that he kept it in his laundry bag.

17 Q. Earlier in your testimony, you mentioned an
18 individual by the name of Nawaf al Hazmi. Who is Nawaf
19 al Hazmi in relation to the 9/11 attacks?

20 A. Nawaf al Hazmi was one of the first people to enter
21 the United States in January of 2000. He was also on the date
22 of September 11th, he was a hijacker aboard American Airlines
23 Flight 77.

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1 Q. Did you ask Mr. Ali about whether or not he had any
2 interactions with Nawaf al Hazmi?

3 A. Yes.

4 Q. And what did Mr. Ali say?

5 A. He advised at first he knew him by the name of
6 Rabiea, and he advised that he had telephonic contact with
7 him, and also likely e-mail contact with him.

8 Q. And the name Rabiea, was that name significant to
9 you?

10 A. Yes.

11 Q. How so?

12 A. There were videos that were released after
13 September 11th. Those videos were believed to have come from
14 either al Qaeda or an organization that agreed with and
15 supported al Qaeda. Those videos are loosely termed
16 propaganda videos.

17 LDC [MR. CONNELL]: Your Honor, objection.

18 MJ [Col COHEN]: Basis.

19 LDC [MR. CONNELL]: Objection as to foundation. Videos
20 were believed to be loosely affiliated does not sound like a
21 foundation sufficient to understand for the military
22 commission -- I'm -- I've let a whole lot of, you know,
23 foundation go by, but this one is not -- he's not even

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1 testifying that it is the thing or the FBI determined it.

2 He's just saying that some people believe that.

3 MJ [Col COHEN]: Okay.

4 WIT: I can provide some clarity.

5 MJ [Col COHEN]: One second.

6 Counsel, response?

7 TC [MR. GROHARING]: I would just ask the witness provide
8 a little more foundation.

9 MJ [Col COHEN]: Okay. Then I will sustain it for now,
10 and you may ask a few more questions.

11 Q. Special Agent Fitzgerald, you said the name Rabiea
12 was significant to the investigation. Why is that?

13 A. There were videos that were produced by an
14 organization named As Sahab.

15 Q. What is As Sahab, based on your investigation?

16 A. As Sahab is an organization that produced -- this is
17 going to sound circular, but al Qaeda videos.

18 Q. Okay. And throughout the course of the
19 investigation, how many of those types of videos have you
20 reviewed?

21 A. Numerous. Certainly more than ten.

22 Q. And those -- what do those videos generally or
23 usually depict?

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1 A. Videos are -- I'll refer to this one specifically.

2 After September 11th, on one of the anniversaries, a
3 video was released that depicted the names of the hijackers by
4 flight, and identified them by true name and sometimes by
5 alias.

6 Q. Were those videos critical of the attacks?

7 A. They were not.

8 Q. How did those videos portray the attacks on the
9 United States on September 11th, 2001?

10 A. They portrayed them positively.

11 Q. And how did those videos portray the hijackers that
12 are featured in those -- in the videos?

13 A. They portrayed them positively.

14 LDC [MR. CONNELL]: Objection.

15 MJ [Col COHEN]: Counsel, basis?

16 LDC [MR. CONNELL]: Objection at this point is relevance.
17 We don't have any connection to Mr. al Baluchi.

18 MJ [Col COHEN]: Counsel, although M.C.R.E. 104 gives me
19 broad discretion with respect to this, I just want to make
20 sure that we're tying it to something.

21 Q. Is it fair to say you're familiar with these videos?

22 A. Yes.

23 Q. And ----

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1 MJ [Col COHEN]: Counsel -- Counsel, I need a response.

2 TC [MR. GROHARING]: I apologize, Your Honor. I ----

3 MJ [Col COHEN]: If you're just moving on, I'm going to
4 sustain it and ----

5 TC [MR. GROHARING]: I was just laying a foundation -- my
6 response would be, I was laying a foundation for Special
7 Agent Fitzgerald to explain his knowledge of the use of Rabiea
8 as a kunya for Nawaf al Hazmi. Those were background
9 questions for the videos. I want to demonstrate his extensive
10 knowledge regarding al Qaeda propaganda videos. My next
11 question was going to be: Based on that knowledge, are you
12 able to -- do you have an opinion on the kunya Rabiea in
13 relation to Nawaf al Hazmi?

14 MJ [Col COHEN]: Okay. I -- given that you're laying a
15 foundation, we'll get to whether -- to the ultimate testimony,
16 but I'll overrule it for now on those grounds.

17 Q. Based on your knowledge of these videos you just
18 discussed, do you have an opinion regarding the use of the
19 name Rabiea in relation to Nawaf al Hazmi?

20 A. Yes.

21 Q. And what's that opinion?

22 A. My opinion is the video showed a photo of Nawaf al
23 Hazmi, described him by his true name, and also identified his

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1 kunya as Rabiea.

2 Q. And is that kunya the same name that Mr. Ali used in
3 describing Nawaf al Hazmi?

4 A. Yes.

5 Q. Did Mr. Ali -- did you ask Mr. Ali if he had ever
6 sent any money to Nawaf al Hazmi in the United States?

7 A. Yes.

8 Q. What did Mr. Ali say?

9 A. He stated that he had.

10 TC [MR. GROHARING]: Could I have the feed again, please?

11 MJ [Col COHEN]: Please.

12 Q. Let the record reflect I have pulled up AE 628AA
13 Attachment T.

14 Do you recognize this photo?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's a photograph of the Wall Street Exchange Centre
18 in the UAE.

19 Q. Did you show this photo to Mr. Ali?

20 A. Yes.

21 Q. What did Mr. Ali say about it?

22 A. He advised that there were two separate -- at least
23 two separate Wall Street Exchange Centre branches that he was

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1 familiar with, one in Bur Dubai, and one in Deira Dubai.

2 Q. Were you able to determine in your investigation how
3 far the Wall Street Exchange Centre was from the Modern
4 Electronics Centre where Mr. Ali worked?

5 A. In general terms, yes.

6 Q. In general terms, how far was that?

7 A. Within about an hour's drive.

8 Q. Is there writing on this photo?

9 A. Yes, there is.

10 Q. Is that Mr. Ali's writing?

11 A. Yes, it is.

12 Q. What did Mr. Ali write on the photo?

13 A. He wrote the words "Bur Dubai" and "Deira Dubai,"
14 followed by the word "Main" in parentheses.

15 Q. Let the record reflect I've pulled up AE 628AA
16 Attachment U.

17 Do you recognize this document?

18 A. Yes, I do.

19 Q. Did you show that document to Mr. Ali?

20 A. Yes.

21 Q. What did he say about it?

22 A. He advised that he recognized this money transfer and
23 it was one that he sent.

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1 Q. Okay. And is this a money transfer about which you
2 testified earlier today?

3 A. Yes, it is.

4 Q. And which transfer is that?

5 A. This is the April 16th, 2000 transfer of \$5,000 from
6 a person named Ali to a person named Adel Rafeea.

7 Q. Is there text -- is there also handwriting on this
8 document?

9 A. Yes, there is handwriting on the photocopy in the
10 white margin above the original receipt.

11 Q. Let the record reflect I've called out the
12 handwriting on the top portion of the document.

13 Is this also Mr. Ali's handwriting?

14 A. Yes, it is.

15 Q. What did Mr. Ali write on this document?

16 A. He wrote, "Recognized this money transfer. All
17 personal info are correct, P.O. box, phone, name."

18 Q. Did Mr. Ali also sign and date this document?

19 A. Yes, he did.

20 Q. Let the record reflect I've pulled up AE 628AA
21 Attachment V.

22 Do you recognize this document?

23 A. Yes.

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1 Q. Let the record reflect I've called out text from this
2 document. Did you ask Mr. Ali about this document?

3 A. Yes.

4 Q. What did Mr. Ali say about this document?

5 A. He reviewed it. Under the words "Ordering Customer,"
6 he circled the information there, and he advised the
7 information was correct.

8 Q. Did Mr. Ali say where he got the information about
9 where to send this money?

10 A. Yes, he did.

11 Q. What did Mr. Ali say about that?

12 A. He said he received it from Rabiea.

13 Q. In addition to the circle that you previously
14 described, is there additional handwriting on the document?

15 A. Yes, there is.

16 Q. Is that Mr. Ali's -- let the record reflect I've
17 called out the handwriting on the middle of the document.

18 Is that also Mr. Ali's handwriting?

19 A. Yes.

20 Q. What did Mr. Ali write on that document?

21 A. He wrote, "Information are correct," and then he
22 signed and dated it.

23 Q. Let the record reflect I've pulled up AE 628AA

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1 Attachment W.

2 Do you recognize that document?

3 A. Yes, I do.

4 Q. What is it?

5 A. This is a copy of the ID that Ali presented when he
6 sent the \$5,000 transfer on April 16th of 2000 to Adel Rafeea,
7 and this is a photocopy of that identification card.

8 Q. Let the record reflect that I've called out the right
9 half portion of that document.

10 Did you ask Mr. Ali about this document?

11 A. Yes, I did.

12 Q. What did he say about it?

13 A. He reviewed the information on the photocopy of the
14 card and said it was his ID, a copy of his ID.

15 Q. What is the significance of this information?

16 A. This information is significant because it
17 corroborates a number of other pieces of information. He
18 lists his occupation as computer technician, which is
19 corroborated by other items on bank accounts that were opened
20 by Mr. Ali. It lists his nationality as Pakistan and his
21 passport number as E911562, which is corroborated by multiple
22 documents. And it associates his company as Modern
23 Electronics Centre, which again is corroborated by multiple

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1 documents, including his U.S. visa application.

2 Q. Is there also handwriting on this document?

3 A. Yes, there is.

4 Q. Let the record reflect that I've called out the
5 handwriting on the document.

6 Is this Mr. Ali's handwriting?

7 A. Yes, it is.

8 Q. And what did Mr. Ali write on this document?

9 A. He wrote the letters "ID," and then he signed and
10 dated the document.

11 Q. Were Mr. Ali's explanations of this wire transfer
12 consistent with your investigation?

13 A. Yes.

14 Q. Let the record reflect I've pulled up AE 628AA
15 Attachment X.

16 Do you recognize this document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's a Western Union money transfer that I have
20 described previously from Isam Mansar to Marwan al Shehhi.

21 Q. Let the record reflect that I've called out the text
22 of this document.

23 Did you show Mr. Ali this document?

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1 A. Yes, I did.

2 Q. Did Mr. Ali recognize the document?

3 A. Yes.

4 Q. What did he say about it?

5 A. He said he recognized it and that he conducted this
6 transaction.

7 Q. Did he explain why he used the name Isam Mansar?

8 A. Yes.

9 Q. What did Mr. Ali say about that?

10 A. He advised that after the first transfer on
11 April 16th of 2000, where he used his true identification card
12 and true name, true P.O. Box, and true telephone number, he
13 sent a transfer to Adel Rafeea.

14 When Khalid Shaikh Mohammad became aware that he sent
15 that transfer in true name, he admonished Mr. Ali and stated
16 words to the effect of if they identify this transfer, it will
17 lead back to you, meaning the -- meaning the April transfer,
18 and if they get to you, they'll get to me, meaning Khalid
19 Shaikh Mohammad. Thus, Mr. Ali used an alias when sending
20 this transfer.

21 Q. Did Mr. Ali indicate why he sent the money from that
22 particular location?

23 A. He sent the money from that location because they

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1 either did not require an identification card when the
2 transfer was sent, or if they did require some sort of
3 identification, they did not record it.

4 Q. Is there also handwriting on the piece of paper that
5 surrounded this document?

6 A. Yes.

7 Q. Let the record reflect that I've called out
8 handwriting from the top of the document.

9 Is that Mr. Ali's handwriting?

10 A. Yes, it is.

11 Q. What did Mr. Ali write on this document?

12 A. "Yes, I did this transaction in Dubai, and I
13 recognize this document," and then he signed and dated it.

14 Q. And based on your investigation, where was Marwan al
15 Shehhi at the time of this transfer?

16 A. He was in the area of New York City.

17 Q. And what, if anything, was he doing significant to
18 the 9/11 investigation?

19 A. He was taking English language lessons, and he was
20 also visiting local flight schools in the area, in both
21 New York, specifically Long Island, as well as New Jersey.

22 Q. Were Mr. Ali's statements regarding this wire
23 transfer consistent with the other information you learned

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1 investigating the 9/11 attacks?

2 A. Yes.

3 Q. Let the record reflect that I've pulled up AE 628AA
4 Attachment Y.

5 Do you recognize this document?

6 A. Yes, I do.

7 Q. I've called out the text from this document to make
8 it larger. What is this document?

9 A. Again, this is a transfer that I spoke of previously
10 on July 18th, 2000, of a money transfer from Isam Mansur,
11 M-A-N-S-U-R, to Marwan al Shehhi.

12 Q. Did you show this document to Mr. Ali?

13 A. Yes.

14 Q. Did he recognize it?

15 A. Yes, he did.

16 Q. What did Mr. Ali say about this transaction?

17 A. He noted that he did recognize this transaction and
18 send this transaction, and he also recognized and circled the
19 post office box on the transaction.

20 Q. Is there also writing on this document?

21 A. Yes. On the photocopy, yes.

22 Q. Let the record reflect that I've called out the
23 middle left portion of the document.

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1 There appears to be a circle around the P.O. Box
2 number. Who wrote that circle around the P.O. Box number?

3 A. Mr. Ali.

4 Q. And what, if anything, did he say when he circled
5 that number?

6 A. He noted that that was his P.O. Box, his business
7 P.O. Box in Dubai.

8 Q. Let the record reflect that I've also -- now called
9 out a handwriting from the bottom portion of the document.

10 Is this also Mr. Ali's handwriting?

11 A. Yes, it is.

12 Q. What did Mr. Ali write?

13 A. "I do recognize this transaction and been sent by
14 me," and then he signed and dated it.

15 Q. Based on your investigation, where was Marwan al
16 Shehhi at the time Ali sent this money?

17 A. He was in the area of Venice, Florida.

18 Q. And what was he doing, if anything, related to the
19 9/11 attacks?

20 A. Attending flight school at Huffman Aviation.

21 Q. Were Mr. Ali's statements about this transfer
22 consistent with your investigation into the September 11th
23 attacks?

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1 A. Yes.

2 Q. Let the record reflect I've pulled up 628AA
3 Attachment Z. I've enlarged the text. Do you recognize this
4 document?

5 A. Yes, I do.

6 Q. What is it?

7 A. It is an August 5th transfer of approximately \$9,500
8 from Isam Mansour, M-A-N-S-O-U-R, to Marwan al Shehhi.

9 Q. And is this one of the transfers about which you
10 testified earlier?

11 A. Yes.

12 Q. Did you show this document to Mr. Ali?

13 A. Yes.

14 Q. Did he recognize it?

15 A. Yes, he did.

16 Q. What did Mr. Ali say about this transaction?

17 A. He advised again the name was an alias. He advised
18 that the P.O. Box 16958 was his. He indicated that the
19 telephone number that was listed there, 5845684, was probably
20 a number from one of his business clients, and he said the
21 signature appeared to be his Arabic signature.

22 Q. On this transfer, I notice he uses the name Isam
23 Mansour. What, if anything, did Mr. Ali say about his use of

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1 that name?

2 A. The use of Isam Mansour was an alias to protect his
3 true identity.

4 Q. I note there's also handwriting on this document.

5 A. Yes, on the photocopy.

6 Q. I've called out the handwriting on the top part of
7 the document. Is this Mr. Ali's writing?

8 A. Yes, it is.

9 Q. What did Mr. Ali write?

10 A. "I recognize this transfer that been made by me,"
11 signed and dated.

12 Q. Again, based on your investigation, what was Marwan
13 al Shehhi doing significant to the 9/11 attacks at the time of
14 this transfer?

15 A. In August of 2000, Marwan al Shehhi was enrolled at
16 Huffman Aviation taking flight training lessons.

17 Q. And were Mr. Ali's explanation of this transfer
18 consistent with the other information you learned during the
19 course of your investigation?

20 A. Yes.

21 Q. Let the record reflect I've pulled up AE 628AA
22 Attachment AA, and I've called out the text of the entire
23 document.

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1 Do you recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It's an August 29th transfer of \$20,000 from Mr. Ali
5 to Marwan al Shehhi.

6 Q. Did you show this document to Mr. Ali?

7 A. Yes, I did.

8 Q. Did he recognize it?

9 A. Yes, he did.

10 Q. What did Mr. Ali say about this transaction?

11 A. He said he recognized it and that he sent it. He
12 noted that the P.O. Box was written incorrectly, and that
13 would have been a mistake on his part. And he also noted the
14 phone number likely would have been a phone number from one of
15 his customers.

16 Q. Is there also handwriting on this document?

17 A. Yes, there is, on the photocopy.

18 Q. Is that also Mr. Ali's handwriting?

19 A. Yes.

20 Q. What did Mr. Ali write?

21 A. "I recognize this transfer as I did send it," and
22 signed and dated.

23 Q. Let the record reflect I've pulled up AE 628AA

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1 Attachment BB.

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. What is it?

5 A. This is an approximately \$70,000 transfer from a
6 person named Hani at Fawaz Trading to Marwan al Shehhi on
7 September 17th, 2000.

8 Q. Did you show this document to Mr. Ali?

9 A. Yes, I did.

10 Q. Did he recognize it?

11 A. Yes.

12 Q. What did Mr. Ali say about it?

13 A. He recognized it, said that he sent it. He noted
14 that the phone number on here was the same as the previous
15 phone number on the August 29th transaction, but he also
16 stated that that phone number was likely one of the phone
17 numbers of one of his customers.

18 Q. Did Mr. Ali say why he used the alias Hani from Fawaz
19 Trading during this transfer?

20 A. He simply advised that he used an alias to hide his
21 identity.

22 Q. Is there writing on the photocopy of this document as
23 well?

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1 A. Yes, there is.

2 Q. Let the record reflect that I've called out the
3 handwriting from the top of the document.

4 Is that also Mr. Ali's handwriting?

5 A. Yes.

6 Q. What did Mr. Ali write?

7 A. "I recognize this transfer as I send it to Marwan,"
8 and then he signed and dated it.

9 Q. And based on your investigation, what was Marwan al
10 Shehhi doing at the time Mr. Ali transferred him \$70,000?

11 A. In September of 2000, Marwan al Shehhi was enrolled
12 at flight school at both Huffman Aviation and Jones Aviation
13 in the area of Florida in the United States.

14 Q. Was Mr. Ali's explanation of this transfer consistent
15 with the other information you learned during the course of
16 the investigation?

17 A. Yes.

18 Q. Did Mr. Ali discuss any security precautions he took
19 when interacting with Marwan al Shehhi?

20 A. Yes.

21 Q. And what were those precautions?

22 A. He indicated that when they spoke, the best way to --
23 for them to speak was to have one person call from a pay phone

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1 to a cell phone so there would be no cell-phone-to-cell-phone
2 calls if at all possible.

3 Q. Let the record reflect I've pulled up AE 628AA
4 Attachment RR.

5 Do you recognize this photo?

6 A. Yes, I do.

7 Q. Who is it?

8 A. It's American Airlines Flight 77 hijacker Hani
9 Hanjour.

10 Q. And what role did Hani Hanjour have in the attacks on
11 the United States on September 11th, 2001?

12 A. He was likely the hijacker pilot of Flight 77 when it
13 hit the Pentagon.

14 Q. Did you talk to Mr. Ali about Hani Hanjour?

15 A. Yes.

16 Q. What did Mr. Ali say about Hani Hanjour?

17 A. He identified him by a nickname ----

18 Q. And what ----

19 A. ---- and he also stated that he opened a bank account
20 with him while in the Emirates.

21 Q. And what nickname did Mr. Ali use for Hani Hanjour?

22 A. Orwah?

23 Q. Had you heard that nickname used for Hani Hanjour

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1 before?

2 A. Yes.

3 Q. Where had you heard that?

4 A. On the same video I previously described, which was a
5 video that revealed the true names of the hijackers along with
6 aliases.

7 Q. How did Mr. Ali say he got connected with Hani
8 Hanjour?

9 A. He said that either Hanjour called him or Khalid
10 Shaikh Mohammad told him that he would be calling so that
11 Mr. Ali knew when Hanjour called, or when they made contact,
12 how he referred to himself, Mr. Ali would understand that he
13 had been referred by his uncle, Khalid Shaikh Mohammad.

14 Q. And did Mr. Ali say what the purpose of him
15 connecting with Hani Hanjour was?

16 A. He was helping him transit through the UAE at that
17 time. He helped him with tickets, and he also helped him open
18 up a bank account.

19 Q. Is there handwriting on this photo?

20 A. Yes, there is.

21 Q. Let the record reflect that I've called out the
22 handwriting from the top portion of the document.

23 Is that Mr. Ali's handwriting?

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1 A. Yes, it is.

2 Q. What did Mr. Ali write?

3 A. He wrote the word "Orwah," followed by a slash,
4 followed by the name Hani Hanjour, and then he signed and
5 dated it.

6 TC [MR. GROHARING]: Your Honor, just for planning
7 purposes, I'm about done with this part -- probably a good
8 breaking point after this section of the presentation.

9 MJ [Col COHEN]: Sounds good. Thank you, Counsel.

10 Q. Let the record reflect that I've pulled up Appellate
11 Exhibit 628AA Attachment FF.

12 Do you recognize that document?

13 A. Yes, I do.

14 Q. Let the record reflect that I've called out the top
15 portion of the document.

16 What is this document?

17 A. This is a Citibank UAE account-opening document for
18 Hani Hanjour.

19 Q. And you indicated you talked to Mr. Ali about how he
20 assisted Hani Hanjour in opening a bank account?

21 A. Yes.

22 Q. Is this the bank account in question?

23 A. Yes, it is.

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1 Q. What did Mr. Ali say, if anything, was the purpose of
2 opening this account?

3 A. The advantage to opening this account was it would
4 make unnecessary wire transfers. So in order for Mr. Ali to
5 provide money to someone, specifically in this case Hani
6 Hanjour, all he would have to do was deposit it into the
7 account as opposed to sending a wire transfer.

8 Q. And did Mr. Ali indicate whose money was used to open
9 this account?

10 A. I believe -- I would have to refresh my memory. So I
11 don't -- I know on one occasion he referred to his own
12 account, on another occasion he referred to money from Khalid
13 Shaikh Mohammad, but I'd have to refresh my memory.

14 Q. That's okay.

15 This is additional pages from AE 628AA
16 Attachment F [sic] . I believe it's page 2 of that exhibit.
17 Did you show this document to Mr. Ali as well?

18 A. Yes, I did.

19 Q. What did Mr. Ali say about it?

20 A. Mr. Ali was responsible for depositing, along with
21 Hani Hanjour, this \$3,000 to the account when the account was
22 opened on or about December 5th, 2000.

23 MJ [Col COHEN]: Counsel, I'll just note that that has an

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1 88 circled on that. So for purposes of the record -- I know
2 in my book, it wasn't page 2 of the exhibit, but there is
3 designating numbers of 88 in the circle on the document.

4 TC [MR. GROHARING]: Thank you, Your Honor. And I believe
5 that is the LHM attachment number, I believe, just for the
6 Court's reference.

7 MJ [Col COHEN]: Okay. And that's fine. Like I say, it
8 wasn't in my book. I don't know how it says in the documents,
9 it just wasn't page 2. And so I just want to make sure that
10 we were -- it was clear which page you were on.

11 TC [MR. GROHARING]: And just for the record, if we don't
12 have too many numbers already, the Bates number of that
13 document is LHM-000000636?

14 MJ [Col COHEN]: Thank you. That's what I'm tracking as
15 well. Thank you, Counsel.

16 Q. And did Mr. Ali write on the document during the
17 interview?

18 A. Yes, he did.

19 Q. Is this his writing called out?

20 A. Yes.

21 Q. What did Mr. Ali write?

22 A. He wrote 3,000 and then the dollar sign "was given by
23 me to Hani to open Citibank account." And then he signed and

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1 dated it.

2 Q. And from that document, are you able to tell when
3 that deposit was made?

4 A. Yes. The \$3,000, less a \$15 fee, so a total amount
5 of \$2,985 was deposited as of December 5th, 2000.

6 Q. And from the investigation, were you able to
7 determine where Mr. Ali was on or around 5 December 2000?

8 A. Yes. On or around 5 December 2000, by information
9 from the investigation, Mr. Ali was in the area of Dubai,
10 United Arab Emirates.

11 Q. Were you also able to determine where Hani Hanjour
12 was at the time of this deposit?

13 A. Based upon other immigration records, at around this
14 time -- I can't say precisely on the 5th, but at around this
15 time, he entered the UAE several days previously.

16 TC [MR. GROHARING]: Let the record reflect -- I believe
17 this is AE 628AA Attachment GG. Your Honor, I don't have this
18 one noted in my notes, unfortunately. I do note it's LHM
19 Attachment 91, Bates number MEA-LHM-000000636.

20 MJ [Col COHEN]: Okay, Counsel. I'm tracking that still
21 in FF on the copy you gave me, which is fine. And then that
22 all -- like I said, it does have that MEA-LHM number, and then
23 it has the 91 circled, so it's three pages after the last one.

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1 TC [MR. GROHARING]: Thank you, Your Honor.

2 MJ [Col COHEN]: Thank you.

3 Q. Do you recognize that document?

4 A. Yes, I do.

5 Q. Let the record reflect that I've called out the top
6 portion of that document.

7 Did you show this to Mr. Ali?

8 A. Yes.

9 Q. What did he say about it?

10 A. He reviewed the page. He saw a cash deposit noted on
11 January 28th for \$5,000.

12 Q. And there's writing on this document. Is that
13 Mr. Ali's writing?

14 A. Yes, it is.

15 Q. And it appears that the date is circled; is that
16 correct?

17 A. Yes, it is.

18 MJ [Col COHEN]: One second, Counsel. Mr. Connell?

19 LDC [MR. CONNELL]: Sorry, can I -- Counsel, I don't have
20 that document as FF or GG.

21 MJ [Col COHEN]: Okay. I'll let you guys confer
22 momentarily. Thank you.

23 [Counsel conferred.]

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1 MJ [Col COHEN]: Mr. Connell, were you able to work out --
2 do you see the document that he's referring to at this point?

3 LDC [MR. CONNELL]: I do, sir. Thank you.

4 MJ [Col COHEN]: Thank you. All right. Counsel, you may
5 carry on. Thank you.

6 Q. And I'm not sure if you answered the question. I
7 indicated that you had said that Mr. Ali had circled a date on
8 the document. Was the date that he circled January 28th?

9 A. That's correct, January 28th.

10 Q. And is there also writing on the bottom portion of
11 the document?

12 A. Yes.

13 Q. Whose writing is that?

14 A. Mr. Ali's.

15 Q. And what did Mr. Ali write?

16 A. He wrote a dollar sign, 5,000 was deposited to Hani
17 account -- abbreviated A/C -- by me, and then signed and
18 dated.

19 Q. And based on your investigation, what was Hani
20 Hanjour doing in relation to the 9/11 attacks on 28 January at
21 the time this transfer was sent?

22 A. He was living in Arizona, and he was taking ground
23 school lessons at Pan Am Jet Tech. They were flight simulator

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1 lessons for a 737.

2 Q. Were Mr. Ali's statements about his interactions with
3 Hani Hanjour consistent with what you learned about
4 Mr. Hanjour throughout the course of your investigation?

5 A. Yes, they are.

6 TC [MR. GROHARING]: Your Honor, I think that's a good
7 breaking point for the afternoon break.

8 MJ [Col COHEN]: Great. Let's do that, then. Counsel, as
9 I prepare -- like I said, I'm in no rush to get through the
10 testimony. I told the parties that, and I mean that. But we
11 will take a hard break at 1645 today, so as you prepare.

12 We'll be in recess until 1535.

13 [The R.M.C. 803 session recessed at 1523, 16 September 2019.]

14 [The R.M.C. 803 session was called to order at 1535,
15 16 September 2019.]

16 MJ [Col COHEN]: Commission is called to order. We'll
17 wait a few minutes. Mr. Ruiz just returned. I see all of the
18 learned counsel and all of the accused. And then I recognize
19 Mr. Groharing, who had the witness, and the witness remains on
20 the stand. Okay.

21 TC [MR. GROHARING]: May I proceed, Your Honor?

22 MJ [Col COHEN]: Please carry on.

23 TC [MR. GROHARING]: Thank you.

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1 **DIRECT EXAMINATION CONTINUED**

2 **Questions by the Trial Counsel [MR. GROHARING]:**

3 Q. Special Agent Fitzgerald, before we move on to the
4 next section of the presentation, I do just want to circle
5 back to -- regarding one of the transactions. You talked
6 about a gentleman by name of Adel Rafeea?

7 A. Yes.

8 Q. How was he significant to this investigation?

9 A. He was significant to the investigation because, in
10 roughly September of 2001 after the attacks, he heard some of
11 the names of the hijackers on the news. Mr. Rafeea realized
12 that he had had interaction with two of those hijackers, Nawaf
13 al Hazmi and Khalid al Mihdhar.

14 So Mr. Rafeea came forward to the FBI and advised
15 that he had had interaction with Khalid al Mihdhar and Nawaf
16 al Hazmi and that had, in fact, received a wire transfer on
17 behalf of Nawaf al Hazmi.

18 Q. Was he then investigated?

19 A. Yes, he was.

20 Q. What, if any, connections were found with Mr. Rafeea
21 and the 9/11 attacks?

22 A. Other than his acquaintanceship, his brief
23 acquaintanceship with Nawaf al Hazmi and Khalid al Mihdhar, no

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1 other adverse information was found out regarding Mr. Rafeea.
2 He's not a suspect in the attacks.

3 Q. Did you discuss other support that Mr. Ali provided
4 to individuals in the UAE who were travelling to the United
5 States?

6 A. Yes.

7 Q. What did he call these individuals?

8 A. He identified them as the brothers.

9 Q. And what types of support did Mr. Ali provide the
10 brothers?

11 A. Speaking in general terms, when someone arrived in
12 the UAE, he would help them purchase clothes and sometimes
13 help them make flight arrangements, things of that nature.

14 Q. Did Mr. Ali talk about why the brothers were
15 travelling to the United States?

16 A. Yes.

17 Q. And why was that?

18 A. He believed they were travelling to the United States
19 as part of an operation.

20 Q. And how did he know where he was supposed to send
21 them?

22 A. He had communication with other individuals,
23 including but not limited to Marwan al Shehhi and Ramzi

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1 Binalshibh, so he came to understand which cities these
2 individuals would have to go to.

3 Q. And you said that he was travelling -- they were
4 travelling, according to Mr. Ali, to the United States for an
5 operation?

6 A. Yes.

7 Q. And in that context, how did Mr. Ali define an
8 operation?

9 A. He said an operation could be different things. He
10 noted they could be travelling to the United States for
11 training as part of an operation or they could be travelling
12 to the United States for an operation in the form of an
13 attack.

14 Q. Did he define "operative"?

15 A. Yes, he did.

16 Q. How did he define "operative"?

17 A. "Operative" is someone who conducts an operation.

18 Q. When he was discussing about operatives who were
19 going for an operation, did he discuss the concept of
20 martyrdom?

21 A. Yes. He advised that if a person was going on a
22 martyrdom operation, then they would know that they were; it
23 would not be withheld from them.

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1 Q. And are you familiar with the term "martyrdom"?

2 A. Yes.

3 Q. What do you understand that term to mean?

4 A. To sacrifice yourself for a greater cause.

5 Q. And what, if anything, did Mr. Ali say about whether
6 he thought the operatives were on a martyrdom operation?

7 A. He thought there was perhaps a 50/50 chance that the
8 brothers who he was helping transit through the UAE were going
9 to the United States for a martyrdom operation, roughly. He
10 was estimating a 50/50 chance.

11 Q. Did he talk about security measures he used when
12 helping these operatives travel to the United States?

13 A. Yes.

14 Q. What did Mr. Ali say about that?

15 A. Mr. Ali stated that one of the first things that he
16 typically did when someone arrived in the UAE was to tell them
17 to change hotels. One of the other things Mr. Ali advised the
18 individuals who traveled through the UAE en route to the
19 United States was to never call him from a cell phone to his
20 cell phone, to always keep one end loose or keep one end a
21 nonattributable number like a pay phone. "Nonattributable" is
22 my term, not his.

23 Q. What, if anything, did he say about advising

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1 operatives how to fit in in Western society?

2 A. I didn't ask him specifically about something like
3 that. He indicated that he purchased clothes for them at some
4 of the -- or I should say help them purchase clothes at some
5 of the local shopping malls. So there was an implication
6 there, but he did not state specifically regarding how to
7 dress.

8 Q. Did he indicate why, in fact, he was providing
9 support to these operatives?

10 A. Yes. He was asked to by his uncle.

11 Q. Did he ever talk about making a profit by helping the
12 operatives?

13 A. He mentioned no profit.

14 Q. Did he ever talk about having a business where he
15 facilitated travel and money transfers?

16 A. He did talk about business, but not facilitating
17 travel.

18 TC [MR. GROHARING]: Could I have the feed, please?

19 MJ [Col COHEN]: You may.

20 Q. Do you recognize this photo?

21 A. Yes, I do.

22 Q. Who is it?

23 A. That's Waleed al Shehri.

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1 Q. And based on the investigation, what role did he play
2 in the attacks on the United States on September 11th, 2001?

3 A. He was a hijacker aboard American Airlines Flight 11.

4 Q. Did you show this photo to Mr. Ali?

5 A. Yes.

6 Q. What did Mr. Ali say about it?

7 A. When he viewed it, he couldn't tell if this was Wael
8 or Waleed al Shehri. He did -- he described Wael and Waleed
9 al Shehri as twin brothers. He said it was either one or the
10 other. And he noted that one of them, he couldn't recall
11 which one, was one of the first ones that he helped transit
12 through the UAE to the United States.

13 Q. Based on the investigation, were Wael and Waleed
14 al Shehri, in fact, brothers?

15 A. They were brothers. They were not twins.

16 Q. In the familial sense?

17 A. Yes.

18 Q. Did Mr. Ali write on that photo?

19 A. Yes, he did.

20 Q. What did Mr. Ali write?

21 A. He wrote, "Wael or Walid al Shehri" and then he
22 signed and dated it.

23 Q. Were Mr. Ali's statements consistent with what you

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1 learned about hijacker travel to the United States during the
2 course of your investigation?

3 A. Yes.

4 TC [MR. GROHARING]: Your Honor, I believe I forgot to
5 indicate which exhibit that was. That's AE 628AA
6 Attachment PP.

7 MJ [Col COHEN]: All right. One second. That's what I'm
8 tracking, too. Thank you, Counsel.

9 Q. Now, I'm showing AE 628AA Attachment GGGG. Do you
10 recognize the person in that photograph?

11 A. Yes, I do.

12 Q. Who is that?

13 A. That is Satam al-Suqami.

14 Q. What role did he play in the attacks on the United
15 States on September 11th, 2001?

16 A. He was a hijacker aboard American Airlines Flight 11.

17 Q. Did you show that photo to Mr. Ali?

18 A. Yes, I did.

19 Q. Did he recognize that photo?

20 A. He did not.

21 Q. How did you respond when he didn't recognize the
22 photo?

23 A. I simply went on to the next photo.

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1 Q. And based on the investigation, at that point did you
2 believe or at least suspect, based on his travel, that Mr. Ali
3 would have interacted with him in Dubai?

4 A. I knew that Satam al Suqami had traveled at the same
5 time, and on the same flight as Waleed al Shehri, who Mr. Ali
6 did recognize. So I suspected that Satam al Suqami likely
7 would have had the same opportunity that Waleed al Shehri did
8 to interact with Mr. Ali. So I figured it was likely that he
9 had met him.

10 Q. And after Mr. Ali indicated that he didn't recognize
11 the photo, why didn't you challenge him or confront him about
12 it?

13 A. There were two reasons. One is because I considered
14 Mr. Ali at that point to have been forthcoming, and the second
15 thing was that I knew that the photo that I was presenting was
16 a photo of Satam al Suqami in American clothes with a short
17 haircut and no beard, so I figured it was entirely reasonable
18 that he may not have recognized him.

19 Q. I have now pulled up AE 628AA Attachment QQ. Do you
20 recognize this photo?

21 A. Yes, I do.

22 Q. Who is that?

23 A. That's Majed Moqed.

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1 Q. Based on the investigation, what role did Majed Moqed
2 play in the attacks on the United States on September 11th,
3 2001?

4 A. He was a hijacker aboard American Airlines Flight 77.

5 Q. Did you show a copy of this photo to Mr. Ali?

6 A. Yes.

7 Q. What, if anything, did Mr. Ali say about it?

8 A. He said he recognized him, and he provided two names
9 that he knew him by.

10 Q. What names did Mr. Ali indicate he knew Majed Moqed
11 by?

12 A. The name Majed and the name Al-Ahnaf.

13 Q. And were you familiar with those names?

14 A. Yes, I was.

15 Q. Had ----

16 [Alarm in courtroom went off.]

17 MJ [Col COHEN]: If anyone came in during the last recess,
18 please verify they have not brought in a cell phone. Okay.

19 Counsel, you may proceed.

20 Q. You indicated that Mr. Ali provided two names, the
21 first Majed Moqed, his true name. With regard to
22 Al-Ahnaf ----

23 A. Yes.

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1 Q. ---- were you familiar with that name based on your
2 investigation?

3 A. Yes.

4 Q. How did you become familiar with that name?

5 A. Again, a propaganda video released on an anniversary
6 of September 11th depicting Majed Moqed by true name and also
7 describing the alias, Al-Ahnaf.

8 Q. So Mr. Ali used the same alias for Majed Moqed as
9 al Qaeda did when they released the propaganda video regarding
10 the attacks?

11 A. That's correct.

12 Q. And did Mr. Ali write on the copy of that photo?

13 A. Yes, he did.

14 Q. Is that his handwriting on the top?

15 A. Yes, it is.

16 Q. What did Mr. Ali write?

17 A. He wrote the name, "Majed," a slash, and then the
18 name "Al-Ahnaf," and then he signed and dated it.

19 Q. And were Mr. Ali's statements regarding Majed Moqed
20 consistent with what you learned about hijacker travel to the
21 United States during the course of your investigation?

22 A. Yes, they were.

23 Q. I have now pulled up AE 628AA Attachment UU. Do you

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1 recognize that photo?

2 A. Yes, I do.

3 Q. Who is that?

4 A. That's Ahmed al Ghamdi.

5 Q. What role did Ahmed al Ghamdi play in the attacks on
6 the United States on September 11th, 2001?

7 A. He was a hijacker aboard United Airlines Flight 175.

8 Q. Did you show this photo to Mr. Ali?

9 A. Yes, I did.

10 Q. What, if anything, did he say about it?

11 A. He advised that he met him as he traveled through the
12 UAE, and that he also provided the name that he knew him by.

13 Q. And what name did Mr. Ali know Ahmed al Ghamdi by?

14 A. The name Ekremah.

15 Q. Was that name familiar to you throughout the course
16 of your investigation?

17 A. Yes.

18 Q. And how did you become familiar with the name Ekremah
19 in regard to Ahmed al Ghamdi?

20 A. Again through videos released by As Sahab, oftentimes
21 on the anniversary of September 11th, and those videos
22 providing both an image and an alias for Ahmed al Ghamdi.

23 Q. And are you familiar with the term "kunya"?

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1 A. Yes.

2 Q. What does the term "kunya" mean?

3 A. I've heard it described as a war name, but it's an
4 alias, oftentimes taken by individuals who travelled to
5 Afghanistan before September 11th, 2001, so that people would
6 not know them by their true name.

7 Q. And do you know whether it was al Qaeda's practice to
8 use kunyas?

9 A. Yes, I do know that it was their practice to use
10 kunyas.

11 Q. And was Ekremah, in fact, a kunya used by Ahmed
12 al Ghamdi?

13 A. Yes, it was.

14 Q. And so the name used by Mr. Ali during your interview
15 as well as the name al Qaeda used for Ahmed al Ghamdi in
16 propaganda videos was the same?

17 A. Yes, it was.

18 Q. Did Mr. Ali write on that document as well?

19 A. Yes, he did.

20 Q. What did he write?

21 A. He wrote the name "Ekremah," a slash, and then "Ahmad
22 Al-Ghamdi," and then he signed and dated the photo.

23 Q. Let the record reflect I'm now pulling up AE 628AA

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1 Attachment WW.

2 Do you recognize that photo?

3 A. Yes, I do.

4 Q. Who is it?

5 A. That's Mohand al-Shehri.

6 Q. And what role did Mohand al-Shehri play in the
7 attacks on the United States in September 11th, 2001?

8 A. He was a hijacker aboard United Airlines Flight 175.

9 Q. Did you show this photo to Mr. Ali?

10 A. Yes, I did.

11 Q. What did Mr. Ali say about it?

12 A. He advised that he recognized him and assisted him as
13 he transited through the UAE en route to the United States.

14 Q. Did Mr. Ali also write on that document?

15 A. Yes, he did.

16 Q. Let the record reflect that I've called out the
17 handwriting from the top of the document.

18 What did Mr. Ali write?

19 A. He wrote the name "Muhannad al-Shihri" and then he
20 signed and dated it.

21 Q. Were Mr. Ali's statements about Mohand al-Shehri
22 consistent with what you learned about Mohand al-Shehri during
23 the course of your investigation?

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1 A. Yes.

2 Q. I've now pulled up AE 628AA Attachment SS. Do you
3 recognize that photo?

4 A. Yes, I do.

5 Q. Who is that?

6 A. That is Ahmad al-Na'mi.

7 Q. And based on the investigation, what role did Ahmad
8 al-Na'mi play in the attacks on the United States on
9 September 11th, 2001?

10 A. He was a hijacker aboard United Airlines Flight 93.

11 Q. Did you show that photo to Mr. Ali?

12 A. Yes, I did.

13 Q. What did he say about it?

14 A. He first viewed it, and he described it as a person
15 named Naeem al Ghamdi. And then he requested to continue to
16 look at the photo. And upon reflection, he stated it was not
17 Naeem al Ghamdi, he crossed out that name, and then he
18 identified him as Ahmad al-Na'mi.

19 Q. And did Mr. Ali write on that photo as well?

20 A. Yes.

21 Q. Let the record reflect I've called out the
22 handwriting from the top of the photocopy of the photo.

23 What did Mr. Ali write?

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1 A. He wrote the name Ahmad al-Na'mi, crossed out is
2 Naeem, also crossed out is al Shihri. And I'll note for the
3 record, I stated Naeem al Ghamdi, he wrote Naeem al Shihri.
4 He crossed out both, and then he signed and dated it.

5 Q. Were Mr. Ali's statements regarding Ahmad al-Na'mi
6 consistent with what you learned about hijacker travel to the
7 United States during the course of your investigation?

8 A. Yes, it was.

9 Q. Let the record reflect I've pulled up AE 628AA
10 Attachment VV.

11 Do you recognize that photo?

12 A. Yes, I do.

13 Q. Who is it?

14 A. That's Hamza al Ghamdi.

15 Q. And based on the investigation, what role did Hamza
16 al Ghamdi play in the attacks on the United States on
17 September 11th, 2001?

18 A. He was a hijacker aboard United Airlines Flight 175.

19 Q. Did you show this photo to Mr. Ali?

20 A. Yes, I did.

21 Q. What did Mr. Ali say about it?

22 A. Mr. Ali recognized the photo. He said that Hamza
23 al Ghamdi had traveled through the UAE en route to the United

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1 States. The name he used for him was the name Juleibib.

2 Q. Were you familiar with the name Juleibib in relation
3 to Hamza al Ghamdi?

4 A. Yes, I was.

5 Q. How were you familiar with that name?

6 A. Through videos released by As Sahab after
7 September 11th.

8 Q. In those videos, did al Qaeda refer to Hamza
9 al Ghamdi as Juleibib?

10 A. Correct.

11 Q. And Mr. Ali used the same name for Hamza al Ghamdi
12 during your interview?

13 A. Yes, he referred to him as Juleibib.

14 Q. Did Mr. Ali also write on this document?

15 A. Yes.

16 Q. Let the record reflect I've called out the
17 handwriting at the top of the document?

18 What did Mr. Ali write?

19 A. He wrote the word "Juleibib," a slash, the word or
20 name "al Ghamdi," and then he signed and dated the photo.

21 Q. Were Mr. Ali's statements consistent with what you
22 learned about Hamza al Ghamdi's travel to the United States
23 during the course of your investigation?

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1 A. Yes.

2 Q. Let the record reflect I've pulled up AE 628AA
3 Attachment YYY.

4 Do you recognize that photo?

5 A. Yes, I do.

6 Q. Who is that?

7 A. That is Ahmad al Haznawi.

8 Q. And based on the investigation, what role did Ahmad
9 al Haznawi play in the attacks on the United States on
10 September 11th, 2001?

11 A. He was a hijacker aboard United Airlines Flight 73.

12 Q. Did you show this photo to Mr. Ali?

13 A. Yes, I did.

14 Q. What did he say about it?

15 A. He identified him. He advised he was one of the
16 individuals who he assisted travelling through the UAE en
17 route to the United States, and he provided a name for him.

18 Q. And did Mr. Ali write on this document?

19 A. Yes, he did.

20 Q. Let the record reflect I've again called out the
21 handwriting on the top of that document.

22 What did Mr. Ali write on the document?

23 A. He wrote the name "Al-Garah" -- that's spelled A-L,

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1 hyphen, G-A-R-A-H -- a slash and then the name "al Ghamdi,"
2 and then he signed and dated the photograph.

3 Q. Was the name Al-Garah familiar to you in the
4 investigation?

5 A. Yes, it was.

6 Q. All right. Where -- in relation to Ahmad Al-Haznawi?

7 A. That's correct.

8 Q. Where had you heard that information used?

9 A. Again, on videos released by As Sahab on
10 anniversaries, typically on anniversaries after 9/11.

11 Q. So al Qaeda propaganda videos?

12 A. That's correct.

13 Q. In those videos, they used kunya Al-Garah?

14 A. That's correct.

15 Q. And Mr. Ali used that same kunya when talking about
16 Ahmad Al-Haznawi?

17 A. That is correct.

18 Q. Were Mr. Ali's statements about Ahmad Al-Haznawi
19 consistent with what you learned about hijacker travel to the
20 United States during the course of the investigation?

21 A. Yes.

22 Q. Now I've pulled up 628A Attachment IIII. Do you
23 recognize that photo?

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1 A. Yes, I do.

2 Q. Who is that?

3 A. That is Wail al Shehri.

4 Q. And based on the investigation, what role did
5 Wail al Shehri play in the attacks on the United States on
6 September 11, 2001?

7 A. He was a hijacker aboard American Airlines Flight 11.

8 Q. Did you show this photo to Mr. Ali?

9 A. Yes.

10 Q. What did he say about it?

11 A. As I explained previously with Waleed al Shehri. He
12 recognized it as either Wail or Waleed -- he couldn't tell the
13 difference between the two -- but identified him as one of the
14 brothers and also as one of the individuals that he helped
15 transit through the UAE en route to the United States.

16 Q. Did Mr. Ali write on this document?

17 A. Yes, he did.

18 Q. Let the record reflect that I've called out the
19 handwriting at the top of the document.

20 Is that Mr. Ali's handwriting?

21 A. Yes.

22 Q. What did Mr. Ali write?

23 A. "Wael or Walid al Shehri" and then he signed and

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1 dated it.

2 Q. Were Mr. Ali's statements consistent with what you
3 learned about hijacker travel to the United States during the
4 course of the investigation?

5 A. Yes.

6 TC [MR. GROHARING]: Your Honor, the next attachment is
7 AE 628AA Attachment ZZZ. It's a roughly six-minute video, one
8 of the propaganda videos that Special Agent -- about which
9 Special Agent Fitzgerald just testified.

10 MJ [Col COHEN]: Okay.

11 Q. And Special Agent Fitzgerald, are you familiar with
12 the video known as "The Anniversary of the New York and
13 Washington Raids"?

14 A. Yes.

15 Q. Could you describe that video?

16 A. It's a video that is narrated by Usama bin Laden and
17 talks about the individuals who carried out the 9/11 attacks.

18 Q. You said it was narrated by Usama bin Laden?

19 A. Yes.

20 Q. And what role did Usama bin Laden play in al Qaeda?

21 A. He was the leader of al Qaeda.

22 TC [MR. GROHARING]: Your Honor, I'd ask for permission to
23 publish the video. I would also like to, at four times

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1 throughout the course of the video, pause it and ask Special
2 Agent Fitzgerald to explain certain information that's
3 contained on the video.

4 MJ [Col COHEN]: Okay. Actually, Mr. Connell. One
5 second. He has risen.

6 LDC [MR. CONNELL]: Thank you, sir. Objection as to
7 relevance in that if the question is did certain people use
8 certain nicknames, he's already testified to that. I didn't
9 object. It's not in controversy. If there's something else,
10 perhaps counsel could proffer it.

11 MJ [Col COHEN]: Counsel.

12 TC [MR. GROHARING]: This video will both show that the
13 individuals that Ali facilitated travelling through Dubai to
14 the United States as well as to whom he transferred money
15 actually participated in the United States according to
16 al Qaeda.

17 This is an admission from al Qaeda praising them for
18 their participation in the attacks, so it's directly relevant
19 to Mr. Ali's statements that he's made about his efforts. It
20 corroborates what Mr. Ali has said, and it also proves --
21 provides evidence that corroborates other evidence that
22 establishes Mr. Ali as an enemy combatant. So it's relevant
23 on both counts.

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1 MJ [Col COHEN]: Okay. Response?

2 LDC [MR. CONNELL]: Yes, sir.

3 The -- really counsel didn't just say -- I mean,
4 there was very little to what counsel just said. He said it's
5 going to show what it shows, essentially. The -- it doesn't
6 tie anything to Mr. al Baluchi. The witness has already
7 testified to the names.

8 And I will add the objection as to foundation. We
9 don't know anything about this video. I don't know that this
10 counsel has any -- I mean, this witness would at least need to
11 testify about where he got it, where it came from. We don't
12 know anything about this video at this point.

13 MJ [Col COHEN]: Okay. Counsel, although the rules are
14 relaxed, I -- to help me put it in proper context, I do need a
15 little more testimony about what this actually is, where it
16 came from, and -- for example, I mean, the assertion was it
17 came from Usama bin Laden, but -- it is his voice, but how do
18 we know that? Those kinds of things.

19 So I'll sustain it for now. I'm not ruling that you
20 can't admit it. But at least, that way, at least when I'm
21 potentially using this evidence, I understand why I'm using
22 it.

23 TC [MR. GROHARING]: Special Agent Fitzgerald -- would you

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1 like me to lay the foundation, sir, or attempt ----

2 MJ [Col COHEN]: Sure. Like I said, it can be more
3 loosely than you may have to in the other -- in the ----

4 TC [MR. GROHARING]: Okay.

5 MJ [Col COHEN]: ---- in the actual trial itself, because
6 M.C.R.E. 104 does allow for a more relaxed foundation but it
7 will at least help give me a little more context as to how I
8 should tie it to the accused. Thank you.

9 **DIRECT EXAMINATION CONTINUED**

10 **Questions by the Trial Counsel [MR. GROHARING]:**

11 Q. Special Agent Fitzgerald, are you familiar with
12 al Qaeda's use of propaganda?

13 A. Yes.

14 Q. How does al Qaeda release propaganda?

15 A. Oftentimes it's released on the anniversary of an
16 attack.

17 Q. And is it released publicly?

18 A. Yes. Many of their videos are released publicly on
19 the Internet so they're available for download.

20 Q. Are you familiar with LiveLink [sic]?

21 A. Yes, I am.

22 Q. What is LiveLink?

23 A. It's a -- I'll describe it as a service that allows

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1 you to download videos whether of this nature or any other
2 nature, but it's -- it allows you to download them.

3 Q. And over the course of the investigation, how many
4 al Qaeda propaganda videos have you reviewed?

5 A. Numerous ones. Certainly many of them have been
6 released, as I stated before, on the anniversary. I would
7 estimate at least 10 or 12, what I would call martyrdom videos
8 or other videos directly related to September 11th. I've also
9 seen other videos as well.

10 Q. You said martyrdom videos. You talked a little bit
11 before about martyrs. Could you please describe what a
12 martyrdom video is to the military judge?

13 A. Yes. A number of the 9/11 hijackers had videotaped
14 statements taken which were later released after the events of
15 September 11th, 2001. During those videotaped statements,
16 they indicated many different things, including their
17 political views and what they thought about U.S. support of
18 Israel, what they thought about U.S. support of leaders they
19 considered illegitimate, what they thought about U.S. troops
20 in the Arabian Peninsula, and many things that are recognized
21 to be tenets of al Qaeda and which were also articulated in
22 previously released fatwas.

23 Q. And throughout the course of your investigation, have

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1 you become familiar with videos that have been released that
2 feature Usama bin Laden?

3 A. Yes.

4 Q. And are you familiar with the voice of Usama bin
5 Laden?

6 A. Yes.

7 Q. And in reviewing this video, what's your opinion with
8 regard to who is speaking?

9 A. I've released -- I've reviewed many hours of video.
10 I am not a voice expert. The voice sounds consistent to me
11 with the voice of Usama bin Laden.

12 Q. And in your opinion, based on your experience with
13 al Qaeda propaganda videos, do you believe this is an al Qaeda
14 propaganda video?

15 LDC [MR. CONNELL]: Objection, Your Honor. Voice
16 identification is subject to lay identification, but video
17 matching would require some sort of expertise.

18 MJ [Col COHEN]: Okay. Counsel, repeat the question.

19 Q. Based on your investigation, do you have an opinion
20 of whether or not this is an al Qaeda propaganda video?

21 A. Yes.

22 MJ [Col COHEN]: Okay. I'll overrule that and I'll
23 consider the answer. I didn't see that as identifying

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1 anything more than just he considers it an al Qaeda propaganda
2 video.

3 TC [MR. GROHARING]: Your Honor, I believe sufficient
4 foundation has been laid to -- that would allow Special
5 Agent Fitzgerald to comment on the individuals portrayed in
6 this video, in particular ----

7 MJ [Col COHEN]: Any final comments, Counsel?

8 LDC [MR. CONNELL]: Yes, sir. The question that -- when
9 the military commission ruled earlier, the question was how do
10 we know this is an al Qaeda video versus some other sorts of
11 video. The witness' answer was it was released on the
12 Internet, publicly, from a site where you can download all
13 kinds of videos, and that he's seen a lot of al Qaeda videos.

14 The only actual kind of linkage between any of the
15 testimony and this video is his last comment that in his
16 opinion it's an al Qaeda video, but that still begs the
17 foundation question: How do we know that it's an al Qaeda
18 video versus some other organization video that just used the
19 voice?

20 That we still don't know where it came from other
21 than just it was found wild on the Internet. If it was
22 captured from a site or something, that might be different.
23 But there's just not foundation for this to be -- to have this

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1 sort of linkage that it needs to Mr. al Baluchi in order to be
2 relevant.

3 MJ [Col COHEN]: Mr. Sowards.

4 LDC [MR. SOWARDS]: Yes, Your Honor, I just wanted to join
5 in Mr. Connell's objections and just also summarize that I
6 think at this point the record reflects there's a failure to
7 establish sources and methods by which he's identifying this
8 as an al Qaeda video.

9 And if in the event if he clears that hurdle, that it
10 is marginally relevant. It is clearly cumulative to
11 everything that we have heard before because all it's being
12 offered for is to attach names to individuals. I understand
13 they would like to show an inflammatory video, but that's not
14 the purpose of this motion.

15 MJ [Col COHEN]: Trial Counsel, any further comments with
16 respect to either of those?

17 TC [MR. GROHARING]: Your Honor, Special Agent Fitzgerald
18 has testified that individuals that Mr. Ali facilitated
19 regarding travel to the United States as well as money
20 transfers, that Ali described them in a particular way; and
21 this video will establish they were, in fact, connected to the
22 September 11th, 2000 [sic] attacks.

23 Al Qaeda is taking responsibility for that. They're

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1 praising them for martyring themselves. The videos talk about
2 and make reference to the fact that these individuals were
3 planning to martyr themselves. So it's directly relevant to
4 show that they actually participated in the attacks, which is
5 connected to Mr. Ali's statements facilitating them, which
6 helps establish that he is an enemy combatant.

7 Second, the references to them, we have heard
8 testimony from Special Agent Fitzgerald, this is specific
9 information released publicly, spoken by Usama -- with --
10 featuring Usama bin Laden's voice using some of the same
11 kunyas that Mr. Ali used during his interview. So it
12 corroborates the statements that Mr. Ali made and makes them
13 more reliable.

14 So it's relevant on both counts, and it should be
15 played.

16 MJ [Col COHEN]: Okay. Counsel?

17 LDC [MR. CONNELL]: Sir, the government has gone back to
18 its kunya claim, which is sort of where we started, that
19 these -- the witness has already testified to the nicknames,
20 for each of the persons who had a nickname. He already
21 testified to their role on 9/11. It's difficult to see what
22 showing this video is going to add to the unobjected-to
23 testimony of the witness.

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1 MJ [Col COHEN]: M.C.R.E. 104(a) says -- *Questions of*
2 *admissibility and procedures generally* says, "Preliminary
3 questions concerning the qualification of a person to be a
4 witness, the existence of a privilege, the admissibility of
5 evidence, an application for a continuance, whether to protect
6 the identity of a witness, whether to afford protective
7 testimonial procedures to a victim or child witness, or the
8 availability of a witness to testify either at the site of
9 trial or a remote site, shall be determined by the military
10 judge. In making these determinations the military judge is
11 not bound by the rules of evidence, except those with respect
12 to privileges."

13 In light of the guidance of M.C.R.E. 104(a), I
14 believe that there has been a level of authentication for what
15 this purports to be and that he has experience listening to
16 the voice of Usama bin Laden and, therefore, can identify the
17 voice that's in there. And although it may not be admissible
18 at trial in its current state or with the current issue, in
19 light of the liberal mandate of M.C.R.E. 104(a), which is
20 consistent with F.R.E. 104, I will allow the evidence to be
21 presented. It just still goes to the issue of weight as
22 opposed to admissibility.

23 TC [MR. GROHARING]: Yes, Your Honor.

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1 Permission to publish the video, Your Honor?

2 MJ [Col COHEN]: You may.

3 **[AE 628AA Attachment ZZZ was played.]**

4 Q. Special Agent Fitzgerald, do you recognize the
5 individuals on the screen right now?

6 A. Yes, I do.

7 Q. Could you please describe who they are for the court?

8 A. They are the hijackers of American Airlines
9 Flight 11.

10 Q. And which individuals did you mention today in
11 relation to Mr. Ali?

12 A. I mentioned Waleed al Shehri and Wail al Shehri.

13 Q. And could you please circle those individuals?

14 A. This is Waleed al Shehri, and this is Wail al Shehri.

15 TC [MR. GROHARING]: Your Honor, would you like me to make
16 sub-exhibits as we go or when he -- he's going to talk about
17 some more individuals on the screen or wait until ----

18 MJ [Col COHEN]: Take a screen shot of this one at the
19 current time.

20 TC [MR. GROHARING]: Please capture that as a sub-exhibit.
21 **[Pause.]**

22 LDC [MR. SOWARDS]: Your Honor, may we have just a moment?

23 MJ [Col COHEN]: You may.

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1 LDC [MR. SOWARDS]: Thank you.

2 [Counsel conferred.]

3 LDC [MR. CONNELL]: Your Honor, now that we've started the
4 video, I have one further objection, if I may be heard.

5 MJ [Col COHEN]: Okay, sir.

6 LDC [MR. CONNELL]: And that's that, in flipping to what
7 the government provided as ZZZ, it appears to be a
8 November 2017 video after the death of Usama bin Laden, and it
9 seems to have text added, perhaps -- by parties unknown, which
10 these sentences don't seem to make a lot of sense. I'm not
11 sure what "purified the nation's folios from the dirt" means,
12 but I doubt it's a translation of what is being said in the
13 Arabic.

14 So I think that there are substantial additional
15 questions now that we've started to see it about the
16 authenticity of this video.

17 MJ [Col COHEN]: Counsel?

18 TC [MR. GROHARING]: Judge, if I could have a moment,
19 I ----

20 MJ [Col COHEN]: You may.

21 [Counsel conferred.]

22 MJ [Col COHEN]: I tell you what, Counsel, I -- we can
23 always come back and reconsider this tomorrow, but for now

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1 we're just going to move on, and it will not be admitted into
2 evidence at this point.

3 I'll exercise M.C.R.E. 611 with respect to mode and
4 interrogation -- mode and manner of interrogation or
5 questioning of the witness, and given that there's concerns
6 and I have looked at ZZZ, it does say November 2017 as far as
7 the date, which raises more questions about who it is,
8 et cetera.

9 TC [MR. GROHARING]: Your Honor, I ---- I believe it's
10 just been mismarked, but I'll get to the bottom of it, and
11 tomorrow I will be in a position to ----

12 MJ [Col COHEN]: Okay.

13 TC [MR. GROHARING]: ---- articulate ----

14 MJ [Col COHEN]: I mean at the point, I mean, defense
15 counsel is correct that you have -- there is evidence already
16 before the commission that these kunyas were identified by
17 Mr. Ali. All right. Thank you.

18 All right. Let's move on, then. Cut the feed.

19 Mr. Groharing, your witness.

20 TC [MR. GROHARING]: Thank you, Your Honor.

21 **DIRECT EXAMINATION CONTINUED**

22 **Questions by the Trial Counsel [MR. GROHARING]:**

23 Q. Special Agent Fitzgerald, did you talk to Mr. Ali

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1 about his interactions with Mustafa al-Hawsawi?

2 A. Yes, I did.

3 Q. How did Mr. Ali say he met Mr. al Hawsawi?

4 A. Mr. Ali advised that he needed help in the UAE
5 because he was holding down a full-time job while facilitating
6 people.

7 Q. What kind of assistance did he need?

8 A. He needed an additional person to help him facilitate
9 people.

10 Q. And did you show Mr. Ali a photo of Mr. al Hawsawi?

11 A. Yes, I did.

12 TC [MR. GROHARING]: Could I have the feed, please?

13 MJ [Col COHEN]: You may.

14 TC [MR. GROHARING]: Your Honor, this is AE 628AA
15 Attachment ZZ.

16 Q. Did Mr. Ali recognize the photo?

17 A. Yes, he did.

18 Q. Did he write on the photo?

19 A. Yes, he did.

20 MJ [Col COHEN]: If we could please turn that down. Thank
21 you.

22 Q. What did Mr. Ali write on the photo?

23 A. He wrote the name "Mustafa al Hawsawi," and then he

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1 signed and dated the photograph.

2 Q. What else, if anything, did Mr. Ali say about Mustafa
3 al Hawsawi?

4 A. Mr. Ali advised that Mr. al Hawsawi was sent to the
5 UAE by Khalid Shaikh Mohammad, and that because Mr. Ali had a
6 full-time job and was not able to handle all of the work he
7 had between helping people transit through the UAE and do his
8 job, that his uncle send him some additional help.

9 So Mr. al Hawsawi took over where Mr. Ali left off in
10 helping people transit through the United Arab Emirates.

11 Q. And when you say "people," were those the brothers
12 that Mr. Ali had described previously?

13 A. That's correct.

14 Q. Were Mr. Ali's statements about Mr. al Hawsawi
15 consistent with statements made by Mr. al Hawsawi,
16 Mr. Mohammad, as well as the rest of your investigation?

17 A. They were consistent with the statements of
18 Mr. Hawsawi. I'm unaware if they were consistent with the
19 statements of Khalid Shaikh Mohammad. They are consistent
20 with other evidence that I'm familiar with in the
21 investigation.

22 Q. Did Mr. Ali talk about personally using aliases?

23 A. Yes, he did.

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1 Q. What did he say about that?

2 A. He used several different names.

3 Q. And do you recall what names he used?

4 A. He advised he used the name Ammar and Mo'een and
5 possibly one or two other names.

6 Q. And did he consider those kunyas?

7 A. He did not describe them as kunyas, and I did not
8 interpret them as that.

9 Q. Did Mr. Ali talk about his interactions with Ramzi
10 Binalshibh?

11 A. Yes, he did.

12 Q. What role did Ali, Mr. Ali, indicate Ramzi Binalshibh
13 played with regard to the operatives Mr. Ali was assisting?

14 A. Mr. Ali advised that Mr. Binalshibh was in contact
15 with Marwan al Shehhi. Mr. Ali also advised that Ramzi
16 Binalshibh had traveled through the UAE on a number of
17 occasions in the summer of 2000, and he had cause to meet him
18 as he had traveled through.

19 Q. What, if anything, did he say about Ramzi
20 Binalshibh's efforts to obtain a visa?

21 A. Mr. Ali advised that he was aware that Ramzi
22 Binalshibh had applied for a visa to the United States, and
23 was unable to get in.

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1 Q. Did Mr. Ali indicate what he thought Mr. Binalshibh
2 was going to do in the United States if he obtained a visa?

3 A. Mr. Ali believed that Ramzi Binalshibh was going to
4 join the brothers in the United States.

5 MJ [Col COHEN]: Counsel, do you still need the feed?

6 TC [MR. GROHARING]: I'm about to put up a different
7 photo.

8 MJ [Col COHEN]: Okay. Thank you.

9 Q. That's 628AA Attachment 00. Do you recognize that
10 photo?

11 A. Yes, I do.

12 Q. Who is that?

13 A. That's a photo of Ramzi Binalshibh.

14 Q. And did you show Mr. Ali that photo?

15 A. Yes, I did.

16 Q. Did he write on the photo?

17 A. Yes.

18 Q. Let the record reflect that I've called out the
19 handwriting on the top of the photo.

20 What did Mr. Ali write on the photo?

21 A. He wrote the names Abu-Obiedah/Salem/Ramzi Bin
22 Alshibah, and then he signed and dated the photograph.

23 Q. Were you familiar with the name Abu-Obiedah?

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1 A. Yes, I was.

2 Q. Where had you seen that name used in relation to
3 Ramzi Binalshibh?

4 A. There was a videotape that was released after 9/11
5 that depicted Usama bin Laden. Usama bin Laden was talking
6 about the September 11th attacks, and he identified
7 Abu-Obiedah as Ramzi Binalshibh.

8 Q. So Ramzi Binalshibh -- or I'm sorry, Usama bin Laden
9 and Mr. Ali both referred to Ramzi Binalshibh as Abu-Obiedah?

10 A. That's correct.

11 Q. And did you interpret that to be a kunya for Ramzi
12 Binalshibh?

13 A. I suspected it was likely a kunya.

14 Q. Were the statements that Mr. Ali made about
15 Mr. Binalshibh consistent with what you learned during the
16 course of your investigation?

17 A. Yes.

18 Q. Cut the feed, please.

19 Did you talk to Mr. Ali about a trip he made to
20 Pakistan in the summer of 2001?

21 A. Yes, I did.

22 Q. What did Mr. Ali indicate happened on that trip?

23 A. He said when he traveled to Pakistan roughly in late

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1 June 2001, sometime during that trip he met with his uncle,
2 Khalid Shaikh Mohammad. He advised that when he spoke with
3 Khalid Shaikh Mohammad, he stated that he knew that Ramzi
4 Binalshibh had tried and failed to get into the United States.

5 Mr. Ali described that based upon his English
6 language ability and his business contacts, he felt that he
7 would be able to get into the United States at least as well
8 as Ramzi Binalshibh did or was able to do; in other words, he
9 felt he was at least as competent as Ramzi Binalshibh to get
10 into the United States to join the brothers.

11 Q. Did Mr. Ali talk at all about his willingness to be a
12 martyr?

13 A. Yes. Mr. Ali stated that not during this
14 conversation in roughly June-July of 2001, but previously, he
15 had spoken to his uncle, Khalid Shaikh Mohammad, about the
16 topic of martyrdom such that when the conversation was had in
17 June or July 2001, that Mr. Ali knew that Khalid Shaikh
18 Mohammad knew that he, Ali, was willing to be a martyr.

19 Q. So is it fair to say that, based on what Mr. Ali
20 said, that after Mr. Ali had had a conversation with
21 Mr. Mohammad about his willingness to become a martyr, he then
22 became of the opinion that it was at least a 50 percent chance
23 that the operatives that he was facilitating ----

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1 LDC [MR. CONNELL]: Your Honor, leading on an important
2 point, recharacterizing what the witness said.

3 MJ [Col COHEN]: Counsel, to the extent that you can, I
4 was allowing the summaries earlier, but please ask open-ended
5 questions.

6 Q. So you just testified that at some point Mr. Ali had
7 a conversation with Mr. Mohammad about his willingness to
8 become a martyr.

9 A. That's correct.

10 Q. Was it after that conversation that, based on your
11 interview, Mr. Ali learned -- or developed his opinion that
12 there was a 50 percent chance ----

13 LDC [MR. CONNELL]: Your Honor, same objection.

14 MJ [Col COHEN]: Yeah. Counsel, go to the -- form of the
15 question. Like I said, you -- you know, the question is, you
16 know, at what point did he -- did he learn that fact.

17 Q. At what point did ----

18 TC [MR. GROHARING]: Yes, Your Honor.

19 MJ [Col COHEN]: That would -- there we go.

20 Q. At what point did Mr. Ali form the opinion that the
21 individuals he was sending to the United States -- the opinion
22 that you said earlier, stated earlier, that there was a 50
23 percent chance that they were travelling to be martyrs?

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1 A. I didn't know at what point he formed that opinion.
2 The only thing that I can state is that at what point Mr. Ali
3 understood or believed -- based upon what, I don't know, but
4 Mr. Ali believed that there was maybe a 50/50 chance that the
5 brothers going to the United States were going for a martyrdom
6 operation.

7 MJ [Col COHEN]: And just so the record is clear, my -- me
8 having the rephrasing, those objections deleting were
9 sustained.

10 Q. Special Agent Fitzgerald, let the record reflect I've
11 pulled up AE 628AA Attachment II. Do you recognize this
12 document?

13 MJ [Col COHEN]: One second, Counsel. We need to publish
14 that. While we're pulling that up, the court reporters wanted
15 to confirm: Earlier with respect to the photo of
16 Mr. Binalshibh, that was Attachment 00, correct?

17 TC [MR. GROHARING]: Just one moment, Your Honor. I
18 believe so, yes, Your Honor.

19 MJ [Col COHEN]: Okay. That is what I was tracking. I
20 just didn't want to testify as the judge.

21 LDC [MR. CONNELL]: That's what I have, sir.

22 MJ [Col COHEN]: All right. Thank you. Now we're at II,
23 is where everyone should be. Thank you.

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1 Q. Now there's actually an exhibit on your screen.

2 A. Yes.

3 TC [MR. GROHARING]: May I continue, Your Honor?

4 MJ [Col COHEN]: You may, please.

5 Q. Do you recognize this document?

6 A. Yes, I do.

7 Q. And what is it?

8 A. It's the front -- it's the facing page, the front of
9 an application for a U.S. visa by Ali Abdul Aziz Ali.

10 Q. Did you show it to Mr. Ali?

11 A. Yes, I did.

12 Q. Did he acknowledge that it was his visa application?

13 A. Yes, he did.

14 Q. Let the record reflect I've called out text from the
15 middle left of the document.

16 On the application "Married" is checked. What, if
17 anything, did Mr. Ali say about that?

18 A. Mr. Ali stated at the time he was not married;
19 however, he thought his visa was more likely to be granted if
20 he indicated that he was married.

21 Q. Let the record reflect that I've called out text from
22 the bottom right-hand corner of the document.

23 When does the application say that Mr. Ali intend --

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1 would intend to arrive in the United States if the application
2 was approved?

3 LDC [MR. CONNELL]: Your Honor, asked and answered. We've
4 already been over this exhibit once.

5 MJ [Col COHEN]: Counsel, yeah, let's -- that is asked and
6 answered. I'm going to sustain that. If there's new things
7 you need him to identify, that's fine, but you did
8 specifically ask that the first time we saw this.

9 TC [MR. GROHARING]: Your Honor, if I could respond?

10 MJ [Col COHEN]: You may.

11 TC [MR. GROHARING]: I'm only framing the question. I'm
12 going to ask Special Agent Fitzgerald what Mr. Ali said.

13 MJ [Col COHEN]: Okay. Feel free -- I mean, if someone's
14 already testified, just say earlier you testified to this,
15 correct, and then just -- then just ask the question if you
16 need to. And I'll allow the defense to do the same thing. In
17 lengthy examinations, if you need to refer back to something
18 that may have happened a day prior during testimony, that's
19 fine, as long as it's not a loop after loop, you know,
20 examination.

21 TC [MR. GROHARING]: Okay.

22 MJ [Col COHEN]: But, yeah, it will be helpful to me and
23 efficient to just get to the question.

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1 TC [MR. GROHARING]: Yes, Your Honor.

2 MJ [Col COHEN]: Thank you.

3 Q. Earlier you testified that Mr. Ali's visa -- in
4 Mr. Ali's visa, he requested to travel to the United States on
5 September 4th, 2001, and stay for a period of one week. Did
6 you ask Mr. Ali about that during the interview?

7 A. Yes.

8 Q. And what did Mr. Ali say?

9 A. He stated, in part, that his residency permit in the
10 UAE was expiring, and he also advised that his company, MEC,
11 was closing and that he was going to have to leave the UAE.

12 Q. Let the record reflect I've called out handwriting on
13 the left side of the document.

14 Did Mr. Ali write on this document?

15 A. Yes, he did.

16 Q. What did Mr. Ali write on the document?

17 A. He wrote, "home tel no.," number is abbreviated N-0
18 period, and he signed and dated the document.

19 TC [MR. GROHARING]: Your Honor, I've pulled up the back
20 page of the visa application. I want to make sure I have the
21 right appellate exhibit, Your Honor.

22 MJ [Col COHEN]: Still be on ----

23 TC [MR. GROHARING]: I believe it's the same appellate

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1 exhibit, just the next page?

2 MJ [Col COHEN]: Yeah, II is where we're at. Thank you,
3 Counsel.

4 Q. Do you recognize that document?

5 A. Yes, I do.

6 Q. Is it the back page of Mr. Ali's visa application?

7 A. Yes, it is.

8 Q. And did he write on that document?

9 A. Yes.

10 Q. What did he write?

11 A. "This is my visa app."

12 Q. Special Agent Fitzgerald, based on your
13 investigation, when did Mr. Ali leave the UAE?

14 A. Based upon the investigation, he departed the UAE on
15 10 September 2001.

16 Q. And did Mr. Ali talk about his departure from the
17 UAE?

18 A. Yes, he did.

19 Q. What did he say?

20 A. He stated on or around that time, he met Ramzi
21 Binalshibh. He wasn't sure why Ramzi Binalshibh was there.
22 And he also met Mustafa al Hawsawi. He came to understand
23 through the context of the conversation that an operation was

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1 about to happen and that he needed to leave Pakistan.

2 He indicated that he was considering going to
3 someplace else, such as Kuwait, to find a new job, and Ramzi
4 Binalshibh advised him that he should instead travel to
5 Pakistan.

6 Q. You indicated that he intend to leave Pakistan. Did
7 he, in fact, intend to believe Dubai?

8 A. Correction, yes. He intended to leave Dubai, United
9 Arab Emirates, for Pakistan. That's correct.

10 Q. Do you recognize ----

11 TC [MR. GROHARING]: Your Honor, AE 628AA
12 Attachment LL ----

13 MJ [Col COHEN]: Thank you.

14 TC [MR. GROHARING]: ---- is displayed. And that's, I
15 believe, page 12 of that document. And the Bates number is
16 six zeros -- five zeros and 593.

17 MJ [Col COHEN]: Thank you, Counsel. Mr. Connell, do you
18 have that?

19 LDC [MR. CONNELL]: Yes, sir, thank you.

20 MJ [Col COHEN]: All right. Thank you.

21 Q. Do you recognize that document?

22 A. Yes.

23 Q. What is it?

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1 A. It's a bank statement of Ali Abdul Aziz Ali.

2 Q. Let the record reflect that I've called out the text
3 of that statement.

4 Did you show this document to Mr. Ali?

5 A. Yes, I did.

6 Q. What did he say about it?

7 A. He advised that this was his bank account, and he
8 identified the last transactions that he undertook prior to
9 leaving the United Arab Emirates.

10 Q. Special Agent Fitzgerald, I notice this is an Emirati
11 bank account. Are these dirhams?

12 A. That's correct. The currency is dirhams.

13 Q. And do you know what the rate, the equivalency rate
14 for Dirhams to dollars roughly was?

15 A. At that time approximately 3.65 dirhams to the
16 dollar.

17 Q. And what did Mr. Ali say about this document?

18 A. Mr. Ali circled two ATM transactions and advised
19 those were his last transactions in the UAE.

20 Q. Are those the ATM withdrawals on 10 September 2001?

21 A. That's correct.

22 Q. Is there also writing on the bottom of the document?

23 A. Yes.

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1 Q. Whose writing is that?

2 A. That's Mr. Ali's writing.

3 Q. And what did Mr. Ali write?

4 A. He wrote the words "last trans," for last
5 transaction, and underlined them.

6 Q. And is this another page of that same bank statement?

7 A. Yes, it is.

8 Q. This is the last --

9 TC [MR. GROHARING]: The Bates number on this ends in 592,
10 Your Honor.

11 MJ [Col COHEN]: Thank you.

12 TC [MR. GROHARING]: It's Attachment 45.

13 Q. Did you show this document to Mr. Ali?

14 A. Yeah. This document was available for him to review.
15 I think he flipped through it. Obviously, he did not write on
16 this document.

17 Q. Okay. Does that document reflect any additional ATM
18 transactions?

19 A. It does reflect one ATM transaction on 11 September.

20 Q. Leaving the account with just sort of 42 dirhams?

21 A. That's correct.

22 Q. Did your investigation reveal any additional
23 transactions on this account after September 11th -- after

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1 September 11th, 2001?

2 A. The only transactions that it showed were service
3 charges, which consumed the balance of the account, and then
4 in approximately December of 2001, the account was closed.

5 Q. Could you please clear the screen.

6 Where did Mr. Ali indicate he went when he left Dubai
7 on September 10th?

8 A. He flew from Dubai to Karachi in Pakistan.

9 MJ [Col COHEN]: Counsel, I just wanted to give you a
10 heads-up. You have about four minutes before we'll stop for
11 the day. So I didn't want you to get too far down a different
12 line and then cut you off mid-sentence.

13 TC [MR. GROHARING]: Thank you, Your Honor.

14 Q. Did you talk to him about what he was doing on
15 September 11th?

16 A. Yes.

17 Q. Was he in a position to view the attacks on the
18 United States on September 11th?

19 A. Yes, he was.

20 Q. Did Mr. Ali indicate who he was with?

21 A. Yes, he did.

22 Q. Who was he with?

23 A. He was with Ramzi Binalshibh and Khalid Shaikh

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1 Mohammad. He said later on in the day they were all joined by
2 Mustafa al Hawsawi.

3 Q. What did he say about that?

4 A. As he was watching TV, he indicated that he wondered
5 if these were the brothers, if this was the operation of which
6 he was -- by inference -- and this is by inference, if this
7 was the operation that he was part of and if these were the
8 brothers that he facilitated; and Khalid Shaikh Mohammad
9 indicated to him that, yes, these were the brothers.

10 Q. What did -- what, if anything, did Mr. Ali say after
11 Khalid Shaikh Mohammad told him these were the brothers that
12 he had facilitated?

13 A. He was wondering -- he wondered if they were --
14 essentially if they were all dead, and Khalid Shaikh Mohammad
15 indicated that they were.

16 TC [MR. GROHARING]: Your Honor, I think that's a good
17 stopping point based on the examination.

18 MJ [Col COHEN]: I think so, too.

19 We'll reconvene at 0900 hours. Like I said, if -- as
20 we move forward in this case with testimony this week, you can
21 expect that we'll go 0900 to 1645 each day, after we -- and
22 we'll try to keep it to no more than a 75-minute lunch on each
23 afternoon during the break.

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1 We're in recess -----

2 TC [MR. GROHARING]: Your Honor, if it helps Your Honor
3 just for planning purposes, I estimate less than two hours to
4 complete my examination ----

5 MJ [Col COHEN]: Okay.

6 TC [MR. GROHARING]: -- for everyone's purposes.

7 MJ [Col COHEN]: All right. Mr. Connell, sometime
8 tomorrow morning, you will be tendered the witness. I know
9 you've been preparing for it, so we'll take up that point.

10 Sir, just an admonition to you. You can interact
11 with counsel on nonsubstantive matters this evening, but
12 please do not discuss the substance of your testimony with
13 anyone at this point. You remain a witness on the stand.

14 WIT: Yes, Your Honor.

15 MJ [Col COHEN]: All right, thank you, we're in recess.

16 LDC [MS. BORMANN]: Judge, if I may.

17 MJ [Col COHEN]: One second. Please, everyone stay
18 seated.

19 LDC [MS. BORMANN]: We've organized a procedure with the
20 help of the security officer and Mr. Bin'Attash. We need the
21 courtroom until 6:00 p.m., with your permission.

22 MJ [Col COHEN]: Trial Counsel, is that -- can we do that?

23 CP [BG MARTINS]: No objection, Your Honor.

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1 MJ [Col COHEN]: Okay. You may do so. We're in recess.

2 LDC [MR. HARRINGTON]: Excuse me, Judge.

3 MJ [Col COHEN]: Mr. Harrington, please come forward.

4 LDC [MR. HARRINGTON]: Thank you, Judge.

5 Judge, this morning you heard from Mr. Binalshibh,
6 although he spoke to you, I think, in a calm, and respectful
7 and polite way.

8 MJ [Col COHEN]: He was very respectful this morning.

9 LDC [MR. HARRINGTON]: You could also, I'm sure, detect
10 the desperation and suffering he is coping with in his present
11 conditions. And I know that you heard him say that people
12 don't believe him with what he's suffering but these things
13 are real.

14 And we are filing an emergency motion this week
15 seeking additional relief from the court. We've also asked to
16 meet with the psychiatrist and the SMO and the camp commander.
17 We're making arrangements on the SMO and the psychiatrist, but
18 my understanding is the camp commander does not want to meet
19 with us.

20 The court has encouraged counsel to try and meet to
21 resolve things. We are trying to work that through in
22 addition to filing motions, but we are desperately seeking the
23 court's help in trying to alleviate the physical and emotional

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1 problems that Mr. Binalshibh is going through. And we do need
2 the court's intervention in order to try to get that ----

3 MJ [Col COHEN]: Thank you. I'll look for the motion.
4 Will this be framed in a non-706 motion? Is this something
5 separate than a 706 issue, or ----

6 LDC [MR. HARRINGTON]: Yes. Yes, Judge. Nothing to do
7 with a 706.

8 MJ [Col COHEN]: Okay. Okay. Great. Thank you, then,
9 I'll look for the motion, and I'll work with the parties to
10 see what authority I can do to help facilitate. Thank you.

11 LDC [MR. HARRINGTON]: Okay.

12 MJ [Col COHEN]: We're in recess.

13 [The R.M.C. 803 session recessed at 1646, 16 September 2019.]

14 [END OF PAGE]

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