

1 **[The R.M.C. 803 session was called to order at 1003, 17 April 2024.]**

2 MJ [Col McCALL]: Commission is called to order.

3 Good morning, Mr. Trivett. Could you please identify who's
4 here on behalf of the United States, both here and at the Remote
5 Hearing Room?

6 MTC [MR. TRIVETT]: Yes, sir. Good morning.

7 Representing the United States today in the courtroom in
8 Guantanamo is myself, Mr. Clay Trivett; Lieutenant Commander
9 Robert Baxter; Mr. Christopher Dykstra. Also present are paralegals
10 Rudolph Gibbs and Ms. Karissa Grippando.

11 FBI representatives in the courtroom today are Intelligence
12 Analyst Christina Volker, Supervisory Special Agent Justin
13 Zuccolotto, and Ms. Katherine Eisenreich of the FBI Office of General
14 Counsel.

15 Representing the United States in the Remote Hearing Room
16 today is Colonel Joshua Bearden. We anticipate Major Dastoor will be
17 here shortly. Staff Sergeant Samantha Resendiz is also present.

18 Your Honor, these proceedings are being broadcast via
19 closed-circuit television consistent and pursuant to the commission's
20 orders.

21 MJ [Col McCALL]: All right. Thank you, Mr. Trivett.

22 Good morning, Mr. Sowards.

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

1 Appearing on behalf of Mr. Mohammad in the courtroom, who is
2 not present, are Gary Sowards; Lieutenant Colonel Kathleen Potter,
3 United States Air Force; Denise LeBoeuf; Lieutenant William Xu,
4 United States Navy. And we're also joined by Elspeth Theis, a major,
5 United States Air Force; and Michael Leahy, captain, United States
6 Air Force, who are prepared to make their appearances whenever it's
7 convenient ----

8 MJ [Col McCALL]: Okay. We'll do that this morning.

9 LDC [MR. SOWARDS]: ---- for the commission.

10 And, also, I just wanted you to know, out of an abundance of
11 caution, I have brought my umbrella today; and the theory is that if
12 I have it, it will not rain.

13 MJ [Col McCALL]: I'm sure of it. Thank you.

14 All right. Good morning, Mr. Engle.

15 LDC [MR. ENGLE]: Good morning, Your Honor.

16 On behalf of Mr. Bin'Attash in the courtroom this morning:
17 Matthew Engle, William Montross, and Tasnim Motala. Up in the RHR,
18 we have Lieutenant Austin Ridgeway and Prax Kennedy.

19 MJ [Col McCALL]: All right. Thank you.

20 Good morning, Mr. Connell.

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

22 On behalf of Mr. al Baluchi, we have myself, James Connell;
23 Alka Pradhan; Rita Radostitz; Lieutenant Jennifer Joseph; and in the

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1 Remote Hearing Room, Defne Ozgediz.

2 MJ [Col McCALL]: All right. Good morning, Mr. Ruiz.

3 LDC [MR. RUIZ]: Good morning, Judge.

4 I'm here on behalf of Mr. al Hawsawi with Captain
5 Patrick Tipton, Captain Kerry Mawn, Mr. Sean Gleason. In the RHR we
6 have Ms. Suzanne Lachelier.

7 MJ [Col McCALL]: All right. Thank you.

8 And I note that none of the accused are present this
9 morning.

10 Trial Counsel, do you have a witness to explain these
11 absences?

12 Now it is.

13 **LIEUTENANT COMMANDER, U.S. Navy, was called as a witness for the**
14 **prosecution, was sworn, and testified as follows:**

15 **DIRECT EXAMINATION**

16 **Questions by the Deputy Managing Trial Counsel [MR. DYKSTRA]:**

17 Q. Lieutenant Commander, you go by the pseudonym "Bandit"; is
18 that correct?

19 A. That is correct.

20 Q. And you've previously testified in these proceedings?

21 A. I have, yes.

22 Q. And for purposes of the record, I'll just remind you that
23 you remain under oath.

1 Now, did you have the opportunity to advise the accused of
2 their right to be present this morning?

3 A. I did.

4 Q. And what form did you do so when you -- when you advised
5 them of their rights?

6 A. The standard rights advisement form that we have.

7 DMTC [MR. DYKSTRA]: Your Honor, if I may approach the
8 witness, I'm going to hand him what has previously been marked 943D
9 (KSM), 943E (WBA), 943F (AAA), and 943G (MAH).

10 MJ [Col McCALL]: Go ahead.

11 DMTC [MR. DYKSTRA]: Thank you, Your Honor.

12 Q. And are these, the forms that I just handed you, the forms
13 that you used to advise the accused of their rights?

14 A. They are, yes.

15 Q. And approximately what time did you do so?

16 A. It was about 0620 to 0710.

17 Q. And did you advise them of their rights in English or
18 Arabic?

19 A. We read it in English; and if they asked for it, I gave
20 them an Arabic copy.

21 Q. And what was their response when you advised them?

22 A. None of the accused wished to be present today.

23 Q. And do you have any questions about the voluntariness of

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1 their choices?

2 A. I did not.

3 Q. And just for purposes of the record, for those that did
4 not attend, are they attending legal meetings or other -- have other
5 appointments?

6 A. Mr. Mohammad would be -- my understanding was Mr. Mohammad
7 would be, you know, attending legal meetings all day off-site and
8 that Mr. Bin'Attash would be attending legal meetings in the
9 afternoon.

10 Mr. Hawsawi and Mr. Ali did not want to attend legal
11 meetings today.

12 DMTC [MR. DYKSTRA]: All right. Thank you, Your Honor.

13 No further questions.

14 MJ [Col McCALL]: All right. Thank you, Mr. Dykstra.

15 Any questions for this witness?

16 Apparently not.

17 All right. You're excused. Thank you.

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

19 MJ [Col McCALL]: The commission finds that Mr. Mohammad,
20 Mr. Bin'Attash, Mr. Ali, and Mr. al Hawsawi have knowingly and
21 voluntarily waived their right to be present at today's session.

22 All right. A few administrative matters. Yesterday counsel
23 for Mr. Bin'Attash and Mr. Ali conducted unclassified

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1 cross-examination of Supervisory Intelligence Analyst Kimberly Waltz.
2 Counsel for Mr. Ali was still conducting his cross-examination when
3 we recessed for the evening, so we'll continue with that this
4 morning.

5 I do want to remind everyone, just a couple housekeeping
6 matters that, you know, I bring up from time to time and one new one,
7 is just, again -- yesterday I thought it was really good, we didn't
8 get too many yellow lights, meaning that people are going too fast
9 for the court reporters or the interpreters, but please just be aware
10 of that. Keep that in mind, make it easier for us to get a good
11 record.

12 Obviously, we're not going to have interpreters today, but
13 we still have the court reporters and the stenographers.

14 Also, just for the issue that we had yesterday with -- we
15 have a procedure in place for using the classified documents here in
16 an open session, but it doesn't work if the monitors allow people in
17 the gallery to see what's going on.

18 So what I did overnight was I did ask the AV people, when
19 they come in in the morning and they're doing their checks on the
20 mics and making sure all that works, they're also looking to make
21 sure that the monitors are not viewable from the gallery. But then I
22 know how it is. On the bench I immediately start moving stuff around
23 as I'm getting it the way I like it.

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1 Please don't move the monitors. You know, I know some
2 people probably did as they came in. I think the AV people let me
3 know that they've checked before we came on the record.

4 If you need to stand up, because I know it's angled up
5 higher than what you normally have, feel free to stand up. I think
6 all of you know that I'm fairly relaxed on getting up and moving
7 around if you need to while we're in session.

8 All right. Also, last night I did mention maybe having
9 argument today about compelling the two witnesses, Ms. Jocys and SG1.
10 Because trial counsel mentioned that they had already reached out and
11 were checking availability on Turchiano and D'Amuro, I'm good with
12 that progressing. You know, we'll see where that goes. I do ask
13 trial counsel to go ahead and start checking on availability of SG1
14 and Ms. Jocys. Just whether or not it's this fifth week or if it's
15 the next session, might as well start getting those comms up and
16 checking on availability.

17 And then, again, we'll -- as we get closer, we'll figure
18 out, you know, what the fifth week is going to look like.

19 Mr. Trivett.

20 MTC [MR. TRIVETT]: Yes, sir. We've confirmed the
21 availability of Maria Jocys for week five ----

22 MJ [Col McCALL]: Oh, perfect.

23 MTC [MR. TRIVETT]: ---- whether that's in the RHR. Now,

1 that's not to say that we ----

2 MJ [Col McCALL]: You're not conceding.

3 MTC [MR. TRIVETT]: Exactly. We would have to litigate
4 whether or not she's necessary, but to the extent the commission
5 finds she's necessary, she's available.

6 MJ [Col McCALL]: All right. Well, then let's have that
7 argument. But my understanding is the person the trial counsel
8 wanted to use is available this afternoon?

9 MTC [MR. TRIVETT]: Yes, sir.

10 MJ [Col McCALL]: We'll do that this afternoon. That works.

11 All right. All right, that's the administrative matters I
12 had. Let's go ahead and ----

13 Mr. Connell, let me stop you. Do you have an administrative
14 matter or are you coming up to get ready for cross?

15 LDC [MR. CONNELL]: I do have an administrative matter, sir.

16 MJ [Col McCALL]: Go ahead, come on up.

17 LDC [MR. CONNELL]: Your Honor, there are several matters sort
18 of hanging over from yesterday that I want to address. The first one
19 is I did want to explain the reason for the delay.

20 The -- this morning at 8:16 the government produced three
21 new documents in the AE 885 series. I understand they had
22 just -- they had been recently submitted to the military commission
23 and the military commission made expedited review of them.

1 They -- they do affect the timeline. It turns out they fit pretty
2 nicely into the timeline that I had, but I needed a moment to review
3 those. So thank you for that.

4 It does mean that we have to file a 505(g) notice for them.
5 So I would request oral verbal leave to file an out-of-time 505(g)
6 notice so we can get that done quickly.

7 MJ [Col McCALL]: That's fine.

8 LDC [MR. CONNELL]: Thank you. The second thing, Your Honor,
9 is yesterday the government produced -- previously produced FBI
10 intelligence requirements with new Bates numbers.

11 Now, this is part of an ongoing conversation between the
12 parties, because we brought to the attention of the government that
13 in some cases they had produced two different documents which had the
14 same Bates number. And the solution that they proposed and that we
15 agreed with was that they would reproduce those, and that happened
16 yesterday.

17 So those new numbers are not in the record using that
18 number. And, to be honest, I don't -- didn't have time to put them
19 into my examination. So I'm going to continue to use the old
20 numbers, and -- which have already been noticed. But these new
21 numbers have already been noticed on 505 and already been approved.
22 Sometimes the same document is in the record multiple times, but with
23 a different number.

1 And so my question to the court is: Do you want us to file
2 new 505(g) notice on the renumbered documents or simply a notice of
3 exhibits, or some other method of proceeding?

4 MJ [Col McCALL]: So the documents have not changed, it's just
5 the Bates numbers ----

6 LDC [MR. CONNELL]: Yes.

7 MJ [Col McCALL]: ---- that have changed; is that correct?

8 LDC [MR. CONNELL]: That is my understanding. I have not done
9 a side-by-side comparison yet, but that's my understanding. Perhaps
10 we could get a confirmation.

11 MJ [Col McCALL]: Yeah. And I see some head nods from ----

12 LDC [MR. CONNELL]: That was what I thought.

13 MJ [Col McCALL]: ---- the prosecution's table.

14 All right. I don't see a reason to do a new 505 notice. If
15 you want to have it -- explain it -- put it in just a notice of
16 exhibits, that's fine. Or if you want to just rely on the old Bates
17 numbers for now, I mean, they've already been submitted and, again,
18 like, that's fine with me. I think it's clear. It's the same
19 document, and as long as, again, either me or an appellate authority
20 can figure out what it was that was being used, that's the key.

21 LDC [MR. CONNELL]: Well, I'm happy for -- for today I don't
22 really have any choice other than to rely on the old numbers.

23 MJ [Col McCALL]: Right.

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1 LDC [MR. CONNELL]: The reason why we worked together to
2 deconflict this was that sometimes I am using a document which -- I'm
3 using a number which refers to two different documents. And so I'm
4 not sure how immediate it will be, but we will work to sort of
5 cascade these changes down through the record ----

6 MJ [Col McCALL]: Perfect.

7 LDC [MR. CONNELL]: ---- in an appropriate way.

8 MJ [Col McCALL]: Perfect. And, to be honest, I mean, I
9 really do think it's mostly counsel that rely on the Bates numbers
10 more than the commission, you know, because it will be attached to an
11 AE, and I usually find it that way.

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

13 MJ [Col McCALL]: So, anyways...

14 LDC [MR. CONNELL]: Makes sense.

15 A couple of follow-ups from yesterday. The first is we had
16 a conversation among the parties with the witness on the stand about
17 the -- the 302, which was Special Agent Perkins' interview of Bashi
18 about al Bayoumi, and if that rings a bell. And it has the words
19 "redacted" on it.

20 MJ [Col McCALL]: Right. Right.

21 LDC [MR. CONNELL]: And that's found in the record at
22 MEA-FBI-00006724, AE 827AAA (WBA) Attachment D.

23 And the way that that conversation ended was that you said

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1 that I should bring -- when there are redactions like that, I should
2 bring them to the government's attention and they should address it.
3 And the only thing that I said to you was "Yes, sir."

4 MJ [Col McCALL]: Yes.

5 LDC [MR. CONNELL]: And the -- I was -- in reflecting on it, I
6 was concerned that you meant "Yes, sir, I will do that in the
7 future," when, in fact, I meant "Yes, sir, that is exactly what I
8 have done."

9 MJ [Col McCALL]: Okay.

10 LDC [MR. CONNELL]: The -- I have been addressing this
11 specific document with the government by category since 2013, but by
12 Bates number individually since 2021. And this document was a focus
13 of argument in AE 827 in the fall, and it is one that you ordered
14 production of back in November of 2023 in AE 827K. And so we're
15 still waiting for the production of the actual document.

16 So I didn't want to leave you with the impression that this
17 was something that I had, you know, unearthed out of the record and
18 sprung. This particular document, which is quite important to the
19 Bashi financial -- I mean the al Bayoumi financial investigation, has
20 been a focus of contention for a long time.

21 MJ [Col McCALL]: No, and I was tracking that. I recalled it
22 whether -- I couldn't remember if it was from Perkins or Maguire's
23 testimony, but I recall it being used and it somewhat stands out for

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1 those redactions that look different from what we typically see in
2 this case.

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

4 With respect to the pending motion regarding AE 914
5 productions, while the witness is off the stand, I just wanted to
6 point out that yesterday we covered three of those witnesses -- three
7 of those documents drafted by Ms. Waltz, found at FBI-00020495,
8 WALTZ-00000001, and WALTZ-00000012. Obviously, that was in support
9 of our motion under 914. I just wanted to call your attention to it.

10 But a new one came up in the course of the cross-examination
11 that I wanted to call your attention to, which is MEA-FBI-00024642,
12 found in the record at AE 628MMMMM (AAA) Attachment D. That was a
13 CIA cable and -- that included information about Ms. Waltz in it,
14 which -- from which I had concluded that Ms. Waltz was the drafter.
15 And that was consistent with the previous testimony of FBI witnesses
16 that if they were listed as the POC, then they were the drafter.

17 Ms. Waltz pushed back on that and she said, "Look, you have
18 the wrong version of this document. You have the CIA version and not
19 the FBI version," which means there is another document, very likely
20 drafted by Ms. Waltz, that she would need to see in order to be
21 confident, herself, that she was the drafter of the document so that
22 she could answer questions better about it.

23 And that was one of the purposes of 914, so that we can show

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1 documents to their author. And in this situation, it seemed clear
2 that the government has not produced the proper version of that
3 document to us, according to Ms. Waltz.

4 And then the last thing that I just want to flag for you
5 about that is that the other document that I knew of -- knew of the
6 existence, but don't have, is the one that I mentioned when I
7 initially argued on Monday the 914 issue, which is the summer 2002
8 request by Ms. Waltz for financial documents, which resulted,
9 apparently, in 1B 4970.

10 That's about to come up in the questioning. That's early,
11 like in the first 20 minutes or so. And when we cover that issue,
12 you'll also see a redaction in a Fitzgerald document, which is, in my
13 view, unambiguously covered by the order in AE 502ZZZ, which mentions
14 Fitzgerald by name and should be produced.

15 So I just wanted to flag that the -- we're seeing in the
16 evidence sort of what I was flagging in advance on 914. I understand
17 the military commission's position on, we're going to get through
18 this and then we're going to see where it goes, but I just wanted to
19 show you how that was developing in the evidence.

20 MJ [Col McCALL]: No, I appreciate that. That type of
21 signposting certainly helps me follow along with where you're going
22 with some of the questioning. So that's useful.

23 LDC [MR. CONNELL]: Thank you.

1 And I did want to flag that it is about -- it will come up
2 again with Special Agent Zebley, and it's also a good example of
3 the -- how we approach these redactions in documents, some of which,
4 in my view, occurred under a previous redaction regime and, if they
5 were being produced today, would not have the same redactions on
6 them.

7 And so I have placed in the record AE 942G (AAA), which is a
8 14 March 2024 discovery request, and AE 942H (AAA), which is a 21
9 March discovery request. And they essentially all relate to the
10 testimony of either Ms. Waltz, but mostly Mr. Zebley, about the
11 telephones and the documents that we think are missing or that have
12 the wrong redaction regime applied to them.

13 So I just wanted to demonstrate to you that we are, you
14 know, diligent in following up on those issues and doing so in
15 advance. Because the whole 914 issue is going to come up again with
16 Mr. Zebley, and so I just wanted to give you advance notice of that.

17 MJ [Col McCALL]: I appreciate that.

18 LDC [MR. CONNELL]: And then, finally, Your Honor, I had -- I
19 had talked about the idea of using the word "redacted" when I'm not
20 allowed to discuss something in a question. And what I found is that
21 that doesn't -- won't work, because sometimes I have to ask about an
22 unclassified sentence, which has both a redaction in it and a
23 Protective Order #3 restriction, and I need to distinguish between

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1 the two.

2 So I will continue to use the word "redacted" for actual
3 redactions in documents, as I've done in the past, but I will use the
4 word "prohibited" when I get to something which is prohibited by
5 Protective Order #3.

6 MJ [Col McCALL]: All right. That's clear.

7 LDC [MR. CONNELL]: Okay. And those are my administrative
8 matters, Your Honor.

9 MJ [Col McCALL]: All right. Thank you, Mr. Connell.

10 Mr. Montross?

11 DC [MR. MONTROSS]: Good morning, Your Honor.

12 MJ [Col McCALL]: Good morning.

13 DC [MR. MONTROSS]: I would like to first join Mr. Connell's
14 request regarding MEA-FBI-00024642. That was the cable that, again,
15 we also believed that it was actually drafted by Ms. Waltz. She
16 indicated that she was not the drafter of it.

17 We do need, then, the document that -- that we believe that
18 she actually did draft it from the FBI's side. The reason we need it
19 is I was intending to cross her on this or examine her on this in
20 closed session, because the document actually directs further
21 questioning of Khallad Bin'Attash in the black sites. So it's very
22 relevant to us.

23 So, if it's possible, I would ask if you can require the

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1 government to produce that before we go into Ms. Waltz's closed
2 session.

3 MJ [Col McCALL]: All right.

4 DC [MR. MONTROSS]: Okay. The second thing is ----

5 MJ [Col McCALL]: Well, before we move on, I mean, Government,
6 do you have a position on this?

7 MTC [MR. TRIVETT]: That it's not 914 material?

8 MJ [Col McCALL]: Well ----

9 MTC [MR. TRIVETT]: And to the extent it has the substance on
10 one side, they have it. We can look to see if it exists elsewhere.
11 We'll look, but I don't know off the top of my head.

12 MJ [Col McCALL]: Okay.

13 DC [MR. MONTROSS]: The second issue, Judge -- and I'm doing
14 this on behalf of Mr. Engle, who's going to be the attorney for our
15 team who's going to be examining Special Agent Stephen Gaudin.

16 There was -- as you may recollect from yesterday, I was
17 inquiring of Ms. Waltz about a meeting that she attended in May 22nd
18 in 2018 ----

19 MJ [Col McCALL]: Right.

20 DC [MR. MONTROSS]: ---- where Special Agent Gaudin was
21 questioned about a number of things. I believe her testimony was
22 about the FBI/CIA integration or coordination. She indicated in
23 there that there was a supervisory special agent who was present from

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1 the FBI, Mary Boese, B-O-E-S-E, who apparently took a series of notes
2 or was taking notes during the course of an interview with Gaudin.

3 Under 914, we would ask for production of those notes as
4 they would reflect statements that Mr. Gaudin made during the course
5 of the interview that, in some ways, incorporated into this
6 memorandum that I was attempting to question her by. Mr. Engle would
7 need those notes prior to examining Special Agent Gaudin.

8 MJ [Col McCALL]: So I think it doesn't kick in until after
9 Gaudin has testified, though.

10 DC [MR. MONTROSS]: That is true, Judge, okay, under 914. But
11 I don't want to be in a situation where Special Agent Gaudin has
12 finished the testimony and then we are now asking for the notes at
13 that time.

14 I'm just putting everyone on notice that that's something
15 that came out that we weren't aware of ----

16 MJ [Col McCALL]: Understood.

17 DC [MR. MONTROSS]: ---- and to be looking for it now.

18 MJ [Col McCALL]: No, I appreciate you flagging that.

19 DC [MR. MONTROSS]: Okay. Thank you.

20 MJ [Col McCALL]: All right. Any other administrative matters
21 to take up before we move on to entering the appearance of Major
22 Theis and Captain Leahy?

23 All right.

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1 DC [Capt LEAHY]: Good morning, Your Honor.

2 MJ [Col McCALL]: Good morning.

3 DC [Capt LEAHY]: I am Captain Michael Leahy of the United
4 States Air Force JAG Corps. I've been detailed to this military
5 commission by Brigadier General Jackie L. Thompson, Jr., the chief
6 defense counsel for the Military Commissions Defense Organization.
7 My detailing memorandum is in the record as an attachment to AE
8 004YYY, filed on 17 April 2024.

9 I am qualified and certified under Article 27(b) and
10 previously sworn under Article 42(a) of the Uniform Code of Military
11 Justice. I am also qualified and certified under the Rules for
12 Military Commissions 502 and 503. I have read all relevant
13 protective orders and signed all relevant memoranda of understanding.
14 I have not acted in any manner which might tend to disqualify me in
15 these proceedings.

16 Thank you, Your Honor.

17 MJ [Col McCALL]: All right. And do you have a preference on
18 swearing or affirming?

19 DC [Capt LEAHY]: Swearing would be fine. Thank you.

20 MJ [Col McCALL]: All right. If you could raise your right
21 hand.

22 **[Counsel was sworn.]**

23 MJ [Col McCALL]: All right. Thank you.

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1 DC [Capt LEAHY]: Thank you.

2 Good morning, Major Theis.

3 DC [Maj THEIS]: Good morning, sir.

4 I am Major Elspeth Theis of the United States Air Force JAG
5 Corps. I have been detailed to the military commission by Brigadier
6 General Jackie L. Thompson, Jr., chief defense counsel, Military
7 Commissions Defense Organization. My detailing memorandum is in the
8 record at AE 4ZZZ KSM, filed previously on 17 April 2024.

9 I am qualified and certified under Article 27(b) and sworn
10 previously under Article 42(a) of the Uniform Code of Military
11 Justice. I am also qualified and certified under the Rules for
12 Military Commissions 502 and 503. I have read all relevant
13 protective orders and signed all relevant memoranda of understanding.
14 I have not acted in any way that might tend to disqualify me.

15 Thank you, sir. And I prefer to swear.

16 MJ [Col McCALL]: All right. Please raise your right hand.

17 **[Counsel was sworn.]**

18 MJ [Col McCALL]: All right. Thank you.

19 DDC [Maj THEIS]: Thank you.

20 MJ [Col McCALL]: All right. Anything else before we bring
21 the witness back in?

22 Apparently not.

23 If we can get Supervisory Intelligence Analyst Waltz back in

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1 here.

2 **[The witness, SIA Kimberly Waltz, resumed the witness stand.]**

3 MJ [Col McCALL]: Ms. Waltz, welcome back. Please have a
4 seat.

5 And I should have asked this before, but is it a proper
6 shorthand to refer to you as SIA Waltz? Is that used? If that's not
7 used, I ----

8 WIT: That's fine.

9 MJ [Col McCALL]: Okay.

10 WIT: Or Ms. Waltz, sir.

11 MJ [Col McCALL]: All right. I just wanted to be sure.

12 All right. Go ahead, Mr. Connell. Your witness.

13 **CROSS-EXAMINATION CONTINUED**

14 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

15 Q. This is a major issue. Ms. Waltz is okay, too?

16 A. I'm amenable.

17 MJ [Col McCALL]: In the military, we always try to be very
18 aware of people's rank or titles. So, anyways ----

19 WIT: No worries.

20 MJ [Col McCALL]: ---- go ahead, Mr. Connell.

21 Q. Great. Thank you so much. Good morning.

22 A. Good morning.

23 Q. We're going to pick up with 1B 4970.

1 A. Yes, sir.

2 Q. Okay. You testified on direct examination that after the
3 April 2002, which I understand was not just April -- the
4 spring/summer 2002 trip to UAE, you had a pretty significant
5 conversation with Adam Drucker and Abbey Perkins. Do you recall that
6 testimony?

7 A. I do, yes.

8 Q. Okay. And I know that you told us that you prefer
9 in-person encounters or discussions. Is that what this happened?
10 This was -- was this via e-mail, this discussion, or this was y'all
11 sitting in a room?

12 A. I suspect -- I wouldn't have sent an e-mail. I would have
13 spoken to him in person about it.

14 Q. Okay. And in early summer of 2002, what
15 was -- Mr. Drucker was in a financial role with the FBI; is that
16 right?

17 A. Yes.

18 Q. Okay. And Ms. Perkins was part of PENTTBOM?

19 A. Yes.

20 Q. And you testified that you decided you needed to formulate
21 a request to the UAE Central Bank and you personally put together a
22 specific request for 9/11 records; is that -- is that accurate?

23 A. Yes.

1 Q. Okay. And when -- when did you formulate that request?

2 A. I would have worked with Adam and Abbey to put it
3 together. It would have been after I got back from UAE and before
4 traveling again. The exact time frame I can't -- I
5 can't specify -- I can't get any -- I don't really think I can get
6 more specific than that.

7 Q. That's fine. Is that -- would that request have been in
8 the format of an EC to the legat?

9 A. No, I don't believe so. The UAE and things happening in
10 Abu Dhabi were complicated at the time because we had no office, or
11 real established office. We had TDYers there. And I had also
12 been -- after I returned from the UAE, I had been sent to another
13 office ----

14 Q. In Portland.

15 A. ---- to work on now something else. So I was trying to do
16 all of these things at the same time.

17 I do recall speaking with, I believe, Tom Neer on the phone
18 while I was -- I believe I was in Portland at the time. But I
19 don't -- I don't recall actually drafting an EC.

20 Q. All right. Did you draft some other kind of document, or
21 was this purely a verbal conversation between you and Special Agent
22 Neer?

23 A. I'm -- I know I spoke -- I can recall -- I have an unusual

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1 memory of talking to him on the phone in my hotel room just because
2 of the time difference, et cetera, but there would have had to have
3 been something -- something sent to Tom Neer. It would have
4 been -- there's no way I would have given him all of that information
5 verbally.

6 Q. And so when you say "something," what do you mean? Like
7 an e-mail or ----

8 A. Probably an e-mail.

9 Q. Okay. I ask this because we haven't -- it hasn't been
10 produced. We haven't been able to find any communication between you
11 and anybody in UAE in the summer of 2002.

12 Do you think that that document exists?

13 A. I -- I have no idea. I haven't given any particular
14 effort to try to find something, but, again, it was in the
15 summer -- even in 2002 into 2003, it was -- communications in the UAE
16 were extraordinarily difficult, only because our system -- even our
17 FBINet system, the one little terminal that we had on a satellite,
18 was spotty. It was difficult.

19 There would have had -- we would have had to have given
20 that -- like, the totality of that information in the -- in that
21 request, that would have had to have gotten in the hands of Tom Neer.

22 Q. In some kind of electronic communication, even if not a
23 formal EC, some kind of -- some kind of communication that went

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1 electronically?

2 A. Yeah.

3 Q. Yeah. Okay. So you mentioned that you hadn't put any
4 effort into finding things. Were you asked to look at your prior
5 e-mails to see if there were any that related to the subject matter
6 of your testimony?

7 A. Recently?

8 Q. Yes.

9 A. No, sir.

10 Q. Okay. When did you travel back to the UAE after Portland?

11 A. Can you rephrase -- say that again, please?

12 Q. Sure. As I understand the timeline, in April to June-ish
13 time period, you were in the UAE. You come back briefly. You head
14 out again to Portland, and then at some point you travel back to the
15 UAE. And I'm asking when that travel back to the UAE was.

16 A. Probably August.

17 Q. Okay. And you testified that at some point you started
18 getting those records from your request back. Perhaps it was in
19 August of 2002. Does that sound right?

20 A. Yes, that sounds correct.

21 Q. Okay. And you testified that you were in the meeting
22 where the documents were provided. Do you recall that testimony?

23 A. I do recall that -- a meeting -- I mean, we were sitting

1 at a table together, so...

2 Q. Okay. Who else was in that meeting?

3 A. Adam was there. Abbey was there. I'm not sure if other
4 people from the -- anybody else from the Bureau was there, meaning
5 Tom -- I don't know -- and then probably assuming some representative
6 from the Central Bank.

7 Q. Okay.

8 A. If I -- I don't -- I don't recall a -- like, one singular
9 meeting where we're sitting and they -- and every -- we get
10 everything. I recall, like -- I don't want to say piecemeal, but
11 different -- okay, this is available. These documents are available,
12 coming in at different -- different times.

13 Q. Okay. And so "meetings" would be fairer than "meeting"?

14 A. Yes. But certainly not that -- it wasn't like a formal
15 "We're going to have a meeting at 10:00 today." That -- it was not
16 that type of situation. We were -- we would come in and see if
17 anything new was available.

18 Q. Okay. So given that it was a couple of different
19 conversations, would that be a fairer word than "meeting"?

20 A. Probably, yes.

21 Q. Okay. Given those couple of different conversations, was
22 it a couple of different people who provided documents?

23 A. I can't recall.

1 Q. Okay. And do you remember any of the people who provided
2 the documents?

3 A. I -- I'm sorry, I can't -- I can't recall. There
4 were -- I know that there were a couple different people there,
5 but -- when I say "there," I mean generally speaking over that period
6 of time. But I don't recall --

7 Like, for example, [REDACTED] who was the head of that
8 component, he was around. But, you know, he wasn't coming in, and he
9 wasn't giving us everything, per se. But maybe somebody -- a couple
10 of -- somebody that worked for him. Like, he would direct it to be
11 provided to us. So I -- I don't recall specifics of who.

12 Q. Okay. And under normal circumstances there would be a 302
13 or an EC that would document the -- who gave what documents and when;
14 isn't that right?

15 A. Under -- if an EC or 302 is written, it would document
16 what was received and when.

17 Q. And, in fact, that's kind of the point of writing those
18 302s and ECs is, as you told us yesterday, who provided information
19 or evidence to the FBI and when?

20 A. Yes, sir.

21 Q. You testified on direct that the documents that we
22 received in August/September 2002 were placed into 1B 4970; does that
23 sound right?

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1 A. That sounds accurate. Excuse me.

2 Q. Of course. All right. Do you have -- all right. You do
3 have your ----

4 A. I have my water.

5 Q. You have your water. All right.

6 A. Thank you.

7 Q. Sure.

8 I'd like to show you from your slide deck, which is in the
9 record at AE 885H, page 17, what is also FBI-00051393.

10 LDC [MR. CONNELL]: May I have access to the document camera,
11 Your Honor? This is not for display to the gallery.

12 MJ [Col McCALL]: Go ahead. And, again, this won't be
13 displayed to the gallery. And you can go ahead and zoom in, as
14 needed.

15 LDC [MR. CONNELL]: Yes, sir. Thank you.

16 Q. Can you see enough of that document, Ms. Waltz?

17 A. Yes, I can.

18 Q. Okay. Great. The -- so this document has at the top of
19 it noted 1B 4970; is that right?

20 A. Yes.

21 Q. So we had some conversation yesterday about what is a 1B
22 cover sheet. Is this a 1B cover sheet?

23 A. Well, in this instance it appears that it was used as a

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1 1B, but it is still a 1A envelope that has a 1B number on it. 1A
2 envelopes are thin. They're small. They're not like a standard
3 8 1/2 x 11 -- or big enough to fit a standard 8 1/2 x 11 paper. So
4 it's a little bit smaller, but this -- this is a 1A -- an image of a
5 1A envelope, but it has a 1B number on it.

6 Q. I understand. Okay.

7 And so it has that case file number on it, same one that we
8 saw on 1B 2496, right?

9 A. Yes.

10 Q. Okay. And then we come to the serial number of
11 originating document, which you explained to us yesterday. And this
12 one has the case number. Do you know what's after the N -- N
13 something? NY probably? Kind of a weird looking Y, but ----

14 A. Okay. So it looks to me that it's NY-280350-2004-NEW
15 Serial 1054.

16 Q. All right. Very good. And that 2004, does that have
17 anything -- any relationship to the year 2004?

18 A. I think initially it did. Administratively within the FBI
19 PENTTBOM -- so our PENTTBOM case is New York 280350. And that has
20 a -- administratively, a significant number of what we call subfiles.
21 So main file is New York 280350. And then from there, there can be
22 what we call subfiles opened. And so that would be the dash
23 something.

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1 Q. Okay.

2 A. In this instance, this is -2004-New. That was at some
3 point done administratively to help identify some newer documents
4 that were coming in. It's just another subfile.

5 Q. Okay. So we can conclude from that -- use of that case
6 number that that -- that subfile of the case number was assigned in
7 2004 or later?

8 A. I don't know when the subfile was opened exactly,
9 but -- so without looking in the system, I can't tell you exactly
10 when it was opened. You could name a subfile, really, whatever you
11 want.

12 I'm going to look at this. I believe it was opened at some
13 point in 2004. Is there any particular significance to that
14 happening in 2004? I wouldn't place any importance on that.

15 Q. This document has a redaction in the middle of it. Do you
16 know -- after the word "from."

17 Do you know what sort of information would typically be
18 after -- follow the word "from" in a document such as this one?

19 A. On a 1A, it would indicate who the information was from.

20 Q. Okay. And when this document was prepared, is there any
21 indication that it was a classified document? I can show you the top
22 and bottom of it.

23 A. It does not appear to have any classification markings on

1 it.

2 Q. Okay. Do you know any reason why the origin of the
3 information would be redacted?

4 A. Generally speaking or in this particular instance?

5 Q. I'll take what I can get, whichever you have.

6 A. In this particular instance I do know why it was redacted.

7 Q. Why is that?

8 A. I can't -- I believe that would call for a classified
9 response.

10 Q. Okay. We can come back to that.

11 Now, after the redaction it says Standard Chartered Bank,
12 Dubai Islamic Bank, Middle East Bank, Citibank, U.A.E. Exchange
13 Centre. And from I understood of your description of the
14 conversations that were taking place in August and September of 2002,
15 it was not people from Standard Chartered Bank or U.A.E. Exchange
16 Centre who were coming to a location and handing you documents; is
17 that right?

18 A. That's correct. In that time frame, however, I do know
19 that Adam Drucker and Abbey Perkins met with different
20 member -- different bank personnel from specific financial
21 institutions. I did not, but I do have awareness that they did.

22 Q. Okay. Now, I'd like to draw your attention to
23 the -- actually, I'll come back to that.

1 I'd like to talk about your subsequent efforts in UAE. You
2 testified on direct examination that in 2004 you began working on
3 behalf of the Moussaoui prosecution team. And one of your roles,
4 perhaps your key role, was relationship with the UAE documents; is
5 that right?

6 A. Yes. In that time frame, in 2000 -- probably in 2004 is
7 when I was starting to engage with the Eastern District of Virginia
8 on the use of -- the potential use of items from the UAE.

9 Q. Okay. And the Eastern District of Virginia was trying to
10 determine if the FBI had the ability to certify bank records for use
11 in the federal trial; is that right?

12 A. I would categorize it slightly different. We -- the FBI
13 wouldn't certify them, but if we could assist in getting them
14 certified for federal court.

15 Q. Okay. Your actual quote was: They were trying to
16 determine if we had the ability to certify bank records.

17 Who was "we," then?

18 A. Okay. Then -- so I will take the opportunity to maybe
19 correct what I said, if that is exactly what my transcript says.
20 That, of course, I'm not going to certify ----

21 Q. Of course.

22 A. ---- any type of business record. But I could -- when
23 I -- the question that they had for me was, do we have -- is -- does

1 the ability exist to get these records certified or do something so
2 that they could be used in federal court?

3 In doing -- in having that conversation with the Eastern
4 District of Virginia that, you know, I -- I would have said that's
5 something I would have to discuss in the UAE. I'd have to talk to
6 the authorities in the UAE about that and if it could be done, and if
7 so, how.

8 Q. Right. And in 2004, when you were having those
9 conversations, there was an FBI, we'll say envelope or box, that was
10 1B 2046 that contained those records in it, right? We saw the box
11 yesterday.

12 A. I saw the box yesterday. The item -- the evidence would
13 have been in the evidence storage facility, so...

14 Q. In a 1B 2046?

15 A. Yes.

16 Q. Okay. But at the time you were having those conversations
17 in 2004, there was no box or collection called 1B 4970 yet, right?

18 A. In 2004?

19 Q. Right.

20 A. I -- I -- I don't believe so. I think the item -- I think
21 4970 was dated probably 2005, early 2005.

22 Q. Right. So in January and February of 2005, you traveled
23 to UAE to ask -- to discuss with UAE authorities certification of

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1 records, right?

2 A. Yes. I don't know the exact dates, but that time frame is
3 accurate.

4 Q. Okay. And you went with Special Agent Fitzgerald and
5 Special Agent Zebley?

6 A. No, I don't believe they went.

7 Q. No? Okay. You memorialized your efforts to obtain
8 certifications in an EC, right?

9 I could show it to you, but ----

10 A. I'm sure if you have -- if there is an EC available, it
11 would be great to see it.

12 Q. Sure, of course.

13 A. Thank you.

14 Q. I'm going to show you MEA-WALTZ-00000009, which is
15 contained in the record at AE 628RRRRRR (AAA) Attachment F.

16 LDC [MR. CONNELL]: It is a Secret document, but it contains
17 unclassified paragraphs, so it is not appropriate for display to the
18 gallery.

19 May I have access to the document camera?

20 MJ [Col McCALL]: You may. And, again, it won't be displayed
21 to the gallery. And you can zoom out.

22 LDC [MR. CONNELL]: Yeah, zoom out. Sorry.

23 MJ [Col McCALL]: No, you're good.

1 LDC [MR. CONNELL]: It takes a while for it to come up on
2 mine.

3 MJ [Col McCALL]: Yep, understood.

4 Q. So I'm not going to ask you to read from the document, but
5 you're certainly welcome to read it.

6 A. Okay.

7 Q. Tell me when you're ready.

8 **[Pause.]**

9 A. Okay.

10 Q. Okay.

11 LDC [MR. CONNELL]: Let me consult with counsel for a moment.

12 MJ [Col McCALL]: That's fine.

13 **[Counsel conferred.]**

14 Q. All right. And this is an EC dated 6 February 2005?

15 A. Yes, it is.

16 Q. Okay. And I see what you mean. Were Special Agent
17 Fitzgerald and Special Agent Zebley back in New York while you were
18 in Abu Dhabi?

19 A. I was in -- at the time of this -- drafting of this EC, it
20 appears that I was in Abu Dhabi. This -- Jim Fitzgerald and Aaron
21 Zebley were probably in D.C.
22 at the time, but administratively ----

23 Q. Administratively assigned to New York.

1 A. ---- connected to New York. So this is -- so that is why
2 it says "New York."

3 Q. Got you. All right. I'd like to draw your attention to
4 the -- to the bottom paragraph, which is marked FOUO.

5 A. Um-hmm.

6 Q. And this is what I was asking you about. And I'll just
7 read these two sentences to you:

8 As legat is aware, the PENTTBOM team is currently preparing
9 for the upcoming trial of Zacarias Moussaoui. In furtherance of this
10 effort, during travel of TFOS personnel to the UAE, efforts will be
11 made to certify official records previously obtained in the UAE.

12 Does that refresh your recollection as to timing and the
13 focus of effort?

14 A. Yes. I am -- I was -- I was comfortable with the kind of
15 the January/February time frame. What I was uncertain about was the
16 specific dates.

17 Q. Okay. And on the second page, in an unclassified
18 paragraph, this EC asks for additional results to go to PENTTBOM,
19 Special Agent Fitzgerald and Zebley, and you, from TFOS.

20 A. Yes.

21 Q. Yeah, that's right. And then on the last page, which is
22 WALTZ-00000011, there are redactions which would normally be the
23 leads.

1 A. Yes, sir.

2 Q. Okay. One other question about the document specifically,
3 and I'd like to draw your attention to where it says "synopsis," and
4 then there's an unclassified line that says "certification of
5 documents obtained from the UAE."

6 And then there's another U, indicating unclassified, and two
7 redactions. What would typically be under those redactions?

8 A. I don't know.

9 Q. Okay. So I take it you do not know why it's redacted?

10 A. I -- I don't know what's there.

11 Q. Now, on the next page, in an unclassified paragraph, it
12 says: Enclosed for Abu Dhabi are copies of records provided by the
13 FBI -- to the FBI by the -- redaction -- and there's a short
14 redaction there. However, copies of records and with certifications
15 forms will be provided to the -- redacted -- by TFOS personnel.

16 And the reason for those redactions is that the government
17 has invoked national security privilege over the origin of the
18 records; is that right?

19 A. I -- if the -- I just -- I see the redaction. I believe I
20 know what's there, but I would -- I would need to see the original
21 document and consult with the government as to, you know, the
22 prosecution as to exactly what they've claimed. So I -- I'm not
23 sure -- I can't speak on behalf of the prosecution, so I don't know

1 what your question is.

2 Q. You don't know what my question is or you don't feel
3 equipped to answer it? Do you want me to rephrase the question, is
4 what I'm asking.

5 A. Yes, please.

6 Q. Okay. Do you believe that you know what is under the
7 redaction in this document that you drafted?

8 A. I believe I know what's there.

9 Q. Does it relate to the person or organization who provided
10 records to the government -- to the FBI?

11 A. I believe that entity assisted, but this is a fairly
12 general statement of records, generally speaking. It's not a -- it's
13 not specific to a certain -- it's not specific to which records, so
14 I -- I'm not sure.

15 Q. You're -- so when it says "copies of records provided to
16 the FBI by the -- redacted," you're not sure whether that refers to
17 the organization or persons who provided the records to the FBI?

18 A. I was in the UAE to get -- I was -- I was there when some
19 records were obtained. I was not there when other records were
20 obtained. At this time in early February 2005, there were
21 discussions occurring about potentially certifying a number of
22 different records. If -- certifying or getting witnesses, right?

23 The -- the -- at this time I don't believe the conversations

1 had become specific yet. So I do know what is there, but with
2 respect to -- the difficulty I'm having right now is that there's a
3 couple different sets of records. And this statement right here
4 isn't specific; this is just general records.

5 So if I -- if I'm talking about one set of records, then we
6 got those from members of -- like, the Central Bank assisted us. If
7 we're talking about another set of records, that came through the
8 Minister of Interior. So there isn't one overarching organization
9 that would have certified or provided witnesses for all of that
10 material.

11 Q. When -- the first part of that sentence says "enclosed for
12 Abu Dhabi." That means that enclosed for Abu Dhabi are copies of
13 records. That means actual records accompanied this EC; is that
14 right?

15 A. This EC was written when I was in Abu Dhabi. I wrote this
16 in Abu Dhabi. I had the records with me. The reason I wrote it this
17 way is to leave it there for the legat. I wasn't able to stay to
18 follow through or execute any follow-on that needed to happen.

19 I was on a time frame where I had to be back in the United
20 States probably by no later than the end of -- maybe the end of
21 February. I don't remember the exact date, but I could not stay.

22 So at this time we're getting a -- our legat office is
23 actually more formalized. There was actually an office that had been

1 created in Abu Dhabi.

2 So administratively what I was attempting to do here is to
3 create the paperwork so that the legat personnel who were there
4 could -- had a document to rely on and could follow up on and send
5 it -- refer back to it when they got something and send that back to
6 Jim Fitzgerald and Aaron Zebley.

7 Q. I see. So "enclosed" is used a little bit loosely. It
8 wasn't actually in an attachment to an EC. It was actually in a
9 stack -- paper stack of documents or something like that?

10 A. Correct. I did this EC -- could I see the front page,
11 please?

12 Q. Of course.

13 A. So the -- yeah. It's from Abu Dhabi to Abu Dhabi. I was
14 there. It has -- indicating that I was TDY'd there at that time, and
15 I was effectively setting the lead for them as I'm sitting there and
16 leaving that material for them. And then I left.

17 Q. Okay. So you've testified about the -- how -- the
18 significance of which records we're talking about. And you've
19 testified that the EC is not specific.

20 Given that this did not go through electronic channels, is
21 it accurate to say that it is no longer possible to know exactly
22 which records this document refers to?

23 A. I -- there was -- there was no electronic transmission of

1 records.

2 Q. Therefore -- and given the things that you've explained to
3 us, it is not possible to know which records are referred to in this
4 EC?

5 A. I -- in this -- as it's written right here in this
6 particular EC, you cannot tell what -- what I left behind. So the
7 black right here, that is -- that is accurate.

8 Q. And the significance of that to you is that because you
9 don't know which records are involved, you don't know what appears
10 under the redaction? Is that what you explained to us?

11 A. I know what appears under the redaction. That component
12 does not necessarily certify or not certify. There may have been
13 some assistance, there may have been some conversation, but that
14 component does not and would not have the ability to certify or not
15 certify.

16 Q. And bring us sort of full circle in this line of
17 questioning. Do you know whether the government has asserted
18 national security privilege over that organization that is -- appears
19 under the redactions?

20 A. I don't -- I don't know if that's a -- I'm not 100 percent
21 sure if that's a national security privilege or if that's classified.
22 I'm ----

23 Q. Okay. We can come back to that in closed session.

1 A. Okay.

2 Q. Okay. I'd like to show you what is in the record -- is
3 marked as MEA-WALTZ-00000001, contained in the record at AE 628RRRRRR
4 (AAA) Attachment F.

5 LDC [MR. CONNELL]: Your Honor, this is a classified document.
6 I request access to the document camera, but not displayed to the
7 gallery.

8 MJ [Col McCALL]: All right. Go ahead.

9 Q. So I'd like to give you the opportunity to look at the
10 document, but please don't read from it.

11 A. Understood. Is there more under the ----

12 Q. Yes. Just tell me when you're ready.

13 A. Okay. I'm ready.

14 **[Pause.]**

15 A. Okay.

16 Q. Sometimes it helps to look at the bottom, too, so I'm
17 going to show you that.

18 A. Okay.

19 Q. Okay. And I'll show you anything else you want to see in
20 it as well. But -- so this is an electronic communication dated 30
21 January 2005 drafted by you; is that right?

22 A. Yes.

23 Q. Were you in Abu Dhabi at this time?

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1 A. That's what the EC says, that I was in Abu Dhabi.

2 Q. Okay. So the fact that contact indented is under "From"
3 indicates that you were in Abu Dhabi, just like on the last document?

4 A. Yeah. So it says, like, "Office is from Abu Dhabi," and
5 then it has me. So that is an indication to me that I wrote it from
6 that -- when I was there.

7 Q. Okay. Very good. And I'd like to direct your attention
8 to the synopsis, which is an unclassified paragraph, which says:
9 Summary of information previously obtained regarding Khalid Shaikh
10 Mohammad, alias Abdul Rahman al Ghamdi, A.A. al Ghamdi. Is that what
11 it -- is that correct?

12 A. Yes.

13 Q. Okay. And yesterday you testified that you had relied on
14 a particular statement from the black site, STA-00000044, to seek
15 additional documentation in the UAE. Is this EC an example of that?

16 A. Can I see the second page again, please?

17 Q. Yeah. I don't think you've had a chance to see the second
18 page yet, so let me ----

19 A. Okay.

20 Q. And, ma'am, I can orient you. I will put my pen at the
21 relevant place.

22 A. Okay.

23 Q. Do you need me to repeat the question?

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1 A. Yes, please.

2 Q. Yesterday you testified that you had relied on particular
3 black site statements, found at STA-00000044, of Mr. Mohammad to seek
4 additional documentation in the UAE. Is this EC an example of that?

5 A. Yes, it is.

6 Q. Do you know what action the legat took in -- in response
7 to your EC, to this EC?

8 A. We didn't -- there were no additional -- there was no
9 additional information obtained from the UAE.

10 Q. Not even certifications?

11 A. This -- this is regarding this EC right here?

12 Q. Are you asking me or are you telling me?

13 A. Well, is your question regarding the EC you just showed
14 me?

15 Q. Yes, yes. That EC.

16 A. Okay. So can I see the EC again, please?

17 Q. Of course. Would you like to see the front page or the
18 second page? Start with the front page and ----

19 A. Let's start with the front.

20 Q. Yeah.

21 A. Can I see the next page, please?

22 Q. Yes.

23 A. Okay. Is there additional ----

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1 Q. I can move it up for you. And then when you're ready,
2 I'll go to the next page.

3 **[Pause.]**

4 A. Okay.

5 **[Pause.]**

6 A. This was not requesting certification of records.

7 Q. Okay. So the actual -- my original question was: What
8 action did the legat take in response to this document?

9 A. I believe that we had some additional -- I believe that I
10 was -- that I had additional conversation during this time frame to
11 see where the legat was probably -- I'm trying to recall if the legat
12 was with me. That's -- and I can't recall that specific point.

13 The reason this is written this way, again, is by 2005, we
14 have -- things have become more formalized. And by 2005, we
15 have -- again, we had an office established. And, therefore,
16 the -- you know, the legat who was assigned there was trying to
17 get -- to make sure that any requests that were coming in were
18 properly -- were documented so that he knew what the -- between he
19 and the ALAT at the time, that they knew what to follow up on.

20 So I -- based upon the timing of this, I believe that any
21 requests that were made based upon this EC were probably asked
22 verbally while -- while I was there. But there were no -- we never
23 received any additional records. We never received -- let me be more

1 specific. I never received any additional records from this specific
2 request.

3 Q. Okay.

4 A. I asked in this request for immigration records and any
5 additional financial records, and we never received anything as a
6 result of this request.

7 Q. So the question is actually about FBI investigative
8 efforts. Based on either this document or the discussions which are
9 memorialized in this document, did FBI, which includes you and legat
10 and anybody -- ALAT and anybody else, make additional investigative
11 efforts to obtain copies of immigration documents or additional
12 banking documents?

13 A. We asked the proper UAE authorities for that information.
14 We never received it back. There was -- they gave us nothing.

15 Q. Okay. I'd like to show you MEA-FBI-00023659, contained in
16 the record at AE 628SSS (AAA) Attachment G.

17 LDC [MR. CONNELL]: This is a classified document, Your Honor.
18 I do not request to display it to the gallery.

19 MJ [Col McCALL]: All right.

20 LDC [MR. CONNELL]: May I zoom in just a little?

21 MJ [Col McCALL]: Go ahead.

22 Q. Or I can zoom out, however you want me to do it,
23 Ms. Waltz. You tell me.

1 A. Are you asking me to read the document?

2 Q. Just enough to familiarize yourself with what it is. I'm
3 not going to quiz you on the content. I know you didn't draft it.

4 A. Okay.

5 Q. I just want to show you that you are seeing the bottom
6 line there.

7 A. Thank you.

8 Q. Sure.

9 LDC [MR. CONNELL]: Your Honor, may I have a moment with
10 counsel?

11 MJ [Col McCALL]: Sure.

12 **[Counsel conferred.]**

13 Q. All right. Ma'am, this is an intelligence requirements
14 cable from Special Agent Drucker to the CIA, dated 13 January 2004.
15 I can represent that to you because we've already had extensive
16 testimony about it. Can you accept that representation?

17 A. Yes, sir.

18 Q. All right. Were -- were you previously aware of this
19 cable?

20 A. I -- I -- I don't think so. I say I don't think so
21 because I -- I know generally that Adam had -- had -- was working on
22 questions and sending cables. So did I know that was occurring or
23 that he had done that? Yes. Did I know the details and specifics of

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1 what he was writing? No.

2 Q. Okay. And you know that Special Agent Drucker was working
3 on the financial elements of the case, including Mr. al Baluchi's
4 role?

5 A. At some point. I mean, early on, yes. But then he ends
6 up leaving the PENTTBOM team and taking another -- taking another
7 job.

8 Q. Right. He takes that other job in spring of 2004. Does
9 that sound right?

10 A. If that's what he has testified to, then I'll accept that.

11 Q. Sure. Okay. So this one's a little more complicated, and
12 it might be a good opportunity -- good chance for me to hand you the
13 material to review.

14 I'd like to show you a set of cable summaries from 31
15 January and 1 February 2004. They are marked MEA-STA-00000254
16 through '61 and found in the record at AE 628CC (AAA) Attachment I.

17 And I will represent to you that Special Agent Drucker
18 testified that these cables, or these summary cables, were responsive
19 to his 13 January 2004 intelligence requirements that you just looked
20 at the cable of.

21 A. Okay.

22 LDC [MR. CONNELL]: Your Honor, may I show this to the
23 government and then approach the witness?

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1 MJ [Col McCALL]: Go ahead.

2 **[Counsel conferred.]**

3 LDC [MR. CONNELL]: Your Honor, may I approach the witness?

4 MJ [Col McCALL]: Go ahead.

5 Q. Ms. Waltz, for orientation, I'm not going to quiz you on
6 the content of those.

7 A. Thank you.

8 Q. But I am going to ask you if and when you reviewed them
9 and what actions you took based on them.

10 A. Do you want me to review the entire thing?

11 Q. Yeah. That's why I said it's a little bit -- just at
12 least to satisfy yourself as to what they are.

13 LDC [MR. CONNELL]: Apologies. This will take a minute, Your
14 Honor.

15 MJ [Col McCALL]: That's fine.

16 **[Pause.]**

17 A. Okay. I've reviewed it ----

18 LDC [MR. CONNELL]: May I approach?

19 A. ---- and generally went through.

20 LDC [MR. CONNELL]: May I approach, Your Honor?

21 MJ [Col McCALL]: Go ahead.

22 Q. All right. So when did you personally review that
23 detainee reporting?

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1 A. I -- I've -- I don't know. I can't recall.

2 Sorry. I'm not -- so I can't -- I can't recall. I don't
3 know.

4 Q. Okay. And the topic of the cables is Mr. al Baluchi's
5 involvement in financial transactions; is that right, generally?

6 A. Generally.

7 Q. Okay. Understanding that you don't recall when exactly
8 you reviewed it, did you rely on those cables summarized in
9 STA-00000254 through '61 to seek additional documentation in the UAE?

10 A. No.

11 Q. Okay. Ma'am, I'd like to show you what is marked as
12 MEA-WALTZ-00000012, found in the record at AE 628RRRRRR (AAA)
13 Attachment F.

14 LDC [MR. CONNELL]: Your Honor, it's a Secret document. I
15 would request access to the document camera but not displayed to the
16 gallery.

17 MJ [Col McCALL]: All right. Go ahead.

18 LDC [MR. CONNELL]: I will zoom in or out as soon as I can
19 see.

20 Q. There's more down. You tell me when you want me to move
21 the page.

22 A. Okay.

23 I'm ready.

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1 Okay.

2 Q. Okay. So I can show you more of the rest of it when we
3 get there. But for now, this is an electronic communication dated 8
4 February 2005, basically the same header as the last documents that
5 we've reviewed; is that right?

6 A. It is.

7 Q. And it indicates that you were in Abu Dhabi at the time?

8 A. Yes, it does.

9 Q. And I think I forgot to ask you. Who was the legat in Abu
10 Dhabi in February of 2005?

11 A. I believe it was Dan Roggenbuck. I do know the ALAT was
12 Athena Lien.

13 Q. Let's do the -- so Dan, common spelling. How do you spell
14 the last name?

15 A. R-O-G-G-E-N-B-U-C-K.

16 Q. Okay.

17 A. That's -- I'm giving it a guess.

18 Q. We'll go with it.

19 And then Athena, like the goddess?

20 A. Yes.

21 Q. And Lien?

22 A. L-I-E-N.

23 Q. Okay. All right. Very good.

1 And sliding up here under the synopsis, in an unclassified
2 paragraph, it describes this EC as a request for passage of
3 information regarding Ali Abdul Aziz Ali to UAE liaison and Central
4 Bank. Do you see that?

5 A. I do.

6 Q. Okay. And do you remember this EC now?

7 A. I'm recalling it as I see it.

8 Q. Okay. And as you recall it, is this an example of using
9 information obtained from black sites to seek additional
10 documentation in the UAE?

11 A. That -- I may have used -- I may have asked for some
12 additional information. Can I ----

13 Q. Using -- using detainee reporting from black sites?

14 A. Can I see the rest of my document?

15 Q. Certainly.

16 A. Thank you.

17 Q. I'm going to show you pages 13 through 16. So I'll do
18 that one at a time.

19 **[Pause.]**

20 A. Okay.

21 Q. Do you need to see the bottom of it?

22 A. Yes, please. Okay.

23 Q. Do you need to see more pages?

1 A. I do. I ----

2 Q. I'm going to try to zoom out. Sometimes that bothers
3 people's eyes to try to get the whole page.

4 A. Okay.

5 Q. Tell me if that is better or worse.

6 A. It is.

7 Okay. Next page, please.

8 Okay.

9 **[Pause.]**

10 A. Okay.

11 Q. All right. Having reviewed that document, let me ask this
12 question again: Did you rely on the cables summarized in
13 STA-00000254 through '61 to seek additional documentation in the UAE?

14 A. I did.

15 Q. Now I'd like to show you MEA-FIN-00017314, found in the
16 record at AE 628AAAAAAAAA (AAA) Attachment B.

17 LDC [MR. CONNELL]: Your Honor, this is a LES document, so I
18 do not request its display to the gallery.

19 MJ [Col McCALL]: All right. Go ahead. It won't be displayed
20 to the gallery.

21 A. Okay.

22 Q. All right. This is a document drafted by Special
23 Agent -- and it's an electronic communication drafted by Special

1 Agent Fitzgerald, dated 28 February 2005; is that accurate?

2 A. Yes.

3 Q. And it documents the production of financial documents
4 from the UAE; is that right?

5 A. Yes, it does.

6 Q. And it does not say when the documents were received; is
7 that right?

8 A. Not on this page.

9 Q. Okay. I can show you the other pages.

10 A. Okay. Okay.

11 Q. There's the lead page, too. I just wanted -- yeah.

12 So the question is: It does not say when the documents were
13 received?

14 A. That's correct. It does not.

15 Q. And it does not say from whom the documents were received?

16 A. That's correct.

17 Q. Did this EC lead to the creation of 1B 4970?

18 A. Yes, sir.

19 Q. Now, I'd like to show you MEA-FBI-00020495, found in the
20 record at AE 628DD (AAA).

21 LDC [MR. CONNELL]: Your Honor, this is a Secret document, and
22 I would not request to display it to the gallery.

23 MJ [Col McCALL]: All right. Understood.

1 Q. All right. Ma'am, this is an electronic communication
2 that you drafted, dated 11 July 2007; is that right?

3 A. Yes, that's correct.

4 Q. Okay. And there are substantial redactions in this
5 document. Are you aware of the process by which this document was
6 redacted or the reasons for its redaction?

7 A. I am -- I'm -- no.

8 Q. Okay. Under the -- there's an unclassified paragraph
9 that -- where the word "PENTTBOM" is visible, and there's a redaction
10 under that. Do you know what is under that redaction?

11 A. No, I do not.

12 Q. And then under -- below the paragraph that says,
13 "synopsis," there's an UNCLASSIFIED marking and then another
14 redaction. Do you know what's under that redaction?

15 A. I -- no. I -- I would need to refer to the original
16 document.

17 Q. Do you recall the drafting of this document?

18 A. I'd need to see the document in its entirety.

19 Q. Okay. Does that mean you need to -- is it okay if I flip
20 the pages, or would you like to some other ----

21 A. That's fine. Flipping the pages is fine.

22 **[Pause.]**

23 A. Okay.

1 [Pause.]

2 A. Okay.

3 [Pause.]

4 A. Okay.

5 Q. Have you seen enough or do you want me to keep going?

6 A. I'd like to just see the rest. Sorry.

7 Q. Of course. It's long, which is why I asked.

8 A. Oh.

9 [Pause.]

10 A. Okay. I'm not -- I'm just skimming over it just ----

11 Q. Yeah, of course. That's fine.

12 [Pause.]

13 A. Okay.

14 [Pause.]

15 A. Okay.

16 [Pause.]

17 A. Okay. Okay.

18 [Pause.]

19 A. Okay.

20 [Pause.]

21 A. Okay.

22 [Pause.]

23 A. Okay.

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1 [Pause.]

2 A. Okay.

3 Q. All right. So the question which is on the table is: Do
4 you recall the drafting of this document?

5 A. I don't actually recall drafting it, but I -- it's -- I
6 wrote it.

7 Q. Okay. Why did you write it?

8 A. In -- the date of it's in ----

9 Q. 2007.

10 A. I think the -- it articulates in the document that it's
11 because we were starting -- that we were following up on material
12 that we didn't follow up -- that we never got before, trying to see
13 if we could get some additional information in support of the
14 military commissions prosecution.

15 But it's dated 2007, correct?

16 Q. I can show you that, but yes, it's 11 July 2007.

17 A. Okay.

18 Q. So I'd like to draw your attention to page 409 -- 20497.
19 And there is an unclassified paragraph at the top of the page which
20 says: Immigration records were previously provided to this writer on
21 two separate occasions; however, not certified for use in the
22 Moussaoui trial.

23 Do you see that?

1 A. I do, yes.

2 Q. Okay. And in March 2005, writer requested that these
3 items be certified, but this was not completed by the -- redacted.

4 Do you see that?

5 A. I do.

6 Q. Okay. Here's my question: Does that mean that there is a
7 March 2005 request from you for certification of records?

8 A. This -- no. I -- there wasn't a written -- I
9 don't -- there wasn't a written request. So one of the earlier ECs
10 drafted, I think, articulated that we were trying to certify records
11 for purposes of federal court for the Moussaoui trial.

12 And I had meetings, so I had verbal conversations regarding
13 the possibility of doing that. Can we certify records for use in
14 Moussaoui? Like ----

15 Q. Right. And that was in February 2005, those
16 conversations?

17 A. That -- well, I'm reading here that it says March 2005.
18 That's -- so ----

19 Q. That's, in fact, my confusion. You told us earlier you
20 had to leave UAE by the end of ----

21 A. Well, I -- that's what -- I said ----

22 Q. Right?

23 A. ---- I had to leave. I didn't have -- I knew that I had

1 to leave by a specific time frame. I was pregnant and I was trying
2 to get a lot of work done prior to not being able to travel. And so
3 the exact dates, could I have been there into March? Maybe. I don't
4 have the exact dates, sitting here, of my travel.

5 I -- that's -- even when I was looking at that, I was saying general
6 time frame, like, February, March. I can't recall what my ----

7 Q. I'm not giving you a hard time ----

8 A. Okay.

9 Q. ---- about the time.

10 I just want to know, is there a March 2005 request that we
11 should be looking for for certification of records?

12 A. No.

13 Q. Because the ----

14 A. I don't believe so.

15 Q. The ECs are all much -- you know, like three, four weeks
16 before that.

17 A. Correct. I wrote the ECs to -- and then after that I had
18 conversations. I essentially wrote the EC to make the lead for
19 myself, and then I had the conversations. Those conversations
20 resulted in that -- the results of those conversations were
21 that -- for the immigration records that we had, immigration ----

22 Q. I'm going to stop you there, because, like, my -- I have a
23 fairly specific question ----

1 A. Okay.

2 Q. ---- about the request.

3 The -- so what I hear you saying is that there is not a
4 March 2005 written request to someone in an EC to a legat, to the
5 Central Bank, or to somebody else?

6 A. I -- I didn't write a separate March 2005 request.

7 Q. And is there any documentation, 302, EC, notes, e-mails of
8 the conversations in February/March 2005 that you were describing?

9 A. Not that I recall.

10 **[Pause.]**

11 Q. All right. With -- you testified previously that, based
12 on your request, at least some -- and I'm adding the word "some," but
13 certifications were obtained in 2005. Do you recall that?

14 A. I -- like, just now?

15 Q. No, in March 2024.

16 A. I'm sorry. I'm confused. Can you restate your question?

17 Q. Sure. At transcript page 43086, you testified,
18 "Certifications were obtained in 2005," in response to questions from
19 Mr. Trivett.

20 A. Okay. Yes.

21 Q. Does that sound right?

22 A. Yes.

23 Q. Okay. And, obviously, certifications -- I was adding the

1 word "some," because you just told us that the immigration records
2 were not certified in 2005; you were still seeking those in 2007.

3 A. That's correct.

4 Q. Okay. But some financial documents were certified in
5 2005, correct?

6 A. Some financial documents were certified for the Moussaoui
7 trial in 2005.

8 Q. And I'd like to show you MEA-FBI-00007087, which is a law
9 enforcement sensitive document.

10 LDC [MR. CONNELL]: I request access to the document camera,
11 but not display to the gallery.

12 MJ [Col McCALL]: All right. Go ahead.

13 LDC [MR. CONNELL]: Okay. I'm going to slide that up, because
14 I think we can fit it on one page.

15 Q. This document is a 302, which documents the receipt of
16 certified bank documents from Central Bank on 29 May 2005; is that
17 right?

18 A. Yes.

19 Q. Okay. And that's -- I think I can slide it here. That's
20 Ms. Lien, the legat; is that right?

21 A. Ms. Lien ----

22 Q. Lien, I'm sorry.

23 A. ---- who is the ALAT.

1 Q. I'm sorry, who is the ALAT.

2 Okay. New topic now. I'd like to turn to the investigation
3 into the telephones, and specifically the investigation into
4 the -- this is going to be confusing here, but I'm going to say the
5 prohibited telephones, because I'm not allowed to say the word which
6 goes before "telephones."

7 So whenever I have been instructed that I cannot say a
8 particular word or phrase or sentence, I will substitute the word
9 "prohibited." Is that confusing enough for you?

10 A. It's sufficiently confusing.

11 Q. All right. Very good.

12 So in March, you testified on direct in closed for about two
13 days about telephone calls; is that right?

14 A. Yes.

15 Q. And the investigation into the telephone calls, of course,
16 focused on the pre-9/11 period to learn what was happening in the
17 conspiracy; is that fair to say?

18 A. Calls occurred before 9/11, so it's the dates of the
19 calls.

20 Q. Sure. And as you testified, cellphones were available but
21 were not much in use then; is that right?

22 A. Cell -- cellphones were available. They were used, yes.

23 Q. Okay. Were there cellphones that could be used

1 internationally in 2001, do you know?

2 A. I personally didn't have an international cellphone in
3 2001, so I -- I can't speak to the general technology available to
4 people.

5 Q. So I'm not really asking about general technology. I'm
6 asking you: Did the FBI's investigation reveal whether or not there
7 were cellphones that could be used internationally in 2001?

8 A. I can -- I can speak to the work that I did. I can't
9 really speak to the specific analysis that was done by the -- or the
10 knowledge of the greater FBI.

11 Q. So that actually makes a great deal of sense to me, but on
12 many, many occasions in the -- in your direct examination, you were
13 asked about other FBI investigation and what the FBI investigation
14 generally revealed.

15 Are you saying that you -- and you were asked about how
16 important it was that you learned all these other aspects. Are you
17 saying that that did not occur or that those were just specific facts
18 that you learned in preparation for your direct testimony?

19 A. I think that was in the context of looking at, maybe,
20 evidence that was acquired and certain items that were acquired. And
21 while I did review those materials in preparation for my testimony,
22 they were certainly materials that I had looked at and reviewed even
23 before that.

1 So was there specific documents that we were looking at or
2 that -- even that I was looking at in preparation for my testimony?
3 Yes. But were those other things that I had been generally aware of
4 and had knowledge of before my testimony? Yes.

5 Q. Okay. And so your testimony on direct focused on two main
6 issues. The one was gathering of information from and evidence from
7 UAE, and the other was telephone calls. Is that a fair
8 characterization?

9 A. Yes.

10 Q. Okay. I'd like to show you MEA-FBI-00020985, found in the
11 record at AE 628GGGGGGGGG Attachment B.

12 LDC [MR. CONNELL]: Your Honor, this is an unclassified
13 document. I just want to check with the government that they don't
14 consider it to come under Protective Order #3. May I ----

15 MJ [Col McCALL]: Sure. Go ahead and confer.

16 **[Counsel conferred.]**

17 LDC [MR. CONNELL]: All right. Your Honor, this is an
18 unclassified document. I've showed it to the government, and they
19 have reviewed it for compliance with Protective Order #3.

20 So I request access to the document camera and to display to
21 the gallery.

22 MJ [Col McCALL]: Okay. Go ahead. You can display it to the
23 gallery.

1 Q. So, ma'am, I'll let you review that, and then I'll flip to
2 the other pages to let you see the whole document before I ask a
3 couple questions.

4 **[Pause.]**

5 A. Okay.

6 Q. Okay.

7 **[Pause.]**

8 A. Okay.

9 **[Pause.]**

10 A. Is there another page?

11 Q. There's one last page.

12 A. Okay.

13 Q. There's not much to it but codes.

14 A. Okay.

15 Q. Okay. So in analyzing the telephone data, you were
16 interested in phones used by alleged conspirators in the
17 9/11 Commission; is that right -- 9/11 conspiracy?

18 A. I -- I recognized during -- when I started looking at the
19 phone calls that are here on the board, I recognized -- there were
20 numbers that I recognized.

21 Q. Okay. We're going to talk about this in more detail
22 later, but in a nutshell, in the 2009/2010 period, you reviewed
23 telephone call evidence for possible use in prosecution; is that fair

1 to say?

2 A. I was working with the federal team, the Southern District
3 of New York, Eastern District of Virginia team to -- I look at
4 specific -- a specific subject phone. I wasn't tasked with the,
5 like, a larger kind of telephone analysis of the -- of the case.

6 Q. Okay. And so you were looking at one particular phone?

7 A. I -- I focused my efforts, started with the subject phone.
8 That's where I started.

9 Q. It might be a little bit different. I just want to see if
10 it is. You say "started with the subject phone." Is it that your
11 analysis was confined to one phone or that it started with one phone
12 and then extended to other phones in the conspiracy?

13 A. When I started looking at that phone, there were a couple
14 numbers on there that were familiar to me based upon work that I had
15 previously done. So -- or had previously reviewed. So is every
16 number familiar to me? No.

17 Q. Oh, of course not.

18 A. Right. But there were certain numbers that were familiar
19 to me.

20 Q. Sure.

21 A. So ----

22 Q. So I can -- I can focus this. One of those familiar
23 numbers is shown in this memorandum from the German government,

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1 0175-935-1540; is that correct? Is that number familiar to you?

2 A. So actually, I -- I mean, I've seen -- this is the first
3 time I've seen this document right here.

4 Q. Okay. I understand.

5 A. But ----

6 Q. And I can let you look at it -- I can, in fact, give it to
7 you over the lunch break if you want. But let me just ask: That
8 1540 number, that was a number that was familiar to you, right?

9 A. No. Those aren't the numbers that I'm talking about that
10 were familiar to me.

11 Q. Okay. So that number is so important to the FBI that
12 they've given it a name, the Herweg phone. Is that familiar to you?

13 A. I've heard that term, but that -- you can say "so
14 important to the FBI." It was important to the efforts of the people
15 that were working on it that I'm not trying to underestimate that.
16 It wasn't something that was familiar to me.

17 Q. Okay. And when you say the people that were working on
18 it, that included Special Agent Zebley, for example?

19 A. Yes.

20 Q. Okay. So is what you're saying that you are not familiar
21 with the number 1540, the Herweg phone?

22 A. I'm -- I've heard the term Herweg phone. I know -- I've
23 seen this number before. Is that immediately, like, oh, I know

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1 exactly what this number is and I know where it came from? I don't
2 know all the specifics and all of the details regarding the calling
3 activity on that. I -- I could not articulate that.

4 Q. I understand. Okay. Well, let's -- and you said that you
5 have not seen this document before?

6 A. No, I have not.

7 Q. Okay. So just to be 100 percent clear on that, you have
8 not previously -- whether you've seen the cover sheet or not, have
9 you previously seen the call data for the Herweg phone?

10 A. I -- I don't believe so.

11 Q. Okay. I'd like to draw your attention -- so you testified
12 at some length about phone calls between Ramzi Binalshibh and Khalid
13 Shaikh Mohammad -- or a phone call between Khalid Shaikh Mohammad and
14 Ramzi Binalshibh on 20 January 2001. Does that sound right?

15 A. No, it -- 20 January 2001?

16 Q. Oh, I'm sorry. Did I say January? 20 July.

17 A. I -- yes, I spoke of that.

18 Q. All right. So I'd like to draw your attention to the
19 bottom of page 20986. And do you see the calls listed there on 20
20 July 2001?

21 A. Yes, I do.

22 Q. And do you see the duration of those calls in column 4?

23 A. I do, yes.

1 Q. Okay. And the durations are 12 seconds, 313 seconds, 448
2 seconds, and 90 seconds; is that right?

3 A. That's correct.

4 Q. Okay. And drawing your attention to the top of
5 page 20987, there's a fifth call from 20 July 2001 with a duration of
6 32 seconds. Do you see that?

7 A. I see that.

8 Q. And the number that is called on three of those occasions,
9 which I'm going to -- I'm going to show you the first page again.
10 The bottom two lines and the top line are all to a
11 number 870-762-81-1550. Do you see that?

12 A. I do see that.

13 Q. Okay. And is it fair to say that those three calls do not
14 appear on the call data sheet?

15 A. There's one call on the call data sheet.

16 Q. For 20 July of 10 seconds; is that right?

17 A. That's correct.

18 Q. Okay. And none of these three calls -- 448 seconds, 90
19 seconds, or 32 seconds -- are that 10-second call, correct?

20 A. I -- there is not a call for 10 seconds on here.

21 Q. Okay. And neither on the call data sheet is there a call
22 involving the 1540 number, the Herweg phone, right? Otherwise, you'd
23 be familiar with it.

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1 A. I -- I don't see it on there.

2 Q. Okay. And so for the rest of this examination, we're
3 going to call that number that I just read to you, 870-762-81-1550,
4 we're going to call that number 1550. Is that okay?

5 A. That's -- that's okay.

6 Q. Okay.

7 LDC [MR. CONNELL]: And, Your Honor, I am now asking a
8 prohibited question, which would tie all of this up.

9 MJ [Col McCALL]: Okay. You would have asked a prohibited
10 question. Understood.

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

12 All right. Thank you, sir.

13 It seems that we're at the break time. We're at a good
14 break time, unless you want me to keep going.

15 MJ [Col McCALL]: No. That's fine.

16 All right. So we will go ahead and take a recess. We'll be
17 back at 1330.

18 Again, Ms. Waltz, I know we've gone through this number of
19 times. Please don't discuss your testimony with anyone, to include
20 counsel for any of the parties.

21 WIT: Yes, sir.

22 **[The witness was warned, was excused, and withdrew from the**
23 **courtroom.]**

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1 MJ [Col McCALL]: All right. Anything to take up before we --
2 All right. We'll be back at 1330. Commission's in recess.

3 **[The R.M.C. 803 session recessed at 1201, 17 April 2024.]**

4 **[The R.M.C. 803 session was called to order at 1333, 17 April 2024.]**

5 MJ [Col McCALL]: Commission is called to order.

6 The parties are present. The accused are absent.

7 Anything to take up before we bring Ms. Waltz back to the
8 witness stand?

9 Mr. Connell?

10 LDC [MR. CONNELL]: Do the argument?

11 MJ [Col McCALL]: We can go ahead and do that now if -- it
12 looks like I see Major Dastoor up in the RHR.

13 LDC [MR. CONNELL]: Okay.

14 ADC [MS. PRADHAN]: Afternoon, sir.

15 MJ [Col McCALL]: Good afternoon.

16 ADC [MS. PRADHAN]: All right. So I won't go through the
17 entirety of the legal argument on witnesses. I know that Your
18 Honor's aware of it. It is laid out, I think, in some detail in
19 628B.

20 But I do just want to flag that in there on the relevance
21 and necessity of witnesses, we raise three grounds for suppression at
22 that point. This was filed in May 2019.

23 The first was the proposition that the United States,

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1 including both CIA and FBI, relied on a system of torture and cruel,
2 inhuman, and degrading treatment from 2003 to 2007, although I think
3 we would revise the parameters at this point, to obtain statements
4 from Mr. al Baluchi.

5 Second, was under a totality-of-the-circumstances argument,
6 Mr. al Baluchi's statement was not a product of essentially
7 unconstrained and free choice by its maker.

8 And the third, was that the coercive tactics that the United
9 States employed on Mr. al Baluchi, including inflicting brain damage,
10 render his statements not reliable within the meaning of 948r(c)(1).

11 So with that, let me go to what -- the facts of what we're
12 talking about with regards to SG1 and Ms. Jocys, Special Agent Jocys.

13 So with regards to SG1, there's a reason we put SG1 at the
14 top of the short list that we brought -- that Mr. Connell brought on,
15 I think, Tuesday, and near the top of our witness list originally in
16 May 2019 for three reasons.

17 The first is that SG1 is a -- is, we believe, a very strong
18 witness on the issue of the extent of collaboration between the FBI
19 and the CIA. So we know now from testimony from Special Agents
20 Fitzgerald and Drucker that a significant number of cables from the
21 FBI asking for questions to be posed to Mr. al Baluchi, under
22 torture, had SG1 on the pass line. And that's from unclassified
23 transcripts.

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1 Now, this is still one of the key questions that we're
2 trying to nail down. We have some insight now into how those cables
3 were drafted and sent from FBI Headquarters and some insight into how
4 they were received back and incorporated into the PENTTBOM and 9/11
5 Commission investigations.

6 And we can put together, I think as the military commission
7 has seen, some of the loops of information from the FBI questions to
8 the CIA-provided answers that came from Mr. al Baluchi at the black
9 sites.

10 But we still have very little, I would say almost zero,
11 insight into how those questions were received at the sites and
12 incorporated into the black site interrogations, how decisions were
13 made about whether to ask certain questions at certain times, whether
14 to do them under threat from interrogators wearing all black and
15 putting towels on the table, or whether to have debriefers ask them.
16 SG1 would have insight into that.

17 For more on SG1's actual role -- I wanted to keep this
18 unclassified. So for more on SG1's actual role through the black
19 site years, I would point the military commission to 502Y
20 Attachment G at MEA-2D-25 through 27. We now know that some of the
21 facts in those 2D profiles are not entirely accurate for various
22 reasons, but we also know -- we think we know that the position and
23 the history of employment with the agency that is listed for SG1, as

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1 well as some of the interactions with detainees and other important
2 black site personnel that you've heard a lot about, are true and are
3 accurate for that profile. So that's the first -- that's the first
4 ground for calling SG1.

5 The second is general knowledge of the black sites. So, so
6 far we have had only two witnesses who have spoken about the overseas
7 black sites. That's Drs. Mitchell and Jessen.

8 We established, I think pretty conclusively with both of
9 them, and particularly Dr. Mitchell, that there was a serious schism
10 at the CIA regarding the conduct at the black sites and the conduct
11 at these interrogations and, in fact, sort of a power struggle
12 with -- between what Dr. Mitchell called the green badgers and the
13 blue badgers. And we know from discovery, as we've outlined in 628
14 and 628AAA (Sup), that Mitchell and Jessen as contractors who
15 initially conceived the program have a very different view of the
16 black sites and the way in which EITs were applied and ought to have
17 been applied than the CIA personnel do.

18 SG1 was a CIA employee who was at the black sites for most
19 of the life span of the RDI program.

20 And the third ground for calling SG1 is with respect
21 specifically to Mr. al Baluchi at the black sites. You know, we're
22 here calling witnesses on Mr. al Baluchi's motion to suppress and
23 we've had zero witnesses so far on what his experience was at the

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1 black sites. We have used, you know, liberally the one document that
2 we have that really illustrates or provides details on what he went
3 through at the black sites, and that's of course the CIA OIG report
4 that's in the record at -- in full form in AE 562B Attachment B and
5 the unclassified version at AE 628RRRRR Attachment C.

6 But, you know, that's the only document we have. It's not a
7 stripped substitution. It's the actual document describing his
8 experience at the black sites.

9 SG1 has 11 entries in the RDI index, in Mr. al Baluchi's RDI
10 index, including at three locations. Two of those locations have
11 numbers or code names, Location Number 2, known as COBALT, and
12 Location Number 5, which is a foreign country.

13 SG1 was also present and observing interrogations in the
14 country of Mr. al Baluchi's capture before the decision was made to
15 render him to COBALT for the use of EITs. And that fact, his
16 presence in that country, in conjunction with his being present at at
17 least Locations 2 and 5 over several years, makes him a significant
18 witness on Mr. al Baluchi's treatment over time and response to
19 different types of interrogations under different circumstances.

20 He was one of the interrogators approved to apply, quote,
21 enhanced interrogation techniques on Mr. al Baluchi at COBALT. And
22 this is after we heard, you know, testimony from Special Agent
23 Fitzsimmons in accordance with the findings of the CIA OIG that

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1 Mr. al Baluchi had, in fact, been cooperative during his initial
2 interrogations before he went to COBALT. So SG1 could shed some more
3 light on that.

4 He could also shed more light on -- you know, this is
5 perhaps a side issue, but the 809 RDI discovery issues because
6 there's reason to believe that his contact with Mr. al Baluchi is
7 much higher than the just three locations listed in the RDI index.

8 For example, there are requirements cables from the FBI
9 mentioned in Special Agent Fitzgerald and Drucker's testimony with
10 SGA on the pass line, and this is all from unclassified transcripts.
11 Those cables are from -- are dated October 2003 and January 2004,
12 when Mr. al Baluchi was at Location Number 7. And that is not listed
13 on the RDI index. And that is from a transcript -- two -- one
14 transcript dated September 19th, 2019, pages 26158 and 26191. That's
15 the testimony of Special Agent Fitzgerald.

16 And then the second cable -- the third cable, excuse me, is
17 November 2005, when Mr. al Baluchi was at Location Number 8. And
18 there is significant psychological analysis of Mr. al Baluchi at
19 Location Number 8 that is important as well in conjunction with all
20 of this. And that reference is contained in the testimony of Special
21 Agent Drucker from October 30th, 2019, at page 28054.

22 So that would place SG1 at four of the five sites in which
23 Mr. al Baluchi was held, all very different from each other. If you

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1 recall COBALT, Location 2, was described as the dungeon. Locations 7
2 and 8 were described by Dr. Mitchell as newer facilities, similar to
3 each other. Location Number 5 was third-party custody, as described
4 by Special Agent Butsch and in the SSCI Report.

5 So there's a lot more insight that SG1 may have about the
6 potential coercive factors at the different sites as well as the
7 commonalities.

8 With regards to Special Agent Jocys, according to Special
9 Agent Drucker's unclassified testimony, she is one of the FBI agents,
10 along with Special Agent Drucker, who worked on the FBI
11 investigation, number one; second, was -- second, was detailed to the
12 RDI program to the CIA for several years; and third, assisted with
13 the LHM interviews at Guantanamo Bay.

14 On the first issue, she was involved in the investigation
15 into Iyman Faris, which is significant in the construction of several
16 of the information loops involving Mr. al Baluchi. She was also
17 generally involved in the sending and receiving of requirements
18 cables according to unclassified testimony from Special Agents
19 Fitzgerald, Perkins, and Drucker.

20 In fact, Special Agent Drucker discussed a December 2004 and
21 December 2005 cable -- cables -- excuse me -- where she was on the
22 pass line of requirements with SG1. But during his testimony,
23 Special Agent Drucker actually didn't recall taking any action with

1 regards to photographs mentioned in those cables.

2 So she may have more detailed information for us about that
3 process of creating the information loops to and from the black
4 sites, as well as more information about the other CIA personnel.
5 And the transcript cites for that, sir, just to close the loop, is
6 December 2004 was October 30th, 2019, at page 28047. And the second
7 was February 2005 -- the February 2005 cable was October 30th, 2019,
8 at 28059.

9 There was also, in the spring of 2003, an FBI conference
10 about the exploitation of Mr. Mohammad and other detainee reporting,
11 which appears in the SSCI Report and about which we have some
12 discovery. But so far, it's been a little bit mysterious. No one
13 seems to remember any details about it at all. This is clearly
14 something that when we found out about it, seemed very significant to
15 us. But -- and that includes Special Agent Drucker, whose office
16 allegedly made a presentation there, and he talked about that on
17 October 31st, 2019, in the redacted public transcript at
18 page -- around page 28278.

19 And this is something that Special Agent Jocys may be able
20 to speak to and, frankly, would be pretty significant, if so, to know
21 how detainee reporting was being treated by the intelligence
22 community at that early date in the lifespan of the black sites.
23 This is March 2003.

1 And, finally, in October 2019, we said on the record that
2 the mystery of who was actually PENTTBOM and not PENTTBOM was pretty
3 opaque. And, you know, you can tell from some of the questions we're
4 asking now that we're still trying to sort of nail that down.

5 Special Agent Drucker testified that Special Agent Jocys was
6 not PENTTBOM, in his opinion. He categorized himself as
7 PENTTBOM-retired. And, again, this is something that, I think, as we
8 go through and we try to figure out the threads of who was involved
9 with what with the black sites, this is something that we could use
10 Special Agent Jocys' lived experience and opinion on.

11 On the second issue, detailing to the black sites, she may
12 have more detailed information, as Special Agent Drucker actually
13 said during his testimony, about any debriefing courses she may have
14 done, as well as any actual black sites she may have visited. And
15 for more details on that, I'll refer the military commission to AE
16 538I Attachment B.

17 And then, of course, we've had a few witnesses on the LHM
18 interrogations here at Guantanamo, but only one other CIA detailee,
19 and that's Adam Drucker, and still no one who saw or experienced the
20 black sites where the men actually were before, right? Mitchell and
21 Jessen weren't here for the LHM interrogations. So in terms of
22 bridging witnesses, we really haven't had any, and so she may be very
23 valuable for that.

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1 I -- you know, I won't -- she's public about where she is
2 right now, and I understand that the prosecution's already spoken
3 with her about her availability, so I think that that -- at least
4 that issue may be resolved.

5 So subject to any questions you may have, sir.

6 MJ [Col McCALL]: No questions. Thank you.

7 Ready when you are, Major Dastoor. Take your time.

8 DMTC [MR. DYKSTRA]: Your Honor, before this ----

9 MJ [Col McCALL]: Mr. Dykstra.

10 DMTC [MR. DYKSTRA]: Before Major Dastoor gets up, is any
11 other defense counsel going to argue this issue or ----

12 MJ [Col McCALL]: I didn't see any other defense counsel
13 looking like they were getting ready to stand up.

14 Go ahead, Mr. Sowards.

15 LDC [MR. SOWARDS]: Excuse me, Your Honor. To the extent I'm
16 able, I was -- if I may just make a couple of comments.

17 MJ [Col McCALL]: Sure.

18 LDC [MR. SOWARDS]: Leave from Major Dastoor, if that's okay.

19 MJ [Col McCALL]: Okay. Go ahead.

20 LDC [MR. SOWARDS]: Thank you, sir.

21 Thank you, sir. This was obviously not our motion, but
22 there were some things that Ms. Pradhan sort of triggered for me, to
23 think about her excellent and concise summary of the issues specific

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1 to Mr. al Baluchi.

2 I just wanted to ask the court to consider in -- in looking
3 at these -- the decision to call these two witnesses, a slightly
4 broader framework, which I think will apply to all defense counsel as
5 we go forward in the -- particularly in the near term, given, in
6 part, the unexpected difficulty that the prosecution is having, both
7 with scheduling witnesses and then maintaining the schedule, and Your
8 Honor's commendable efforts to try to make use of the time we have
9 available -- remaining time we have available to call -- to call
10 people to fill the gaps.

11 And the -- and the point is that these witnesses, as
12 Ms. Pradhan has ably explained, are folks who clearly, within
13 counsel's sound judgment, are -- are witnesses who are necessary and
14 helpful, certainly helpful, even if they could be done without, which
15 I don't think they can in a fair determination of this issue, but
16 important witnesses for very specific reasons.

17 And the obligation of defense counsel in capital cases, as
18 we've alluded to before, is summarized in a couple of cases. One of
19 them, Justice Stevens' opinion for the court in Burger v. Kemp, which
20 upheld counsel's performance because, among other things, what
21 counsel did in that case was to interview and evaluate whether to
22 call every single witness who had been brought to his attention. And
23 that's what we do.

1 And the decision in Wiggins where the court noted that the
2 quality of counsel's performance is not measured by the information
3 that he or she has in hand, but the steps they take to develop more
4 that are naturally suggested by the information they have in hand.

5 And that's what has gone on -- on here. And what we bump up
6 against, when counsel -- sorry -- when counsel in these cases -- in
7 our case here make those considered judgments is the -- the somewhat
8 handicap situation we are in in being able to bring those -- those
9 witnesses before you.

10 And we know that because we don't have the same subpoena
11 power that we would have in a -- in a civilian situation, we
12 understand that as -- the way the UCMJ works is that there's much
13 more of a, sort of, paternalistic attitude of defendants who would
14 appear before you.

15 Because in some senses, they are members of the military
16 family, and there's a way that everybody kind of has an evenhanded
17 justice to take care of them. Whereas, in the civilian context, it's
18 much more adversarial. People are strangers to one another and
19 strangers to the system.

20 And so it's for defense counsel to say, "I want to bring
21 that witness; I want to bring this witness." And then objections to
22 their relevance or consumption of time, whatever, can be made at that
23 time.

1 But our effort here, as Pradhan is arguing for, is even to
2 get the witness -- excuse me, excuse me -- get the witness in the
3 door -- oh, that's fine -- to get the witness in the door to
4 begin -- to begin that process.

5 And the MCA sought to fill some of that disparity or to
6 bridge that disparity by explaining that the defense should have the
7 same opportunity to gather evidence and present witnesses as a
8 counterpart might have in an Article III court.

9 And what has gone on, particularly in this case, I would
10 just ask Your Honor to consider, and this is without asking for a
11 penalty, but to understand that when you give that sort of total
12 power to the prosecution to pick and choose who gets to come and then
13 offer this sort of resistance to the similar ability of the defense,
14 what you get is a situation that is, in part, illustrated by Agent
15 Waltz's presence here.

16 And as we said in our earlier motions over four years ago,
17 we asked the prosecution to produce Ms. Walls -- Waltz, I'm sorry,
18 for, among other reasons, to testify to what went on in the
19 letterhead memorandum interview in January of 2007. And they said,
20 "We're not going to produce her or any of the other people unless you
21 can tell us" -- which, of course, we couldn't, because we hadn't
22 interviewed her and knew what she was going to say -- "unless you can
23 tell us what she's going to add to this. And, in particular, if you

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1 can tell us she's going to say something different from Agent
2 Pellegrino and Agent Antol. Tell us that she's going to offer some
3 different perspective as a threshold to consideration of calling
4 her."

5 We were not able to do that. By our lights -- and I don't
6 ask anyone to endorse this. I'm just saying by our lights from where
7 we're sitting, Agent Pellegrino was actually very helpful to us when
8 he testified.

9 And so in the next move, the government said, "Well, you
10 know what? We're going to call Special Agent" -- or, I'm sorry,
11 Investigative Analyst -- "Supervising Analyst Waltz." And they said,
12 "And the reason we're going to do it now," when we reminded them of
13 their standard they were using as a barrier to us, "she's going to
14 give different testimony from Agent Pellegrino."

15 And as far as I can tell from my notes and review of the
16 transcript, as we sort of rhetorically said, "Is that true?"
17 Consistent with that skepticism, she didn't give any different
18 testimony. She gave testimony to -- to corroborate, now,
19 Mr. Pellegrino.

20 So, again, it's the difficulty that when counsel articulates
21 a very plausible, reasonable basis, obvious basis for calling a
22 witness, that they can be precluded from doing that. But it leaves
23 the door open for the prosecution to, quite frankly, manipulate the

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1 process, to -- to sort of toggle between different standards and
2 shape the evidence based on their control over the evidence and the
3 witnesses.

4 And I would ask Your Honor not to allow that to happen and
5 to make this look like both what Article III envisions, as well as
6 the MCA envisions, which is, as Ms. Pradhan says, the only other
7 witnesses who have direct insight into what happened both in the
8 black sites and at Guantanamo in January 2007.

9 Thank you, sir, for allowing ----

10 MJ [Col McCALL]: Thank you, Mr. Sowards.

11 Go ahead, Mr. Montross.

12 DC [MR. MONTROSS]: Okay. Thank you, sir.

13 We're going to join Mr. Sowards' general assertions about
14 why the calling of these witnesses is appropriate. But I do want to
15 add what I believe are also plausible, reasonable, and obvious bases
16 to call SG1, and particularly as it relates to Mr. Bin'Attash's
17 defense.

18 We very strongly support Mr. al Baluchi's request for the
19 prosecution to produce SG1. He is a critical witness to
20 Mr. Bin'Attash's torture.

21 You undoubtedly heard Ms. Pradhan mention that the testimony
22 that we received thus far from individuals who were actually in the
23 CIA black sites were primarily Dr. Mitchell and Dr. Jessen. As

1 depraved as some of that testimony was, that testimony was primary
2 limited -- primarily limited to events and occurrences that involved
3 Mr. Mohammad being waterboarded repeatedly, et cetera.

4 What you also heard hopefully, from Dr. Mitchell in
5 particular, was that as has been described by Mr. al Baluchi's team,
6 is that there was a schism, and there were other CIA officers who
7 were primarily involved with both Mr. al Baluchi and also
8 Mr. Bin'Attash who were NZ7 and NX2. We have requested NZ7 to
9 testify before.

10 SG1 would be another witness who would fall into that
11 category. And the reason I'm saying that is that after
12 Mr. Bin'Attash was captured, along with Mr. al Baluchi, after his
13 presence in a third country, he was eventually taken to Location 2
14 and Location 4.

15 According to the prosecution's RDI index that they provided
16 us -- and, again, we're working within the construct, I think, of
17 very narrow, direct, and substantial definitions -- but even within
18 that context, I have indicated that SG1 had direct and substantial
19 contact with Mr. Bin'Attash 79 times in -- from May to June of 2003.
20 That's the period when he was being tortured. So he would be a
21 critical witness to talk about what happened to Mr. Bin'Attash during
22 that time period.

23 I'm going to try and do this in an unclassified way. There

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1 is a CIA cable substitution that describes Mr. Bin'Attash being
2 threatened with his situation going to get worse and interrogators
3 emphasizing to Mr. Bin'Attash that the time was approaching for those
4 same interrogators to assess how bad things were going to get for
5 Mr. Bin'Attash. That's SG1. So he would be a critical witness
6 to -- even just to talk about that one cable would be very important
7 for us.

8 SG1 is also a named or listed recipient on a lot of FBI
9 requirement cables that specifically have to do with Khallad
10 Bin'Attash. You saw, just even very briefly during this session with
11 Ms. Waltz, that Interrogator SG1 shows up on -- on a bunch of FBI
12 requirement cables.

13 It's an open question that I'm sure everyone's going to want
14 to explore how he ends up being listed, but I can tell you that there
15 is a lot of FBI requirement cables where they're going after Khallad
16 in the black sites where SG1 is the person whose attention is drawn
17 to the requirement cable.

18 I will also note -- and, again, I'm trying to do this in
19 unclassified session. You heard about NX2's interrogation class that
20 Mitchell went to and apparently was disgusted by what he saw was
21 being taught there. SG1 was there. Okay? So another reason to talk
22 to SG1.

23 And it's our belief that SG1 eventually holds such a

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1 leadership position in the RDI program that he would also be able to
2 offer testimony about how interrogators and debriefers were both
3 selected, trained, supervised, and punished, though they never were.

4 So specific to Mr. Bin'Attash, that's why we believe that
5 SG1 is a witness who's absolutely essential to us, and we join the
6 other -- Mr. al Baluchi's arguments in terms of the other witness.

7 MJ [Col McCALL]: All right. Thank you, Mr. Montross.

8 DC [MR. MONTROSS]: Thank you.

9 MJ [Col McCALL]: Mr. Ruiz, do you desire to be heard?

10 LDC [MR. RUIZ]: I don't have anything to add that hasn't
11 already been said, Judge.

12 MJ [Col McCALL]: All right. Thank you.

13 All right. Major Dastoor?

14 TC [MAJ DASTOOR]: Sir, can you hear me?

15 MJ [Col McCALL]: I can.

16 TC [MAJ DASTOOR]: Good afternoon, sir. Major Neville Dastoor
17 for the government.

18 We ask you deny this request for the testimony of SG1 and
19 Maria Jocys during this hearing. We believe this isn't the most
20 efficient way ahead, either procedurally or substantively, with
21 respect to how we're litigating suppression.

22 So procedurally, it seems to me that we're really arguing
23 here a slice of AE 628C, Mr. Ali's motion to compel witnesses in

1 support of his motion to suppress, and both SG1 and Maria Jocys, sir,
2 are listed there among 98 other witnesses.

3 In 628F, our response to that motion, we ask the commission
4 to defer deciding on the 100 witnesses until after the government
5 presented its evidence and until after the defense presents its
6 evidence through the agreed-upon defense witnesses and until after
7 developing the record and hearing argument regarding the relevance
8 and necessity of the other 100 witnesses.

9 These witnesses aren't discovery tools, and they -- and
10 their testimony isn't -- isn't proxy for a deposition. This isn't an
11 oversight committee or a board of inquiry that you're running, as the
12 court said it wasn't in U.S. v. McVeigh at 923 F. Supp. 1310, 1315.
13 These witnesses have to have relevant and necessary information, and
14 that information has to be targeted and refined.

15 And that relevant and necessary standard has to be assessed
16 in light of whether a particular witness would be cumulative to
17 evidence in the record regarding RDI information, regarding whether
18 it's subsumed by the prosecution's offer to stipulate to facts
19 tethered to reality.

20 And for years the commission has adopted the approach that
21 we -- that we propose in 628F, if not explicitly, then by its clear
22 practice reflected in the direction we've taken since 524LLL, the
23 Judge Parrella ruling in 524YYY, the Judge Cohen ruling.

1 And so respectfully, sir, it's our position that the health
2 issues of one witness should not derail that process that we're on.

3 Now, most significantly, permitting that record to develop
4 with testimony from the remaining witnesses, and especially the fact
5 witnesses of the prosecution and those agreed-upon fact witnesses for
6 the defense, while at the same time pursuing those Stipulations of
7 Fact, that will allow for the most refined and comprehensive
8 arguments to be ultimately made under R.M.C. 703 for additional
9 witnesses.

10 Now, assuming, sir, that we're -- that we're moving to the
11 world of additional witnesses right now before the other witnesses
12 have testified, there's still necessary steps to be taken
13 before -- before any testimony should occur for purposes of judicial
14 economy and to ensure the person in the witness stand really needs to
15 be there.

16 So repeating briefly what I said last month in AE 809 in
17 terms of process, the defense should first come to us with a proposed
18 Stipulation of Expected Testimony for additional witnesses, and we'd
19 very likely agree to it.

20 We very likely may have conceded significant portions of it
21 already, like our concession that the RDI program was coercive or the
22 fact that the FBI and CIA shared information or that FBI agents
23 accessed CIA reporting. All of these are topics that are listed

1 under SG1 and under Maria Jocys in 628C.

2 And some testimony might be redundant to other witnesses'
3 testimony. What about Special Agent Drucker's testimony or any of
4 the other FBI special agents or Dr. Mitchell's or Dr. Jessen's, who's
5 most likely able to testify in July, or Mr. Soufan's that's
6 scheduled? What about all of that would be redundant to the facts
7 that the defense says they need to get from SG1 or Maria Jocys?

8 That discussion and assessment should be the first step.
9 And that process can be efficient. It can be lean. It can be
10 propelled by deadlines from you, sir. But it needs to happen. And I
11 respectfully submit that it shouldn't happen here at the podium today
12 on less than 24 hours' notice without the benefit of deliberation and
13 forethought on counsel's side to be able to pose what actually is in
14 contest.

15 And as I said earlier, and as I'll keep on saying whenever
16 I'm up here, this should and can be done in conjunction with work on
17 finalizing the commission-encouraged stipulations. If any of the
18 expected testimony, as we heard from Ms. Pradhan and Mr. Sowards and
19 Mr. Montross, has to relate to the RDI experience of their clients.
20 And I'll refer to you -- to my arguments in 809 from last month, and
21 I won't repeat them here.

22 But before a witness is needed to testify about the
23 accused's experience in the RDI program, is there really a

1 significant dispute about what occurred that isn't in the documentary
2 evidence, most of which we would stipulate to?

3 Now, specifically regarding SG1 for a second, sir, some
4 additional CIPA-grounded considerations are necessary that must
5 preclude any testimony immediately before -- before making those
6 considerations.

7 So, first, if the process unfolds the way that we think it
8 should, with the completion of the current fact witnesses, with
9 good-faith efforts on the part of the defense for the stipulations,
10 with good-faith offers of stipulations of expected testimony, then
11 the universe of information for which SG1 would be needed for which
12 you might order his testimony, that would be potentially pretty
13 limited.

14 And that limited slice of information may necessarily
15 involve the disclosure of classified information. And if so, the MCA
16 sets forth the framework to deal with that. It gives the government
17 the necessary tools to fulfill its obligation to protect national
18 security implicated by that classified information. And that's all
19 the options that are contemplated and listed under 10 U.S.C. 949p-6,
20 including but not limited to proposing a statement admitting relevant
21 fact or proposing other substitutions or procedures limiting the
22 disclosure of classified information.

23 As you know, that process takes thought and time. You

1 could, again, accelerate it with deadlines. And I'm not trying to
2 overstate the process but I don't want to understate it either. It
3 doesn't happen overnight.

4 And, sir, assuming SG1 is slated for testimony, then there
5 are practical and logistical issues that must be addressed given his
6 classified identity. I'm not divulging details here, nor as of now
7 do I have the foundation to know if these questions matter but, for
8 example, from where must the testimony take place? Are we using
9 light disguise? What are those parameters? Would the very timing of
10 the testimony itself, if ordered, tend to reveal the identity based
11 on the individual's abrupt departure from where they currently are
12 located.

13 And, again, I'm not speaking about specific facts here, but
14 I'm speaking to the realities we have to deal with as stewards of
15 classified information.

16 And, separately, the subject matter of the witness'
17 testimony likely involves classified information, and this also
18 applies to Ms. Jocys as well. And to properly protect that
19 information per the rules, as well as ensuring we take testimony in
20 open session as much as possible, the defense needs to provide
21 sufficient notice, and we have to coordinate with the owners of the
22 classified information to work through the issues presented by the
23 notice. And that also takes time and, if not done correctly, will

1 result in delays during the taking of testimony as we've seen in
2 recent weeks and potentially spills.

3 These issues can be resolved, and we stand ready to address
4 them, if necessary. But cautions against -- but we caution against
5 doing so in a manner that does not adequately protect the classified
6 information.

7 So that's all I have, sir, pending any questions.

8 MJ [Col McCALL]: No. I appreciate that.

9 So -- all right. One question for you, just going back to
10 your initial point on procedurally. And I do understand what has
11 been the process that we -- and, I mean, this started up under some
12 of the previous judges where there were certain witnesses for the
13 motions to suppress the LHM that the government intended to call, and
14 then the idea was to also call witnesses that the parties had agreed
15 on, and then leave the decision on the production of these other
16 pending defense-requested witnesses until the end. So I understand
17 that. I understand that with judicial economy.

18 So I guess the question, though, is: As we're getting
19 closer and closer to running out of those witnesses that fall under
20 those categories, the witnesses that are still remaining, like, what
21 do you -- why do you -- it sounds like you think that some of those
22 witnesses that haven't testified yet that are scheduled to testify at
23 some point, or agreed to testify, that it sounds like you think they

1 might be cumulative with Ms. Jocys or SG1? I mean, is that the
2 position?

3 I guess my question is: Why -- my longwinded way of asking
4 is: Why do I need to wait on particular witnesses? I understand,
5 you know, if I was trying to decide all of the pending witnesses.
6 But as I start to try to make some surgical decisions on filling in
7 some of the blank space when we have availability, what's the problem
8 with that?

9 I mean, can you point me to witnesses that I'm -- I know
10 that I will hear from that are cumulative or would make Ms. Jocys or
11 SG1 not relevant for my purpose?

12 TC [MAJ DASTOOR]: Yes, sir. So I understand the question.
13 And I don't want to sound like a broken record when I -- when I go
14 back to the fact that when -- if you're thinking about suppression on
15 the timeline and you're thinking about the cutoff at September '06
16 when we get to GTMO and all the time before that, it's our -- the
17 government's position is that the facts are established regarding
18 everything left of that September 2006 break, right?

19 It's covered by the documentary evidence. It's covered by
20 testimony. It's covered by open-source information. It's covered by
21 our stipulation offers. So to the extent SG1 or Maria Jocys is -- is
22 said to be relevant and necessary for that information, we think
23 that's cumulative. So ----

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1 MJ [Col McCALL]: Well, let me -- well, let me stop you there.

2 TC [MAJ DASTOOR]: Sure.

3 MJ [Col McCALL]: Again -- and so doesn't the extent of
4 whatever was done in the RDI program affect whether or not the
5 government's attempts at attenuation were successful?

6 I mean, are you -- I guess my question is: Are you -- is
7 the government willing to concede that -- I know we've heard this
8 many times before that anything that the defense will
9 stipulate -- that you'd be willing to stipulate to anything that the
10 defense would suggest, as long as it's tethered to facts and reality.

11 But are you willing to concede, I guess, anything that the
12 defense would say as far as what might have happened in the RDI
13 program?

14 I'm trying to understand how ----

15 TC [MAJ DASTOOR]: Yes.

16 MJ [Col McCALL]: It seems like what happened there, I
17 understand that we have lots of documentary evidence. We've had a
18 little bit of witness testimony. But it seems like maybe potentially
19 more witness testimony would flesh out the record. Why is that -- is
20 that cumulative at this point?

21 TC [MAJ DASTOOR]: So -- so one answer, sir, is a stipulation
22 is -- it's a two-sided endeavor. It involves two parties, right?
23 We've -- we've made the overture. We've -- we've infused that

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1 stipulation with rich and comprehensive information, and it's now on
2 the defense to tell us what they couldn't fill in right now with
3 their own -- with their own input and information.

4 And that's why I refer to my 809 argument that I made last
5 month where I tried to demonstrate how claims that they can't do
6 anything additional with their own pens is contradicted by facts that
7 we have. We have Mr. Bin'Attash's, for instance, 13-page declaration
8 that he filed in the Nashiri case that -- that I showed you last
9 month that shows the ability to document and recall specific and
10 vivid facts, right?

11 So it's a -- it's an efficiency argument as
12 well -- right? -- that they have the ability and they've demonstrated
13 the ability to color and to articulate their experience in the
14 program. And so that has to be something that's considered when
15 we're determining whether we need to bring in additional witnesses.

16 In terms of what else we're willing to stipulate to, any
17 fact about the accused's experience that's in the discovery that they
18 have we would stipulate to. Any fact about the accused's experience
19 that's articulated in SSCI we would stipulate to. Right?

20 And so the stipulation -- you know, I think sometimes it
21 gets glossed over in that we can -- we can hear, yeah, it's
22 just -- you know, it's just discovery they're talking about. But the
23 stipulation also means it's a concession that we're making, right?

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1 It's a -- it's not ----

2 MJ [Col McCALL]: Well, no. That was -- that was actually
3 going to be my next question. So, I guess, stipulation, I mean, it
4 takes both sides, right? But are you saying that -- does the
5 government consider the stipulations that have been offered as
6 concessions? As admissions?

7 TC [MAJ DASTOOR]: Absolutely.

8 MJ [Col McCALL]: Okay.

9 TC [MAJ DASTOOR]: Yeah. And what I'm trying to say, perhaps
10 inarticulately, is that those can be made much more powerful if they
11 just wanted to, if they just did it. If they just did what they've
12 done with other documents, like Mr. Bin'Attash's declaration or like
13 Mr. Ali's handwritten notes that he's -- that he's written and
14 submitted in 628, like Mr. Mohammad has demonstrated with his memory
15 throughout -- throughout the course of his detention, they could make
16 them more powerful.

17 But to answer your question directly, yes, every word that
18 we wrote in those stipulations, by definition we have offered to
19 concede to.

20 MJ [Col McCALL]: All right.

21 TC [MAJ DASTOOR]: I can point you to -- well ----

22 MJ [Col McCALL]: Go ahead.

23 TC [MAJ DASTOOR]: I'll leave it at that.

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1 MJ [Col McCALL]: No. Go ahead.

2 TC [MAJ DASTOOR]: No, I'll hold that one back, sir.

3 MJ [Col McCALL]: All right. No, I understand your position.
4 I mean, I think this has been well briefed, and I've heard portions
5 of this argument before from some of the other pending motions.

6 All right. Thank you, Major Dastoor. I don't have any
7 other questions.

8 TC [MAJ DASTOOR]: Give me one second here, sir. Let me see
9 if I've left something on the table here.

10 MJ [Col McCALL]: Sure.

11 TC [MAJ DASTOOR]: Yeah, sir. So one alibi is -- your -- your
12 question was what information from remaining witnesses, right? So,
13 for instance, we have the Camp VII commander. We have Dr. ----

14 MJ [Col McCALL]: Jessen.

15 TC [MAJ DASTOOR]: ---- WK5I. We have Dr. Jessen, right? So
16 Dr. Jessen will fill in gaps that we don't think exist with respect
17 to the RDI side of the timeline.

18 Those other witnesses I mentioned, they do fill in key gaps
19 for the -- for a key part of the timeline when you're assessing
20 suppression; when you're assessing attenuation; when you're assessing
21 whether or not the circumstances changed sufficiently; when you're
22 assessing whether or not the neurological and mental deficiencies
23 that the accused claim they suffered, whether they actually existed,

1 whether they manifested, whether doctors trained to examine these
2 folks and treat these folks actually documented those, right? That's
3 key testimony. That's key information that right now our record
4 needs.

5 And so when you -- when you compare that side of the
6 timeline to the timeline that exists with respect to RDI, I think
7 that's the value of the remaining witnesses.

8 That's all I have now, sir.

9 MJ [Col McCALL]: All right. No, I appreciate that
10 clarification. Thank you.

11 TC [MAJ DASTOOR]: Okay. Thanks.

12 MJ [Col McCALL]: Go ahead, Ms. Pradhan.

13 ADC [MS. PRADHAN]: Thank you, sir. I'll try to keep it
14 brief. I think I went through a lot of the facts with you the first
15 time.

16 But I heard you ask: Why do I need to wait? And the answer
17 is: You don't. I think at this point in the testimony, we've had
18 testimony over five years. There was a gap in the middle, but a lot
19 of testimony. I think the military commission is as aware as the
20 parties are of where the gaps in that testimony are and what needs to
21 be filled in.

22 The -- you know, I heard Major Dastoor refer to bringing
23 witnesses on short notice. These two witnesses have been on notice

1 for five years that they are on this witness list. I'm sure someone
2 told them at that point.

3 We have mentioned both of them multiple times in testimony
4 since 2019. So they have been on notice for a very long time.
5 Certainly the CIA has been on notice for a very long time that this
6 was a possibility that we might bring them.

7 I think I just illustrated how the testimony of SG1 and
8 Ms. Jocys -- excuse me -- Special Agent Jocys would not be redundant,
9 would not be cumulative. If you have any further questions on that,
10 I would be very happy to answer that, sir. But ----

11 MJ [Col McCALL]: I don't.

12 ADC [MS. PRADHAN]: I think I just illustrated that with
13 copious reference to the facts.

14 I do just -- I will not go down this road too far, but
15 you've heard our arguments many times about this -- this repetitive
16 argument about the government's stipulation. You heard Major Dastoor
17 just reference Mr. al Baluchi's handwritten notes. Those are all in
18 the record at AE 200MM.

19 Those handwritten notes about the impact of his brain
20 damage, of his walling, are exactly the point of -- the point of
21 opposition from the government, right? This is a key point for us
22 in -- in the suppression litigation, and that is exactly what the
23 government is bringing witnesses to oppose.

1 So the idea of doing a stipulation -- you've seen our
2 statement of facts in 628. You've seen our statement of facts in
3 628AAA (Sup). It's not that we can't put forward facts. We can.
4 And we identify where there are gaps, as I have just done.

5 But the idea that the government would adopt any of the key
6 facts, the facts that are key to this suppression motion is a pipe
7 dream, frankly. And it is simply inapposite to the argument before
8 you right now.

9 We -- two quick points on the two points that Major Dastoor
10 made regarding SG1 and the equities in play. The first was regarding
11 classification. We do have in the record summaries and substitutions
12 about SG1 and about SG1's role in the program. Those already exist.
13 Those have been created, right? And those are primarily what we
14 would rely on in questioning SG1.

15 You know, we have no -- no doubt, given that the
16 government -- and I don't mean to be disingenuous when I say this,
17 but the government has the ability to issue classification guidance
18 on a very short -- very short notice, very short turnaround.

19 I have no doubt of their ability to do so with a CIA witness
20 on RDI topics that we have been talking about for, at minimum, five
21 years and with years of classification guidance already issued on
22 exactly the topics that SG1 would be testifying about. Even if that
23 does shift by the minute, we also shift by the minute, and we pivot

1 when we have to.

2 The second issue that was raised by the government was about
3 security. The CIA has a right to protect their people. We recognize
4 that. We never disagreed about that. And we have never conducted
5 ourselves -- I think it's important to say we have never conducted
6 ourselves in a manner that would put anyone at risk.

7 But at the same time, Major Dastoor referred to the
8 realities of dealing with -- with these particular people with
9 classified information associated with them, and it's important to
10 remember, I think, the reality is that the CIA's reason of existence
11 is covert operations.

12 I mean, if the argument is somehow that the agency cannot
13 figure out how to get one person in and out of a secure space
14 without, you know, blowing a cover somehow, that just seems a very
15 poor advertisement for the CIA.

16 We obviously don't know where SG1 is located at the moment.
17 We couldn't even say if we did. But we're talking about four weeks
18 from now. Government's been on notice since 2019, and it's very,
19 very difficult to believe that if the United States Government needs
20 to present a witness for testimony in the biggest case they have ever
21 prosecuted, and that witness and their employing agency has been on
22 notice for five years that they're on a witness list, that the United
23 States cannot make that witness available at the RHR, at a minimum,

1 with a month of lead time.

2 So I just put that in front of you, sir. And I do want to
3 just foot-stomp the fact that with regards to SG1, SG1 is the only
4 witness we may ever have who saw Mr. al Baluchi and, actually,
5 Mr. Bin'Attash, before, during, and after his torture. And that puts
6 him in a very unique position with regards to all the other witnesses
7 that we've asked for.

8 Thank you, sir.

9 MJ [Col McCALL]: Thank you.

10 All right. Go ahead, Mr. Sowards.

11 LDC [MR. SOWARDS]: A couple of quick points, Your Honor.

12 First of all, I know you were following it but I was struck
13 by Major Dastoor's qualifications of sort of optimism if the
14 commission is just willing to wait and wait and wait. Not make use
15 of the time but to wait and wait and wait on the prosecution
16 witnesses.

17 What we have is the original officer in charge of Camp VII
18 is scheduled, but -- or not scheduled, but we're optimistic maybe
19 someday he'll be well enough to attend. And he was suggesting that
20 he is the only source of concern for these inordinate delays and
21 never-ending waits for witnesses.

22 What he just said was Dr. Jessen, quote, most likely will be
23 able to attend the next session, just as he was most likely to attend

1 two sessions before in sequence.

2 Ali Soufan, he said, is scheduled, just as Ali Soufan was
3 scheduled until his private business interests conflicted with his
4 appearance here, and so we don't have him.

5 So those really aren't good reasons to, at least in my mind,
6 and I don't -- I'm sorry, I don't mean to be prejudice my own
7 arguments.

8 MJ [Col McCALL]: No, I can understand you through the mask.
9 Whatever you're comfortable with.

10 LDC [MR. SOWARDS]: Okay, sir. And I say it's for all of your
11 protections. This is ----

12 MJ [Col McCALL]: No, I appreciate that.

13 LDC [MR. SOWARDS]: I don't want you all to be ----

14 MJ [Col McCALL]: Anyone that litigated during COVID, we've
15 become very good at understanding testimony through a mask.

16 LDC [MR. SOWARDS]: All right. But the -- but counterbalanced
17 against that was, you know, my arguments, what I was asking the
18 commission to consider are these fundamental due process fair trial
19 rights of being able to call appropriate witnesses.

20 And I don't want to be at odds at all with Ms. Pradhan,
21 especially since she has a supply of cough lozenges, but -- and I
22 don't know what her essential timing is. But I think what Your Honor
23 was saying is, you know, we're looking at the fifth week, and we're

1 also looking ahead to the next session.

2 So the questions about -- that Major Dastoor was concerned
3 about if someone suddenly and inexplicably disappearing from his
4 small village will trigger suspicion and speculation about where he's
5 going, I don't think is really a problem either.

6 But the one thing -- and I know Your Honor has a -- excuse
7 me -- one of the media representatives described as a very affable,
8 supportive manner when you engage with counsel, so I don't want to be
9 too alarmed, but I'm always a little concerned when apparent
10 credibility is given to this stipulation notion.

11 And so I just want to quickly make a couple of points. I
12 may have mentioned them before. But we all know that stipulations
13 are what you offer when you don't want to hear the evidence. And
14 sometimes it really does serve to move things along; nobody has an
15 argument about it. But when you have a fierce argument about what
16 happened someplace to somebody as a victim of some crimes, usually
17 what you're doing is trying to blunt the evidence.

18 And Mr. Dastoor, I don't know how recently he is to the
19 case, but there have been a number of instances -- first of all, the
20 stipulation they have offered us from the beginning has never
21 stipulated to torture, unlike al Nashiri's situation, as I understand
22 from Judge Acosta's opinion in that case.

23 What they do say is after three and a half years of

1 brutalization, both physical and psychological, they're willing to
2 stipulate that that may -- that that was coercive. That's not a huge
3 stipulation. That's a -- that doesn't advance anything.

4 But what you -- one of the things you were exposed to very
5 soon after you took the bench in this case was the fact that we
6 broached the subject of the United States Senate Select Committee on
7 Intelligence noting that when Mr. Mohammad was first taken into
8 custody, he was repeatedly anally raped by goons at black site 2.
9 And, in fact, we most recently heard that Dr. Mitchell himself felt
10 compelled to report the folks at black site 2 as the perpetrators of
11 reportable conduct.

12 When we mentioned that to you shortly after you took the
13 bench, you heard the prosecution respond by saying: Nonsense. There
14 is no rape involved. It was a perfectly appropriate instance
15 of -- of rectal rehydration, something which I won't go into, but
16 it's completely disprovable by any gastroenterologist who says that
17 had nothing to do with that.

18 But these are the people we engage when we try to stipulate
19 to facts that would be of some consequence to a decision in this
20 case.

21 More recently we had a -- a victim family member tour taken
22 by prosecutors in this case, one of whom has recently left, but who
23 assured family members in response to their questions that there was

1 no harm in walling, that walling was just a device used to, quote,
2 get the detainee's attention. Okay?

3 So these are people who, when we go to and say, "Well, what
4 about the abrasions and the reported blood on the back of
5 Mr. Mohammad's head," we have to contend with how we're going to get
6 a stipulation out of them as to what walling is.

7 But the -- the deciding factor for us in terms of competent
8 counsel -- and this is where it comes full circle with their control
9 of the evidence -- is that no one -- no one, however much they want
10 to move things along and try to -- excuse me -- try to frame the
11 issues for any factfinder, no one agrees to a binding and dispositive
12 stipulation until he or she has seen the evidence.

13 And this is what they offered. What Major Dastoor was
14 saying is, let's have a -- let's have a stipulation in lieu of you
15 having access to the evidence. We simply cannot do that.

16 But if we were -- I mean, if they really were to entertain
17 something like that, then they could simply offer to get us together
18 and stipulate to some of these other witnesses we have coming up who
19 we think are an enormous -- you know, even if they were tethered to
20 reality, an enormous waste of time.

21 We've told you about Dr. Welner, who has tapped the
22 government for \$1.2 million, and he's never seen our clients, but
23 he's going to offer an opinion about their mental state. Or Evan

1 Kohlmann who just asked for a renewal of funds from the convening
2 authority and has recently squeezed out a 17-page statement, a report
3 that addresses none of the issues the prosecution said he was going
4 to be called for.

5 If they want to have some stipulation from those folks,
6 yeah, we can -- you know, we can stipulate to probably a lot of what
7 they might otherwise have testified to. But they're not offering
8 that. What they're offering is stipulations that foreclose us from
9 presenting the most damning evidence against the government. And we
10 can't do that.

11 And I -- we just urge Your Honor that despite the sort of
12 apparent reasonableness of that and court efficiency, that is
13 contrary to what is required by the due process clause and the Eighth
14 Amendment.

15 Thank you, sir.

16 MJ [Col McCALL]: Thank you, Mr. Sowards.

17 Mr. Montross.

18 DC [MR. MONTROSS]: Briefly, Judge. Thank you.

19 It's been the word "gaps" have been used for large portions
20 of the RDI index, at least as it applies to Mr. Bin'Attash. I think
21 Ms. Gupta tried to show you during the last session that there's
22 major gaps where there's no direct and substantial contact.

23 The person who borders, often, those gaps on each side?

1 SG1. So to the extent that we're going to get anywhere to what are
2 otherwise no witnesses during substantial periods of time, SG1 does
3 provide the boundaries for the gaps.

4 The second point I want to make is, you know, the
5 prosecution spent a lot of time arguing about Mr. Bin'Attash's
6 affidavit that was submitted in the Nashiri case. And that was when
7 the attorneys in the Nashiri case were trying to force Mr. Bin'Attash
8 to testify.

9 I just want to read something to you in his affidavit: I
10 thought if I didn't talk to Gaudin and the other interrogators, I
11 would be transferred back to CIA prisons where I came from, because I
12 knew that the CIA had brought Nashiri, Ramzi Binalshibh, Abu
13 Zubaydah, and Shaykh al Libi to Guantanamo previously and then sent
14 them back to other black sites. I'd also been transferred from one
15 secret prison to another and from one country to another several
16 times. Or perhaps they would torture me right there at Guantanamo, I
17 thought.

18 All of these experiences and all these years, I knew that I
19 did not have the choice to refuse to talk to Gaudin and the other
20 interrogators. I knew what would happen if I did not talk.

21 Major -- the major for the prosecution suggested that we
22 should stipulate, so we accept his offer to stipulate to that portion
23 of Mr. Bin'Attash's affidavit.

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1 MJ [Col McCALL]: Thank you, Mr. Montross.

2 All right. Mr. Ruiz.

3 LDC [MR. RUIZ]: Judge, I don't have anything to add. Well,
4 actually, I do have something to add, but not a lot. So if you don't
5 mind, I'll stand here.

6 MJ [Col McCALL]: That's fine.

7 LDC [MR. RUIZ]: I simply want to refer you, as you consider
8 this issue in relation to the stipulation, to our filing in 524MMM
9 (MAH). We do make a pretty substantial argument there about the
10 offer for stipulation in relation to how the government approaches
11 and wants to present their case because it's -- it's a paper drill
12 that they want us to do.

13 So I'd ask you to review that as you consider this issue.

14 MJ [Col McCALL]: And I'm well aware of the parties'
15 position -- respective positions on the stipulation, so I -- but I
16 will look at it again.

17 LDC [MR. RUIZ]: I understand that. Just because
18 Major Dastoor was allowed to argue that at length ----

19 MJ [Col McCALL]: No, I understood.

20 LDC [MR. RUIZ]: ---- it's appropriate.

21 MJ [Col McCALL]: Yep.

22 LDC [MR. RUIZ]: And then with respect to one other fact. I
23 think you may have caught this, but Major Dastoor's argument, he

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1 failed to provide any example of how Mr. al Hawsawi has submitted or
2 provided any type of information based on his particular experience,
3 and the reason for that is because he hasn't. The vast majority, if
4 not exclusively, of information we derived was from the open sources,
5 the SSCI, and those materials.

6 So I'd ask you to consider that.

7 MJ [Col McCALL]: All right. Understood, Mr. Ruiz.

8 All right. Anything else before we bring in Supervisory
9 Intelligence Analyst Waltz?

10 LDC [MR. CONNELL]: Sir, I know it's the wrong time, but could
11 I respectfully ask for a comfort break?

12 MJ [Col McCALL]: That's fine. Yeah.

13 All right. So it's 1437. Let's be back in here at 1450.

14 Commission's in recess.

15 **[The R.M.C. 803 session recessed at 1437, 17 April 2024.]**

16 **[The R.M.C. 803 session was called to order at 1449, 17 April 2024.]**

17 MJ [Col McCALL]: Commission is called to order.

18 Parties are present. The accused are absent.

19 We can go ahead and get Supervisory Intelligence Analyst
20 Waltz back on the witness stand.

21 **[The witness, SIA Kimberly Waltz, resumed the witness stand.]**

22 MJ [Col McCALL]: All right. Mr. Connell, go ahead.

23 LDC [MR. CONNELL]: Thank you.

1 **CROSS-EXAMINATION CONTINUED**

2 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. So when we left off, we were talking about the
6 investigation into the telephones. And on direct examination, you
7 testified that 971 was the code for UAE; is that right?

8 A. Country code.

9 Q. Country code, yeah.

10 A. Yes.

11 Q. And 966 is the country code for Saudi Arabia?

12 A. Yes.

13 Q. Okay.

14 LDC [MR. CONNELL]: Your Honor, at this point I would ask two
15 additional questions which have been prohibited which would shed
16 important but unclassified information about the phones at issue.

17 MJ [Col McCALL]: Understood.

18 LDC [MR. CONNELL]: Okay.

19 Q. So, ma'am, I think I'm going to skip some questions
20 because, if I understand it, you do not know a lot about the
21 investigation into the phones that led to the 20 July -- information
22 about the 20 July 2001 phone call that you testified about earlier.

23 A. Not -- yeah, I -- not the focus of my work at...

1 Q. I do want to ask you about one document, which is MEA ----
2 LDC [MR. CONNELL]: Your Honor, I just want to flag that right
3 there, because what I think is going to have to happen is I'm going
4 to have to lay foundation with Mr. Zebley. And so I will ultimately
5 be asking that Ms. Waltz remain subject to recall as well as for the
6 914 issues, but I'm skipping over material that I think is -- this
7 witness may not know and is more Mr. Zebley.

8 MJ [Col McCALL]: Okay. That's fine.

9 LDC [MR. CONNELL]: Okay. I just wanted to flag it for you.

10 Q. I do want to draw your attention to MEA-FBI-00020888,
11 which is found in the record at AE 628GGGGGGGGG Attachment B.

12 LDC [MR. CONNELL]: It is an unclassified document, Your
13 Honor, but I have been informed by the CISO because of Protective
14 Order #3 that I cannot display it to the public.

15 MJ [Col McCALL]: All right. Understood.

16 LDC [MR. CONNELL]: But I do request access to the document
17 camera.

18 MJ [Col McCALL]: Go ahead.

19 Q. Okay. This is an EC drafted by Mr. Zebley dated 30
20 June 2002; is that right?

21 A. Yes.

22 Q. Okay. Have you ever seen this EC before?

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

1 Q. Okay.

2 A. ---- reviewing it.

3 Q. I have a few specific questions. I need to draw your
4 attention to a couple parts of it, and then I have -- that's as
5 foundation for a question.

6 For -- I'd like to draw your attention to the first full
7 paragraph on page 20889. And would you agree with me that it
8 describes the Herweg phone, which we talked about earlier, being
9 purchased on July 17, 2001, the day after Binalshibh's return from
10 Spain and was active from 20 July 2001 to 14 August 2001; is that
11 right?

12 A. That's what the EC says.

13 Q. Okay. And 20 July 2001 is the date that you first -- that
14 you learned of a phone call in approximately the 2002/2003 time frame
15 that the United States had acquired; is that right?

16 A. Yes, the -- so the call that I became aware of in that
17 time frame was -- my understanding was a 20 July 2001 phone call.

18 Q. Okay. And the EC says -- it talks about the money
19 transfers from Ramzi Binalshibh to Mr. Moussaoui. Those were an
20 issue in the Moussaoui trial, right?

21 A. Issue -- they were presented. I believe they were entered
22 as evidence.

23 Q. I'd like to draw your attention to -- at the bottom of the

1 page, the last full sentence says: During the same time period as
2 these wire transfers, Moussaoui called the Herweg phone at least
3 eight times using calling cards at pay phones in Norman, Oklahoma.

4 Can we agree that's what the EC says?

5 A. Yes.

6 LDC [MR. CONNELL]: Okay. And then, Your Honor, I want to
7 consult with the government one last time before I ask this question.

8 MJ [Col McCALL]: Okay.

9 **[Counsel conferred.]**

10 Q. Okay. And then starting with the last partial
11 sentence -- sorry. Let me put it where you can see it, too. The
12 last partial sentence, the unclassified document says: Also during
13 this same time period -- redacted -- telephone 873-762-32-5531 called
14 the Herweg phone on at least one occasion.

15 Do you see that?

16 A. I do see that, yes.

17 Q. Okay. Pause before you answer this question.

18 LDC [MR. CONNELL]: In fact, let me just run it past the
19 government first.

20 MJ [Col McCALL]: Go ahead.

21 **[Counsel conferred.]**

22 Q. Ma'am, you testified on direct examination that you, among
23 the things that you gathered, in addition to financial records,

1 immigration records, et cetera, were phone records?

2 A. I -- I would have to refresh my memory on that particular
3 issue on specific phone records. I don't know ----

4 Q. Okay.

5 A. ---- exactly what that would -- what that was in response
6 to.

7 Q. Okay. Did the FBI gather phone records from a variety of
8 sources?

9 A. Can you be more specific, please?

10 Q. Sure. You testified on direct examination about the use
11 of calling cards, for example.

12 A. Yeah, okay. Yes. The -- in the PENTTBOM investigation,
13 the FBI did gather calling card records, yes.

14 Q. Okay. And we saw before lunch an example of the FBI
15 gathering cellphone records.

16 A. Correct.

17 Q. Okay. The -- in the sentence -- two sentences ago, I read
18 to you about use of calling cards by Moussaoui to call the Herweg
19 phone. Is that an example of the FBI using calling card information
20 to establish linkages between conspirators? Last full sentence of
21 that page.

22 A. The sentence says that calling cards were used, that -- by
23 Moussaoui to call the Herweg phone.

1 Q. Therefore ----

2 A. What? I'm sorry.

3 Q. Okay. The actual question was: Is this an example of the
4 FBI using calling card information to link to conspirators?

5 A. I would say it's an example of using calling card
6 information. I -- with respect to conspirators or not conspirators,
7 like, this is an example to me of an instance where Zacarias
8 Moussaoui used a calling card. I don't know -- the reason I'm
9 hesitating on co-conspirator or what -- I don't know how to clarify
10 or -- clarify has a whole bunch of words. Let me not say that.

11 I don't know how to categorize this Herweg phone because,
12 like, I don't know all the details of who may have used it and when.
13 Like, that's not something I'm versed on.

14 So I recognize who Zacarias Moussaoui is. I am reading here
15 that calling cards were used at pay phones in Norman, Oklahoma. But
16 with respect to calling specifically the -- the Herweg phone, I -- I
17 don't ----

18 Q. Can I help you out?

19 A. Yes.

20 Q. Let me draw your attention to the -- in the paragraph
21 above that where it says, "Details" -- one, two, three, four,
22 five -- six lines down, it says: Investigation has revealed that
23 Binalshibh likely used German cellphone telephone 175-953-1540 to

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1 communicate with Moussaoui in late July 2001 and early July 2001.

2 Does that help you out on connecting conspirators?

3 A. Okay.

4 Q. All right. So I'll try again.

5 The -- is the sentence that we read about Moussaoui
6 using -- calling the Herweg phone eight times an example of the FBI
7 using calling cards to link conspirators?

8 A. It's an example of the FBI using calling cards to
9 associate individuals. I -- I'm ----

10 Q. Because Moussaoui and Ramzi, they weren't conspirators,
11 were they? I mean, it's -- I don't understand why you're pushing
12 back.

13 A. Ramzi Binalshibh wasn't charged for -- at the same time as
14 Zacarias Moussaoui. I'm looking at Moussaoui and the connections
15 between -- right? -- with that.

16 Q. I can help you out again.

17 A. Does that -- in my -- I'm using -- I'm thinking through
18 it. I understand what you're asking me, and I -- Moussaoui and
19 Ramzi -- and Ramzi were connected. There was -- there was money
20 transactions. Clearly here there were calling card -- it appears
21 that there were calling cards. They were associated, yes.

22 Q. Okay. So let me -- the sentence before the one we just
23 read says: The indictment names Ramzi Binalshibh as a co-conspirator

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1 and outlines some of the support that he provided to Moussaoui.

2 A. Okay.

3 Q. Does that refresh your recollection as to whether
4 Mr. Binalshibh was alleged to be a co-conspirator?

5 A. It's not about refreshing my recollection. This isn't
6 something that I worked directly on.

7 Q. Okay.

8 A. So that's -- I'm sitting here reading the work of somebody
9 else. So that's what I'm attempting to do.

10 Q. Okay. So let me return to the question, which is ----

11 MTC [MR. TRIVETT]: I'm going to object at this point, sir.
12 This isn't a document she's familiar with. We do have a witness in
13 planning who would be familiar with it in Special Agent Aaron Zebley.
14 So we're objecting just based on lack of foundation at this point.

15 LDC [MR. CONNELL]: May I be heard?

16 MJ [Col McCALL]: Sure.

17 LDC [MR. CONNELL]: I agree, sir. This should not be as hard
18 as it is. At this point it's almost a -- I think I know what the
19 answer to this question is. I've known it for eight questions, but
20 the witness doesn't want to say it. But, you know, we have the
21 document in front of us, which can help her along. And if I can just
22 get the answer to this question, then I'll move on to where I'm
23 actually trying to go.

1 MJ [Col McCALL]: I'll let you ask your question. Go ahead.

2 LDC [MR. CONNELL]: All right.

3 MJ [Col McCALL]: Objection overruled for now.

4 But I'll allow this question, and I know you said you're
5 going to move on, so that will work. Go ahead.

6 Q. Ma'am, you've heard that I only get one more question. So
7 if you push back again, there's nothing I can do.

8 Is the example -- is the sentence that "Moussaoui called the
9 Herweg phone at least eight times using calling cards at pay phones
10 in Norman, Oklahoma," an example of the FBI using calling card data
11 to associate co-conspirators?

12 A. As written in this EC, yes.

13 Q. Thank you.

14 And then moving on to the next sentence, about the same time
15 period, the 5531 called the Herweg phone on at least one occasion.
16 Do you know how the FBI knew that 5531 called the Herweg phone?

17 A. No, I do not.

18 Q. Okay. Do you know what phone number is associated with
19 the calls on the call data sheet?

20 A. There's several phone numbers on the call data sheet.

21 Q. Do you know what the subject phone is?

22 A. I -- I -- I do know. I do know a --can -- I'm -- I'm
23 uncertain of what I can say in open session.

1 Q. It's really a yes-or-no question, maybe. Or maybe you
2 have a -- you know, you may have some nuance to it, I don't know.
3 But it seems like a ---- let me ask it a different way, then.

4 Do you know the subject phone or phones that are involved
5 with the call data sheet?

6 A. I'm really struggling to answer that question, because
7 the -- I'm -- I don't -- I'm trying to not cross over into classified
8 information. Because I -- are you asking me about this -- I -- I
9 know an identifier for the subject phone.

10 Q. Is that identifier a phone number?

11 MTC [MR. TRIVETT]: We would assert under Protective Order #3
12 that question.

13 MJ [Col McCALL]: I -- my understanding of Protective Order
14 #3, it is covered under that.

15 LDC [MR. CONNELL]: Okay. Your Honor, I would -- if I were
16 not under Protective Order #3, I have a couple of follow-up questions
17 that I would ask.

18 MJ [Col McCALL]: All right.

19 LDC [MR. CONNELL]: But I understand what you're ruling about
20 the scope of -- I don't understand why that's under the scope of
21 Protective Order #3, I don't understand why the witness is struggling
22 with the answer, and that is definitely something that in an ordinary
23 situation I would probe. Because when a witness gives a confusing

1 answer, you know, what you do is you try to figure out, is there a
2 misunderstanding? Do I have the facts wrong? Something.

3 But I would have several follow-up questions on that, but I
4 understand the military commission's ruling about the scope of
5 Protective Order #3.

6 MJ [Col McCALL]: All right. Thank you.

7 Q. Okay. The next sentence in this EC is:

8 The -- redacted -- later called Mustafa Ahmed al Hawsawi in UAE weeks
9 later.

10 Do you see that?

11 A. I see that, yes.

12 Q. Okay. Did the FBI ever gather toll records for phones
13 alleged to be associated with Mr. al Hawsawi?

14 A. We asked a number of times for toll records. I can speak
15 from what I helped with in the UAE, asked a number of times for
16 specific, like, toll records for phone number -- for several phone
17 numbers, some of which were associated with Mustafa Ahmed al Hawsawi.
18 And I never received toll records.

19 We did receive some -- not toll records, but, you know, a
20 couple of memos with some subscriber information, but we never
21 received actual records. That's just -- it was a bit of a -- just we
22 didn't get them.

23 Q. Okay. So in that case, do you know how the FBI knew

1 that: -- redacted -- later called Mustafa Ahmed al Hawsawi in UAE?

2 A. I didn't write this communication. The -- the knowledge
3 that I think you said ----

4 Q. Is that a yes?

5 A. I think the drafter on this is Aaron Zebley.

6 Q. Um-hmm.

7 A. I -- I didn't write this communication. You would have to
8 ask Aaron.

9 Q. I understand that, and I will ask him. I -- my real
10 question is: Do you know how the FBI knew that, something, had later
11 called al Hawsawi in UAE?

12 A. That's a really big question, big FBI. I'm looking at a
13 document here. It says -- I see what it says. I would say that
14 Aaron can -- would have to answer that question -- I'm sorry -- Aaron
15 Zebley would have to answer that question. How somebody -- how big
16 FBI would get -- potentially get toll records associated with Mustafa
17 Ahmed al Hawsawi, I'm not able to answer that question because I -- I
18 personally didn't get toll records associated with al Hawsawi.

19 Q. Okay. Perhaps to everyone's relief, I'm going to move off
20 this Zebley EC.

21 You testified on direct examination -- you testified on
22 direct examination that Drucker told you -- sorry -- on
23 cross-examination that Drucker told you about some of the contents of

1 the 20 July 2001 call, [REDACTED].

2 A. I remember those -- those points, yes.

3 Q. I'd like to draw your attention to MEA-STA-00000994, which
4 is an unclassified document. It's contained in the record at AE
5 628CC (AAA) Attachment I.

6 LDC [MR. CONNELL]: May I have permission to access the
7 document camera and display to the gallery?

8 MJ [Col McCALL]: You may.

9 Q. You are -- from your work on the Moussaoui case, you're
10 aware that ultimately there was a substitution for the testimony of
11 Ramzi Binalshibh that was used in that case?

12 A. I have -- I had awareness of it. I wasn't -- it wasn't
13 something that I knew intimately or I wasn't involved with it.

14 Q. Okay. I'm going to direct your attention to STA-00001006,
15 paragraph 27, which contains reference to what Mr. Binalshibh told
16 Mr. Mohammad during a call on the third week of July 2001. Do you
17 see that?

18 A. Just paragraph 27?

19 Q. Yes, ma'am.

20 A. Okay. I've read paragraph 27.

21 Q. Okay. And my question is: Do you know if, for this
22 substitution, the Moussaoui trial team drew on detainee reporting or
23 whether they drew on the contents of the 20 July 2001 call?

1 A. I don't know.

2 Q. Okay. New topic now. I'd like to talk to you about some
3 notes that we received. I'm going to show you what is marked
4 MEA-WALTZ-00000080. And it's contained in the record at AE 6220
5 (MAH) Attachment D.

6 LDC [MR. CONNELL]: It is a Secret document, so I'd request
7 permission to use the document camera, but not to display to the
8 gallery.

9 MJ [Col McCALL]: All right. Go ahead.

10 Q. So I'm not going to ask you about any of the content, but
11 I do want to know, do you recognize these notes?

12 A. I do, yes.

13 Q. Okay. And are you the preparer?

14 A. I wrote them, yes.

15 Q. You wrote them, okay. When did you write them?

16 A. I -- I can't recall the exact date. I would need -- I
17 would need a little bit more to refresh my memory. This was
18 in -- this was prepared in preparation for a meeting that I had,
19 myself and others had with the 9/11 Review Commission. I -- I don't
20 know. Sitting here right now, I'm not -- I can't recall the exact
21 date of that.

22 Q. Can you remember the year? If it's the Guantanamo Review
23 Commission, is in 2009/2010?

1 A. No, not Guantanamo Review Commission, no, sir. It was the
2 9/11 Review Commission.

3 Q. Okay. So not the 9/11 Commission?

4 A. Correct.

5 Q. But the 9/11 Review Commission?

6 A. Yes, sir.

7 Q. So would that be 2014?

8 A. I -- I'm sorry. I really -- I don't know. I can't
9 recall. Seems like a really -- I know it seems a little silly, but
10 I -- I can't even recall the exact year of that.

11 Q. Okay. You said you would need something more. What more
12 might exist that might help you?

13 A. I think the -- I don't know if the -- the report that was
14 written, if that indicates when they spoke with different portions of
15 the FBI or if -- I don't -- I can't even -- I don't recall, like, the
16 exact time as to when that report came out.

17 Q. Okay. I thought it was 2014, but maybe I'm mistaken.

18 The -- how did -- how -- you -- did you give these documents
19 to the prosecution?

20 A. I -- I believe so, yes.

21 Q. Okay. And where -- where did you get them? Off your
22 computer or something else?

23 A. I think I -- if I recall correctly, I may have had an

1 old -- like a folder -- like an old folder that remained from when I
2 had to meet with the -- the commission.

3 Q. A paper folder or a folder on a computer?

4 A. Paper folder.

5 Q. Is this something that you gave to the prosecution a long
6 time ago or in preparation for this testimony?

7 A. Probably in preparation for the testimony.

8 Q. Okay. Was it -- did it have these redactions when you
9 gave it to the prosecution?

10 A. No, sir, it did not.

11 Q. Okay. We're going to move on to a new topic, detainee
12 reporting. We've covered some elements of it, and we're not going to
13 do that twice.

14 But I asked you a moment ago about the crafting of
15 substitutions in the Moussaoui case. Did you know that detainee
16 reporting was used to craft substitutions in the Moussaoui case?

17 A. I don't recall this specifically.

18 Q. Okay. And you've known about the existence of detainee
19 reporting since at least 2002, right?

20 A. Yes.

21 Q. Okay. When was the first time you were involved in a
22 conversation with a prosecutor in this case about the existence of
23 detainee reporting?

1 A. I -- I'm not -- I can't recall. I started working with
2 the prosecution team in 2007.

3 Q. Okay. So probably 2007?

4 A. I started working with the prosecution team in 2007.
5 Exact -- exactly what conversations I had and specifically when,
6 I -- kind of in the early stages, I don't recall. I -- my -- my -- I
7 do recall my work at the time was really focused on FBI evidence, so
8 I don't -- I don't recall having a specific conversation early on
9 about detainee reporting.

10 Q. Okay. The government asked you on direct examination if
11 it was routine practice for counterterrorism agents and analysts to
12 review detainee reporting.

13 Do you remember that question?

14 A. I do.

15 Q. Okay. And you testified it would be a routine practice?

16 A. It was a routine practice, yes.

17 Q. Okay. When was the first time that you had a conversation
18 with the government about the fact that it was a routine practice for
19 agents to review detainee reporting?

20 A. I -- I can't recall when, a specific conversation with the
21 prosecution team as it relates to detainee reporting.

22 Q. Okay. I might be able to give you a time hack that might
23 help. You remember that this case was first charged in 2008; is that

1 right?

2 A. Yes.

3 Q. Was the first time that you had a conversation with any
4 member of the prosecution team about the routine practice of review
5 of detainee reporting before the first charging decision in 2008?

6 A. I'm -- I don't recall.

7 Q. Okay.

8 A. I -- there's -- I don't recall -- if I had specific
9 recollection of a conversation, I would make attempts to try to frame
10 it in where I was or what else was going on. But I don't have a
11 specific recollection about a general -- about a conversation about
12 detainee reporting.

13 Q. Okay. So let me ask it one more level of specificity,
14 which is: When was the first time you had a conversation -- or were
15 involved in any discussion with the prosecutors in this case about
16 the fact that the FBI had submitted intelligence requirements to CIA
17 for use in interrogations?

18 A. Can you repeat that question again, please?

19 Q. Sure. When was the first time you were involved in a
20 conversation with the prosecution team in this case about the fact
21 that FBI agents had submitted intelligence requirements for use in
22 CIA interrogation?

23 A. Again, I don't have a specific recollection of that

1 conversation, whether it was early in the process. I do know
2 that -- obviously, at some point during this litigation, that there
3 were conversations about -- about the requirements.

4 I recall having conversations with the prosecution about how
5 cables were sent. I do recall that, but it was -- I believe it was
6 after the 538 motions were filed, because it was somewhat of a
7 ridiculous process that we had to go through at FBI Headquarters. So
8 I can recall having to explain what we needed to do. But if I had to
9 explain it in detail at that point, I -- I'm -- I would -- I'm
10 assuming I would not have had that conversation prior to then.

11 Q. Okay. When was the first time you remember having a
12 conversation about the fact that FBI agents were detailed to the RDI
13 program?

14 MTC [MR. TRIVETT]: Objection. Relevance.

15 MJ [Col McCALL]: Objection overruled.

16 A. I believe my conversations on that matter, again,
17 were -- whatever the time frame of -- I -- I have recollection of
18 the -- of the 538 motion series, and I recall having conversations
19 after that.

20 Q. Okay. So since we're using, sort of, 538 as a -- as a
21 focus, prior to the filing of the 538 series, which occurred in the
22 2018 time frame ----

23 A. I was going to -- that was going to be my question, is

1 kind of when that ----

2 Q. 2018.

3 A. I'm trying to -- again, I'm trying to frame this.

4 Q. Yeah. Yeah. Had the FBI turned over to the prosecution
5 the intelligence requirements cables?

6 A. I don't know that there was a specific net cast for those
7 intelligence requirements. I do know that there were -- I think I
8 mentioned yesterday that there were people in the -- the HVD PTF that
9 were handling the netting of the documents, like, the large scale,
10 like, downloading of documents and providing those.

11 So I -- I don't know what was on that, like, the -- there
12 were hundreds of thousands of documents. So I don't know the
13 nitty-gritty, if there were -- if there were intelligence
14 requirements in there.

15 I do know that we made, at some point after -- so it must
16 have been in -- some point in 2008 that we made a concerted effort to
17 cast a net to make sure that we were grabbing everything we
18 could -- anything we could find, so it's ----

19 Q. So I just want to make sure -- I want to be fair to you.
20 You said 2008. You probably meant 2018, right?

21 A. Yes, sir.

22 Q. Okay.

23 A. Thank you.

1 Q. How did it come about that, prior to 2018, no one came to
2 you, the liaison with the FBI, and asked about what participation FBI
3 had in the CIA RDI program?

4 MTC [MR. TRIVETT]: Objection. Calls for speculation.

5 MJ [Col McCALL]: Objection sustained.

6 Q. Did -- prior to 2018, did anyone ever ask you what
7 participation FBI had in the CIA RDI program?

8 A. I don't recall a specific conversation with me, so...

9 Q. Who was responsible for the netting of documents, as you
10 said, in the HVD PTF?

11 MTC [MR. TRIVETT]: Objection. Relevance.

12 LDC [MR. CONNELL]: I'm happy to explain, Your Honor, but
13 could we ----

14 MJ [Col McCALL]: Objection overruled.

15 A. I recall there was a -- there was an SSA Lisa Rich, who
16 was working on the Prudential search requests at some point
17 early -- like, early on with the -- I'm saying early on within the
18 H -- let me be more specific. Probably within the first couple
19 of -- maybe the first couple of years. And I think it was a -- it
20 was probably a lengthy process. So I didn't -- I didn't manage that.

21 Also, I will say that -- you know, that our group and the
22 structure of our group in 2007 was significantly different than what
23 it looks like now. So there was a section chief, the -- there was a

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1 different management structure there.

2 I, at the time, wasn't necessarily -- I was a supervisor in
3 the FBI, but I wasn't necessarily -- I wasn't a supervisor in the
4 task force that we were on. So if there were, kind of, what
5 their -- what they assigned other people to do, I -- you know, I
6 can't speak to that.

7 Q. Okay. Do you remember -- so you remember the 538 order.
8 Do you remember the original order from Judge Pohl when -- that
9 General Martins' 10-category construct and the big effort, the
10 calling for paralegals from across the United States, the
11 whole -- the giant push that took place to sort through RDI evidence
12 in 2016?

13 A. I recall the surge and seeing the people. Was I involved
14 with it? I was not.

15 Q. Okay. Because you didn't work with the prosecution then
16 or for some other reason?

17 A. I think I was probably working on other matters. I
18 wasn't -- I wasn't tasked from the FBI to go through and compile
19 documents for the prosecution as it relates to whatever the
20 10-category construct and RDI, that's -- that wasn't something I did.

21 Q. Was someone else tasked with reaching out to the FBI about
22 what they knew about the RDI program?

23 A. I -- I don't know.

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1 Q. Okay. Was there another FBI agent or analyst who was
2 working with the prosecution at that time?

3 A. We've had -- there's a lot of people in our -- in our
4 unit. There's -- and I don't -- I'm trying to -- I didn't do it. I
5 didn't have a specific -- and I don't have specific recollection of
6 really needing to do anything with respect to that effort.

7 Q. Okay.

8 A. I was there, but I wasn't the -- it wasn't the focus of my
9 work.

10 Q. If you know, how did it take from 2012 to 2018 before
11 there was any production of FBI information about the involvement of
12 FBI in the RDI program?

13 MTC [MR. TRIVETT]: Objection. Calls for speculation.

14 MJ [Col McCALL]: Have the caveat, if she knows. I don't know
15 if it's speculation, so objection overruled.

16 A. Can you repeat the question, please?

17 Q. Sure. If you know, how did it take six years before the
18 prosecution produced any information to the defense about the
19 involvement of the FBI in the CIA RDI program?

20 A. I don't know.

21 Q. You testified yesterday that you saw Special
22 Agent Perkins' second testimony ----

23 A. The -- I saw her ----

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1 Q. ---- or third testimony?

2 A. Her more recent testimony.

3 Q. Yeah, her most recent testimony.

4 A. Um-hmm.

5 Q. Did you hear her testimony about the effort of she and
6 other FBI agents to have primary access to CIA prisoners?

7 A. I -- I heard that, yes.

8 Q. Okay. Had you ever heard of that before?

9 A. I knew, generally speaking, that there were -- I knew that
10 there were some agents that were bothered by the fact that the FBI
11 didn't get access to, like -- access to detainees or even immediate
12 access to detainees. I'm using, for example, like Frank Pellegrino.
13 I knew -- right? -- that he wanted to -- he would have liked to have
14 interviewed KSM. But I didn't have awareness that there was a
15 special -- any type of briefing or any type of document that may have
16 gone up to FBI executives. I didn't have any awareness of that.

17 Q. Okay. Other from -- other than from testimony in court,
18 did you previously know that FBI agents were detailed to black sites?

19 A. I'm sorry. Mr. Trivett stood up, so I was waiting,
20 but ----

21 Q. Yeah. No problem.

22 A. Okay. Repeat your question again.

23 Q. Sure. Other than from testimony in this case -- so I'm

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1 taking the courtroom out of it ----

2 A. Um-hmm.

3 Q. ---- did you know that FBI agents were detailed to CIA
4 black sites?

5 A. I did ----

6 Q. I'll state it a different way. Were detailed to the CIA
7 RDI program.

8 A. I did learn that, yes, outside of this courtroom.

9 Q. Okay. And did you learn it before this case was charged
10 or after the case was charged? So before 2012 or after 2012?

11 A. After 2012.

12 Q. Okay. And did you learn it before 2018 or after 2018 with
13 the 538 series?

14 A. I may have learned it in 2018.

15 Q. Okay. In association with the 538 series or separately?

16 A. In association.

17 Q. Okay. Did you ever hear from any FBI agent or analyst
18 pushback against the idea of participating in the RDI program?

19 MTC [MR. TRIVETT]: Objection. Relevance.

20 MJ [Col McCALL]: Objection overruled.

21 A. Repeat the question, please.

22 Q. Sure. Did you ever hear from any FBI agent or analyst
23 pushback against the idea of participating in the CIA RDI program?

1 A. I -- I'm not sure. Are you -- do you mean in conjunction
2 with me learning about individuals that were detailed?

3 Q. No. It's a stand-alone question.

4 A. Just -- okay. So just big picture?

5 Q. Yes.

6 A. Okay. Can you repeat it again, please?

7 Q. Sure. Did you ever learn of other FBI agents or analysts
8 pushing back against the idea of participating in the CIA RDI
9 program?

10 A. I -- I don't -- outside of the individuals that I learned
11 about in the -- during that 2018 effort forward, I don't know of
12 other people that -- other FBI employees that participated in the
13 program.

14 Q. Okay. That's fine. So the answer to that is no?

15 A. Yes, because I don't know who would have -- I don't know
16 the people who were participating, so yes.

17 Q. Okay.

18 A. Or -- again, I'm trying to differentiate my knowledge,
19 right? I learned after 2018 that we had people detailed. I'm
20 not -- I didn't talk to anybody about their feelings, yes or no, or
21 whatever. But before then, even, I -- I don't have any awareness of
22 any participation.

23 Q. Did you ever hear of pushback from FBI agents or analysts

1 against the idea of submitting questions to the CIA to be used in
2 coercive interrogations?

3 MTC [MR. TRIVETT]: Objection. Relevance.

4 LDC [MR. CONNELL]: I will say it's my last question in this
5 series, Your Honor.

6 MJ [Col McCALL]: Objection overruled. I'll allow this last
7 question.

8 A. The question again please?

9 Q. Sure. Did you ever hear of any pushback by FBI agents or
10 analysts against the idea of submitting intelligence requirements for
11 use in coercive CIA interrogations?

12 A. I heard at some point that Frank Pellegrino didn't want to
13 submit questions.

14 Q. Is that the only example?

15 A. That's the one example that comes to mind.
16 That's -- that's the one example that comes to mind.

17 Q. All right. New topic. You testified on direct
18 examination about the Tariq Road in Karachi, Tariq Road raid in
19 Karachi?

20 A. Yes.

21 Q. Okay. Would it be more accurate to say the Tariq Road
22 raids because there were actually three?

23 A. Yes.

1 Q. And those three raids took place over the time period 10
2 through 11 September 2002; is that right?

3 A. Yes.

4 Q. You were in the UAE at the time with Special Agent Drucker
5 and Perkins?

6 A. Yes.

7 Q. And what, if any, was the involvement of the FBI in the
8 Tariq Road raids?

9 A. I believe we had a couple agents that were in -- that were
10 in Pakistan, and at some point they went in -- this is -- I wasn't
11 there. Don't have firsthand knowledge. I'm simply relaying to you
12 my -- what I am aware of based upon what the documents that I've seen
13 and the chains of custody. But we did -- the FBI did gather
14 evidence, and then it was subsequently sent back to the United
15 States.

16 Q. Okay. Is it your understanding that the FBI gathered
17 evidence at Tariq Road?

18 A. With respect to the exact location, I -- I can't sit here
19 and provide that level of specificity.

20 Q. And you said that that was based on your reading of the
21 ECs and the chains of custody, right?

22 A. Yes. I -- and I -- I may have sat in on a discussion with
23 one of our potential witnesses about it.

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1 Q. Okay. You testified on direct examination that copies of
2 the videos you just described were found with Ramzi Binalshibh at the
3 Tariq Road raid; is that right?

4 A. I ----

5 Q. So ----

6 A. Is this from my -- this is from my -- my direct testimony?

7 Q. It's transcript page 43102.

8 A. And can you repeat the question, please?

9 Q. "Copies of the videos you just described" -- this is
10 Mr. Trivett speaking -- "were found with Ramzi Binalshibh at the
11 Tariq Road raid."

12 And you said yes.

13 A. The -- and I recall the videos and I recall that image.
14 And even before my testimony, I looked at the -- there was a -- the
15 chain of custody on that item.

16 Q. Okay. So that was your testimony?

17 A. Or those items. There are multiple CDs.

18 Q. So yes, that was your testimony?

19 A. Yes.

20 Q. Okay. Of the three Tariq Road raids, which one was Ramzi
21 Binalshibh captured at?

22 A. I -- I'm not sure.

23 Q. Okay. And of the three Tariq Road raids, which ones were

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1 the videos seized at?

2 A. Which -- I'm sorry?

3 Q. Of the three Tariq Roads, which one were the videos that
4 you testified about on direct examination seized at?

5 A. I would have to go back and look at the chains of custody.

6 Q. Okay. So how can you testify that copies of the videos
7 you just -- that you described were found with Ramzi Binalshibh at
8 the Tariq Road?

9 A. I would have to go -- I would want to look at the chains
10 of custody again and look at that to answer the question.

11 Q. Okay.

12 A. I know I looked at the stuff prior to. We actually -- in
13 that particular instance, we -- I had an evidence tech pull the
14 evidence to -- to look at that, or at least part of -- part of the
15 evidence to look at it. So I -- I reviewed that.

16 Q. Okay. Are you saying that there is a -- either an EC or a
17 chain of custody which associates material seized from the Tariq Road
18 raids with individual addresses?

19 A. I can't recall exactly what the description on the
20 evidence says right now. It would be something I would have to look
21 at again.

22 Q. Right. Because you would need a document like an EC or a
23 chain of custody to tell you which of the three addresses which of

1 the evidence was seized at, right?

2 A. Yes, sir.

3 Q. Okay. One more in that series.

4 I'm showing you AE 885H (Gov), page 26. It is a page which
5 is marked LES. It's from your slide deck.

6 LDC [MR. CONNELL]: Your Honor, may I have access to the
7 document camera but not display to the gallery?

8 MJ [Col McCALL]: All right. Go ahead.

9 Q. Do you recognize that item from your slide deck?

10 A. I do, yes.

11 Q. Okay. And of the three Tariq Road raids, which one was
12 this document seized at?

13 A. Without looking at the chain, I'm not -- I'm not sure.

14 Q. Okay. If you looked at the chain, how would it tell you
15 which -- which address it was seized at?

16 A. I would have to see what the description is. That's what
17 I -- I would rely on the description of what is -- of what
18 this -- where this was from ----

19 Q. Sure.

20 A. ---- and what it is.

21 Q. Sure. And that's because the -- the ECs and the chain of
22 custody -- chains of custody normally describe where individual items
23 of evidence are found?

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1 A. Yes. The chains of custody, not necessarily, because
2 that's just literally the signatures; but the evidence description.

3 Q. Right. You testified on -- on cross-examination that
4 Special Agents Drucker and Perkins returned to the UAE after their
5 time in Pakistan?

6 A. Yes.

7 Q. And you testified that you, quote, learned that the FBI
8 would not be involved.

9 Could you explain what you meant by that?

10 A. I -- my recollection is that -- that either -- in
11 discussions with Adam and Abbey, that Ramzi Binalshibh was not going
12 to be indicted, not going to be federally indicted.

13 Q. Okay. And what is the relationship between not -- "would
14 not be indicted" and "FBI would not be involved"?

15 A. So that he wouldn't be federally indicted. And I also
16 think that I said during the kind -- the back-and-forth during that
17 portion that you're referring to is that either he was in CIA custody
18 or would be going to CIA custody. I can't -- it was my impression
19 that Ramzi Binalshibh was either in or going to be in CIA custody.

20 Q. And at that time did you think being in CIA custody meant
21 that the FBI would not be involved?

22 A. Yes.

23 Q. Did that turn out to be true with respect to Ramzi

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1 Binalshibh?

2 A. Well, I -- I'm sorry. I'm just thinking of -- I later
3 learned that the FBI did have some interaction with Ramzi Binalshibh.

4 Q. So your belief at the time did not turn out to be
5 accurate?

6 A. That's correct.

7 Q. When was the next time you spoke to Special Agent Zebley?

8 A. More -- can you -- can you repeat the ----

9 Q. Of course. Let me orient you more.

10 A. Thank you.

11 Q. After you spoke -- learned from Special Agent Drucker and
12 Perkins that Ramzi Binalshibh would be in CIA custody, when is the
13 next time you spoke to Special Agent Zebley?

14 A. I -- I don't know. I can't recall.

15 Q. Okay. You told us earlier that detainee reporting from
16 Ramzi Binalshibh was serialized in ACS; is that right?

17 A. There was -- there were some cables that were serialized
18 in ACS. I don't know that it was all of them because the ACS could
19 only -- it was only a -- like, SECRET//NOFORN. So if there were
20 other handling caveats or anything higher, that it couldn't go into
21 ACS.

22 Q. Okay. And when did you first become aware that you could
23 access detainee reporting from Mr. Binalshibh in ACS?

1 A. I don't recall.

2 Q. Yeah. I'd like to show you MEA-STA-00000460, which is
3 contained in the record at AE 628NN (AAA).

4 LDC [MR. CONNELL]: Your Honor, it's FOUO with no LES caveat.
5 I would request access to the document camera and to display to the
6 gallery.

7 MJ [Col McCALL]: Go ahead. It can be displayed to the
8 public.

9 Q. All right. Ma'am, I'll represent to you that the
10 government informs us that this is a summary of a CIA cable. The
11 third interrogation at Location 5 conducted by Interrogator N, like
12 November, 75. It relation to a \$14,000 wire transfer from
13 Mr. Binalshibh to Mr. Moussaoui; is that right?

14 A. It does, yes.

15 Q. Okay. And that \$14,000 wire transfer was important to you
16 as part of, I think at that time, the Financial Review Group?

17 A. It was -- it was known to me, yes. And -- yes.

18 Q. Okay. What -- at the time, is this the sort of
19 information that would have been placed in ACS?

20 A. I -- I don't know, because I don't know what -- I
21 know -- I recognize this to be a summary. I don't know what the
22 original classification -- I don't know what the original cable looks
23 like.

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1 Q. Sure. And you don't know, for example, whether FBI was on
2 the distro list?

3 A. I -- without seeing the original cable, I can't answer
4 that.

5 Q. Sure. Okay. So we talked a moment ago about the next
6 time that you saw Special Agent Zebley. I wanted to ask: Were you
7 part of a meeting at FBI Headquarters with Special Agent Zebley and
8 the CIA on 7 November 2002? I know you're not going to remember that
9 exact date, but there probably weren't a whole lot of those.

10 A. I -- I was still in the UAE.

11 Q. In November of 2002?

12 A. You said September.

13 Q. I'm having trouble with my months today.

14 A. That's okay.

15 Q. I apologize about that. 7 November 2002.

16 A. 7 November 2002?

17 Q. Is the date of the meeting.

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

19 Q. Okay. Do you recall a meeting about -- about Ramzi
20 Binalshibh involving Special Agent Zebley and representatives from
21 CIA?

22 A. I -- I don't recall. Where was the meeting again, did you
23 say?

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1 Q. At FBI Headquarters.

2 A. At FBI Headquarters. I don't -- I don't recall that.

3 Q. Okay. Do you remember testifying about the 30-page intel
4 requirement that Special Agent Zebley had sent?

5 A. I do recall that. I -- I think my words were I remember
6 that Aaron -- I remember hearing that Aaron ----

7 Q. That he did ----

8 A. ---- wrote a really long cable.

9 Q. Right. So for orientation, the -- the meeting was just
10 before that cable. Does that help at all?

11 A. It doesn't.

12 Q. Okay. Did you ever see that cable?

13 A. I think it may have been attached to a filing for
14 Moussaoui.

15 Q. Yes.

16 A. And, I mean, I had that filing. I didn't really go
17 through it. I know that there was someone else on our -- on our team
18 who was helping -- even helping get that. And when we got the
19 material, I -- I looked through it just to see, generally speaking,
20 what was there. But I -- I don't -- I don't recall the specifics of
21 it.

22 Q. Okay. Since you haven't -- I'm not going to ask you any
23 questions about that cable itself since you haven't seen it, but I do

1 want to ask you about some of the material that came back from
2 the -- from those intelligence requirements.

3 I'd like to show you MEA-STA-00000513, which is contained in
4 the record at AE 62800 (AAA).

5 LDC [MR. CONNELL]: Your Honor, this is FOUO with no LES
6 caveat. May I have access to the document camera and display it to
7 the public?

8 MJ [Col McCALL]: You can. It can be displayed to the public.

9 LDC [MR. CONNELL]: Okay.

10 Q. The question that I want to ask you is -- relates to the
11 bottom paragraph. I'll tell you that the government represents to us
12 that this is a summary of interrogation of Mr. Binalshibh while he
13 was in Location 5.

14 The -- do you see: At the same time while still in Germany
15 and prior to leaving for Spain, Binalshibh brought a United States
16 passport -- and then I'll turn the page.

17 A. Oh, all the way at the bottom. Sorry. I was looking ----

18 Q. Yeah, sorry. All the way at the bottom.

19 A. Yes, I see that.

20 Q. And the name Sabet was used to later wire money?

21 A. Yes.

22 Q. Okay. Before I ask questions, I want to show you one
23 more, which is MEA-STA-00000504, contained in the record at

1 AE 628SSSS (AAA) Attachment C.

2 LDC [MR. CONNELL]: Your Honor, I'd request access to the
3 document camera. This is an FOUO document, so I'd request permission
4 to display to the gallery.

5 MJ [Col McCALL]: All right. And it can be displayed to the
6 public.

7 Q. So I'll show you the top just so you can orient yourself
8 to what it is, but I want to ask you about the second page -- or show
9 you the second page. So it's represented to us by the government
10 this is a summary of an interrogation of Mr. Bin'Attash in
11 Location 5. And ----

12 A. Mr. Bin'Attash or ----

13 Q. Binalshibh, excuse me. Binalshibh. Long day.

14 A. Yes.

15 Q. The -- I'd like to draw your attention to this paragraph
16 after the meeting in Spain: Both Binalshibh and Atta obtained new
17 cellular phones for use in communicating with each other.

18 A. Okay.

19 Q. Okay. When reporting like this came out of Location 5 and
20 to the FBI, did the people who were working on the telephone
21 investigation have access to it?

22 A. It's kind of a big question. The people who were working
23 on the telephone investigation of ----

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1 Q. Zebley, Humphries, Hummell?

2 A. I -- you would have to ask them. Similar to what I said
3 before, if there -- depending on the classification of a document, of
4 a cable, it could be in the system. But who -- if somebody read
5 something, I can't speak to that.

6 Q. Okay. Now, you testified earlier about learning about the
7 January -- excuse me, the 20 July 2001 phone call. Did you learn
8 about that from detainee reporting?

9 A. No. I -- I have a recollection of hearing about it from
10 Adam Drucker. And I remember that he was -- he -- that he
11 and -- he -- he was working on the -- trying to figure out the
12 discussions.

13 Q. Okay. And did you also learn of a -- of a 26 July 2001
14 phone call?

15 A. No, I did not.

16 Q. Okay.

17 A. I -- let me rephrase. I don't recall that. A 26 July?

18 Q. Yes, 26 July.

19 A. I don't recall that.

20 Q. Okay. Now I'd like to talk to you about the Rawalpindi
21 raid you testified about.

22 MJ [Col McCALL]: Mr. Connell, are you going on for a while
23 longer? I'm trying to figure out, if you're getting close to

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1 wrapping up, maybe say within the next hour, we'll just press. If
2 you're going to take longer than that, maybe I'll go ahead and take a
3 15-minute recess?

4 LDC [MR. CONNELL]: I will wrap up within the next hour.

5 MJ [Col McCALL]: Okay. Let's go ahead and press.

6 Q. So you testified on direct examination about the raid in
7 Rawalpindi in 2003?

8 A. That I knew of it, yes.

9 Q. You testified that there was a Toshiba laptop found and
10 recovered from Rawalpindi, Pakistan; is that right?

11 A. Yes.

12 Q. Okay. Who found and recovered that laptop?

13 A. I wasn't on-site.

14 Q. Okay. What -- what organization found and recovered that
15 laptop?

16 A. I wasn't on-site.

17 Q. Okay. You testified that the FBI sent this laptop to the
18 FBI Lab for a forensic examination. Was the FBI involved in the raid
19 in Rawalpindi, Pakistan?

20 A. To my knowledge, the FBI didn't have anybody on-site.

21 Q. When did the FBI take possession of the Toshiba laptop?

22 A. The exact date, I would have to look at the chain of
23 custody.

1 Q. I understand, but generally.

2 A. Probably -- generally speaking? I would really want to
3 look at the chain of custody so I could answer the question.

4 Q. Sure.

5 LDC [MR. CONNELL]: The court's indulgence just a moment. I
6 can find ----

7 MJ [Col McCALL]: That's fine. Take your time.

8 **[Pause.]**

9 Q. Ma'am, I'd like to show you what has been marked as AE
10 942F (AAA).

11 LDC [MR. CONNELL]: Your Honor, if I may have access to the
12 document camera? It's marked LES, so it's not for display to the
13 public.

14 MJ [Col McCALL]: All right. Go ahead.

15 Q. So what we're looking at is an index card that says:
16 Toshiba satellite laptop, 40 gigabytes, chain of evidence. And then
17 it has some dates, the first of which is 3/3/03; is that right?

18 A. I see that.

19 Q. Okay. Do you interpret that to mean that the FBI took
20 possession of the Toshiba laptop on March 3rd, 2003?

21 A. I -- I see the index card. That's not an
22 FBI -- it's -- I -- I don't know what -- I know that's on -- seeing
23 it, but I would -- that's not our chain of custody. I'm not sure how

1 our document -- what our document says.

2 Q. All right. Last major topic is the telephone calls
3 themselves. You testified on direct examination that you had read
4 Protective Order #3?

5 A. I have.

6 Q. Okay. When did you learn that the government was going to
7 seek a protective order to prohibit defense inquiry into the
8 provenance or reliability of these telephone calls?

9 MTC [MR. TRIVETT]: Objection. Relevance.

10 MJ [Col McCALL]: Response?

11 LDC [MR. CONNELL]: Your Honor, some of my questions go
12 to the -- the scope of Protective Order #3. My next question will be
13 what, if any, involvement the witness had. So it's foundation for
14 that. I can ask it in the opposite order, if you want.

15 MJ [Col McCALL]: Yeah, just go ahead and jump to that.

16 LDC [MR. CONNELL]: Okay.

17 Q. What, if any, involvement did you have in discussions over
18 Protective Order #3?

19 A. I -- I don't recall having any discussions about it.

20 Q. Okay. So you didn't learn about it until it was already
21 entered?

22 A. I recall there being a filing, and I recall that they
23 were -- that the government was going to request a protective order.

1 But the specifics of that protective order were -- that they were
2 requesting were going to be, I don't -- I don't recall. I do recall
3 other kind of discussions regarding that filing, but I don't recall
4 discussions specifically about the protective order.

5 Q. Okay. And what is your understanding of what the
6 protective order allows us to ask?

7 MTC [MR. TRIVETT]: Objection. Calls for a legal conclusion.

8 MJ [Col McCALL]: Go ahead, Mr. Connell. Response?

9 LDC [MR. CONNELL]: I think this witness has as good an
10 understanding of what it allows to ask as I do. I mean, the scope of
11 Protective Order #3 has been a major issue since its issuance. Like,
12 what does it actually mean?

13 And this is a -- this -- the government started this on
14 direct, right? They asked questions about Protective Order #3 of
15 this witness, and, you know, asked her to apply it. So what we're
16 allowed and prohibited from asking, this witness is as good a person
17 as any other as to what it means.

18 MJ [Col McCALL]: Well, I mean, this witness pauses if she
19 thinks that it's implicated because she's familiar and she's reviewed
20 the protective order, but it's the government that's asserting.

21 So, yeah, objection sustained.

22 LDC [MR. CONNELL]: All right. I understand, sir.

23 Q. All right. You testified on direct examination that you

1 are aware that the United States acquired phone calls between the
2 dates of 3 April 2001 and 25 October 2001; is that correct?

3 A. That's correct.

4 Q. Okay. And what does the word that you used, "acquired,"
5 mean?

6 A. I'm sorry. Mr. Trivett is standing, so ----

7 Q. Yeah, sure.

8 MTC [MR. TRIVETT]: Could I have counsel repeat the question,
9 please?

10 LDC [MR. CONNELL]: Sure.

11 Q. What does the word that you used, "acquired," mean?

12 MTC [MR. TRIVETT]: Sir, I note that that was the wording that
13 was approved by Protective Order #3 for any of the parties or any of
14 the witnesses to state. So I don't know what the relevance would be
15 in asking her to define what she means by "acquired." And getting
16 into any further detail would be a Protective Order #3 violation.

17 MJ [Col McCALL]: So I understand what you're asking,
18 Mr. Connell. I think you're stuck with the word "acquired." I
19 understand Protective Order #3. I understand what Mr. Trivett is
20 saying as far as any further inquiry into details into what is
21 encompassed within "acquired" in this setting would implicate the
22 sources and methods that are at issue in Protective Order #3.

23 LDC [MR. CONNELL]: So just to be clear, I -- I understand the

1 judge's ruling. I understand you to be ruling that I cannot inquire
2 into the meaning of language that this witness used on direct
3 examination because of Protective Order #3.

4 MJ [Col McCALL]: I think "acquired" means acquired.

5 LDC [MR. CONNELL]: Because -- but that limitation comes from
6 Protective Order #3? Would you agree, sir?

7 MJ [Col McCALL]: Yes.

8 LDC [MR. CONNELL]: Thank you.

9 Q. So if I were to ask you how the United States acquired
10 these calls, you could not answer because of an invocation of
11 national security privilege; is that correct?

12 A. Either national security privileged or possibly Protective
13 Order #3. If I were asked that question ----

14 Q. Fair distinction.

15 A. ---- I would ask if I could consult -- if you were to ask
16 me that question, I would wait to see if there was any other
17 activity. And then I would have to consult to see what I could or
18 could not say based upon classification first, I'm assuming.
19 If -- so I would -- I would need some assistance in determining what
20 I could say, as we're in an open session, regarding that question.

21 Q. Okay. I appreciate your precision.

22 LDC [MR. CONNELL]: May I have a moment with ----

23 MJ [Col McCALL]: Sure. Take your time.

1 Well, let's do this. Let's just go ahead and take a recess.
2 It seems like an area where maybe a little bit of a discussion might
3 be useful.

4 So let's take a 15-minute recess. It's almost 1610. Let's
5 be back in here at 1625.

6 **[The witness withdrew from the courtroom.]**

7 MJ [Col McCALL]: Commission's in recess.

8 **[The R.M.C. 803 session recessed at 1608, 17 April 2024.]**

9 **[The R.M.C. 803 session was called to order at 1621, 17 April 2024.]**

10 MJ [Col McCALL]: The commission is called to order.

11 The parties are present. The accused are absent.

12 If we could bring the witness back in.

13 **[The witness, SIA Kimberly Waltz, resumed the witness stand.]**

14 MJ [Col McCALL]: All right. Mr. Connell, your witness.

15 **CROSS-EXAMINATION CONTINUED**

16 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

17 Q. All right. Ma'am, I'll represent to you that we have here
18 in the military commission a convention which is that when I think
19 that something is covered by national security privilege, so I'm not
20 allowed to ask a question which would elicit classified information,
21 I ask the question as if I were to ask you X, would you not be able
22 to answer because of national security privilege.

23 And normally with a witness I go through all that at the

1 beginning of the testimony, and I apologize that I didn't do that
2 here. I thought you would have seen it.

3 So we have been instructed by the government that that is
4 the proper way to ask the question. And so let me try again.

5 That if I were to ask you how the United States acquired
6 these calls, is it true that you could not answer because of an
7 invocation of national security privilege?

8 A. I could not answer that question, correct.

9 Q. And if I were to ask you whether the manner in which the
10 United States acquired that calls indicated that they were reliable,
11 you could not answer that question because of an invocation of
12 national security privilege; is that correct?

13 A. That's my understanding.

14 Q. And if I were to ask you, for example, whether those phone
15 calls were put together using artificial intelligence, you could not
16 answer because of an invocation of national security privilege; is
17 that right?

18 A. Yes. You're saying national security privilege. I'm also
19 thinking about Protective Order #3. So those things are ----

20 Q. Let me rephrase the question. I appreciate the input.

21 If I were to ask you whether those phone calls were
22 assembled using artificial intelligence, you could not answer because
23 of an invocation of national security privilege and Protective

1 Order #3; is that right?

2 A. Correct.

3 Q. Okay. And if I were to ask you, for example, whether
4 those phone calls were put together in a lab using composite sound,
5 you couldn't answer because of national security privilege and
6 Protective Order #3; is that right?

7 A. Correct.

8 Q. Now, you testified that you became aware of one phone
9 call, initially you said to the 2003/2004 time frame. On cross you
10 clarified that to 2002; is that right?

11 A. That -- which one phone call are you referring to?

12 Q. The one 20 July 2001 call.

13 A. The 20 July 2001, yes, I became aware of that call.

14 Q. Right. And you testified that you learned through Special
15 Agent Drucker because of where we were working. Where were you
16 working?

17 A. I'm literally talking proximity. So I -- at FBI
18 Headquarters. And my desk was not far from his, so we interacted.
19 At some point he was my boss. So I had some awareness -- some
20 awareness of work that he was doing.

21 Q. Was that when you were both at TFOS, when you were working
22 so close to each other?

23 A. Yes.

1 Q. Okay. And if I were to ask you the relationship of that
2 20 July 2001 call to these 118 calls, you could not answer because of
3 an invocation of national security privilege and Protective Order #3;
4 is that right?

5 A. That's correct.

6 Q. Now, you testified that one phone call in particular was
7 being reviewed back in the 2003/2004 time frame, specifically because
8 of the Moussaoui trial. Do you remember testifying to that?

9 A. I do, yes.

10 Q. Okay. And if I asked you when you said "that one phone
11 call in particular," could you answer?

12 A. Well, the phone call I was referring to was the 20
13 July 2001 phone call.

14 Q. Okay. But it's not the 20 July 2001 phone call that
15 appears on that call data sheet, right?

16 A. That's correct. It is not correct in saying it's not that
17 call.

18 Q. Okay. And when you said it was being reviewed, who was
19 reviewing it?

20 A. Adam Drucker was working on it.

21 Q. For the Moussaoui trial?

22 A. I ----

23 Q. That's what confused me. I didn't realize that Drucker

1 was connected to the Moussaoui trial.

2 A. We were -- I think he was still helping as needed. He had
3 an incredible amount of case knowledge in his head, so if he can
4 still be helpful, then I -- it was my perception that he was still
5 helpful.

6 Q. Okay. I got it. So when you said that one phone call in
7 particular was being reviewed because of the Moussaoui trial, you
8 meant that -- you didn't mean that the trial team -- the Moussaoui
9 trial team was reviewing it, you meant that Adam Drucker was
10 reviewing it? Or maybe both?

11 A. Probably -- probably. I would say both because I believe
12 that Aaron -- or that Adam, at least, was communicating with Aaron,
13 maybe other people. I think that he was -- he was -- I have specific
14 recollection that he was working on it. I believe he was working
15 also with Aaron Zebley on that effort.

16 Q. Okay. And if I asked you the phone number involved in
17 that call, could you answer?

18 A. Well, I wouldn't be able to answer because I -- I don't
19 know.

20 Q. Okay. Is it your understanding that that -- and this is
21 why I asked you earlier ----

22 LDC [MR. CONNELL]: But let me just try in a more targeted
23 way, Your Honor.

1 Q. Is it your understanding that that 20 July 2001 call is
2 covered by Protective Order #3?

3 A. I don't think it is.

4 Q. Okay. You testified on direct examination that you were
5 involved in a 2009 or so Obama executive order review of cases; is
6 that right?

7 A. Yes. The FBI was included in helping with that review.

8 Q. And, largely, that was a team composed of prosecutors from
9 the Eastern District of Virginia and the Southern District of New
10 York looking at the feasibility of prosecution in federal courts; is
11 that right?

12 A. Yes.

13 Q. And you told us earlier that that's when you drafted the
14 two-page notes which are MEA-WALTZ-00000080 and '81?

15 A. The two pages of notes that I said were regarding -- like,
16 related to the 9/11 Review Commission?

17 Q. Ah, you're right. I got it. Sorry. When I wrote my
18 notes, I thought it was different.

19 The -- there's, in fact, nothing on those notes that
20 indicate where they're from, right?

21 A. I understand.

22 Q. Okay. The -- was Special Agent Zebley also on that review
23 team?

1 A. No.

2 Q. Okay. And the -- but the review team was interested
3 in -- you testified that the review team was interested in phone
4 calls; is that right?

5 A. Yes.

6 Q. Okay. And does that include these 118 phone calls as well
7 as the other 20 July call?

8 A. Yes.

9 Q. Okay. And that was because the LHM statements would not
10 be admissible in a federal court, correct?

11 A. That was because they were interested in the evidence.

12 Q. Okay. The -- you previously testified that they were
13 interested in those phone calls because they didn't -- the LHM
14 statements would not be admissible in a federal court. Do you recall
15 that?

16 A. I recall saying that the LHM statements would not be
17 admissible into federal court. They were interested in the -- any
18 additional work that could be done on these phone calls.

19 Q. Other sources of evidence?

20 A. Yes.

21 Q. Yeah. Okay. And the reason the LHM statements would not
22 be admissible in a federal court is because the prisoners had not
23 been advised of their rights to remain silent and to an attorney; is

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1 that correct?

2 A. I ----

3 MTC [MR. TRIVETT]: Objection. Calls for a legal conclusion.

4 MJ [Col McCALL]: Objection sustained.

5 LDC [MR. CONNELL]: May I be heard on that, Your Honor?

6 MJ [Col McCALL]: Sure.

7 LDC [MR. CONNELL]: I can rephrase that. In fact, let me do.

8 I'll rephrase.

9 **[The security classification button was pushed in the courtroom which**
10 **caused the video feed to terminate at 1630, 17 April 2024.]**

11 **[END OF PAGE]**

12

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1 **[The Military Commission resumed at 1633, 17 April 2024.]**

2 MJ [Col McCALL]: Just be careful yet. The mic at the podium
3 is hot.

4 All right. We're back up and running. Do the parties need
5 to confer anymore?

6 MTC [MR. TRIVETT]: Sir, yeah. We're going to withdraw that
7 assertion of classified information privilege.

8 MJ [Col McCALL]: Okay.

9 MTC [MR. TRIVETT]: We were just -- we were looking at a
10 different source ----

11 MJ [Col McCALL]: Got it.

12 MTC [MR. TRIVETT]: ---- than Mr. Connell was.

13 MJ [Col McCALL]: Understood.

14 All right. Go ahead, Mr. Connell. Ask your question again.

15 LDC [MR. CONNELL]: Sure.

16 **CROSS-EXAMINATION CONTINUED**

17 **Questions by the Learned Defense Counsel [MR. CONNELL]:**

18 Q. In direct examination you testified that in that
19 coordination you learned that more than one phone call existed; is
20 that right?

21 A. Yes.

22 Q. Okay. And if -- if I asked how you learned that, would
23 you be allowed to tell me under Protective Order #3 and national

1 security privilege?

2 I don't know the answer, so I don't -- I can't represent to
3 you.

4 A. I believe it's classified.

5 Q. It's classified, but not under Protective Order #3, as far
6 as you know?

7 A. As far as I know. I'm just thinking about what my answer
8 would be. And I'm interpreting my "would be" answer and trying to
9 apply all the different rules. And -- so if I was asked the question
10 for real, I would have to think and then maybe consult.

11 Q. Okay.

12 A. But we're in an open session. So, at a minimum, I believe
13 my answer would be classified.

14 Q. Understood.

15 You testified on direct examination that at some point you
16 received the audio of those calls. Do you recall that answer?

17 A. Yes, I do.

18 Q. Okay. And if I asked you when, could you answer?

19 A. I -- right in open session? I -- I believe so.

20 Q. Okay. When did you receive the audio of those calls?

21 Let me be more clear since -- I'm drawing directly from
22 Mr. Trivett's direct. But let me clarify that I mean the audio of
23 the 118 calls.

1 A. I received some audio in -- can I rephrase that a little
2 bit?

3 Q. Sure.

4 A. I had access to some audio in 2009, I believe. I'm -- I'm
5 saying "some" because I'm -- I think it was just -- I don't think it
6 was -- I think it was just a portion. And I can't further -- I'm not
7 able to further describe that portion just because I can't remember.
8 Not because of any other -- I want to just make that distinction.
9 It's not a classification issue, it's a recollection issue, so...

10 Q. Okay. And when did you receive the remainder? Or when
11 did you have access to the remainder? That's a difference.

12 A. It -- it was -- my recollection is that it was somewhat a
13 rolling basis, if that makes sense. I didn't get access all at
14 the -- to everything all at once. But that's a -- my best
15 recollection at this time.

16 Q. Okay. The -- so I asked you earlier about how -- about
17 national security privilege invocations around how the United States
18 acquired the calls. Now I have a couple of questions about how you
19 got access to the calls.

20 If I asked you if some element of the intelligence community
21 had faked those calls in your presence, could you answer?

22 A. What's the question?

23 Q. If I asked you if some element of the intelligence

1 community had faked those calls in your presence, could you answer?

2 A. Well, my -- I believe I could answer, only because I
3 didn't see anybody fake anything.

4 LDC [MR. CONNELL]: Okay with that?

5 Okay.

6 A. I don't ----

7 MJ [Col McCALL]: It's ----

8 Q. If I were to ask you whether you knew that some element of
9 the intelligence community had faked those phone calls outside your
10 presence, could you answer?

11 A. I don't have any ----

12 Q. I think -- where I thought we were close to the
13 line -- maybe we're not. Maybe the line's a different place than I
14 thought it was. But it's really a yes-or-no answer.

15 Can you answer consistent with Protective Order #3 and
16 national security privilege?

17 MJ [Col McCALL]: Mr. Trivett?

18 MTC [MR. TRIVETT]: For the record, we're not asserting at
19 this point. It's a hypothetical question.

20 LDC [MR. CONNELL]: So as long as I ask them hypothetically?

21 MTC [MR. TRIVETT]: I -- it's a difficult-to-understand
22 question based on the form as well. So I'll object as to form. And
23 that might clarify the issue.

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1 MJ [Col McCALL]: Are you saying that he can't ask the
2 question straight-up if -- if she's aware of whether they faked it in
3 her presence or ----

4 MTC [MR. TRIVETT]: If she answered this ----

5 MJ [Col McCALL]: ---- outside of her presence?

6 MTC [MR. TRIVETT]: I'm sorry, Your Honor.

7 MJ [Col McCALL]: No -- yeah, I'm sorry. I understand what
8 you're saying, but ----

9 MTC [MR. TRIVETT]: No, no, no. She -- my understanding, she
10 answered that first question and then the second question was a
11 second hypothetical question about outside of her presence.

12 LDC [MR. CONNELL]: I can repeat the question if we need it,
13 but ----

14 MTC [MR. TRIVETT]: Please.

15 Q. If I were to ask you whether some member of the
16 intelligence community faked those phone calls outside of your
17 presence, would you be able to answer that question consistent with
18 national security privilege and Protective Order #3?

19 A. I ----

20 Q. I was really just repeating it for Mr. Trivett's benefit.

21 A. Okay. Sorry.

22 MJ [Col McCALL]: Why don't counsel ----

23 MTC [MR. TRIVETT]: Can I have a second to consult? Not with

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1 counsel, I just need to consult.

2 MJ [Col McCALL]: I understand. You want to discuss it among
3 yourselves and then perhaps it would be useful to discuss it between
4 the parties.

5 Go ahead.

6 **[Counsel conferred.]**

7 LDC [MR. CONNELL]: I think we've -- I think we've found a
8 path.

9 MJ [Col McCALL]: Okay.

10 LDC [MR. CONNELL]: So let me try it a different way.

11 Q. Do you believe that these phone calls were faked?

12 A. No, I do not.

13 Q. And if I were to ask you what the basis for your belief
14 that they were not faked is, would you have to decline to answer on
15 the basis of national security privilege and Protective Order #3?

16 A. Yes, sir.

17 Q. Now, how many phone calls did you receive the audio of, or
18 have access to the audio of?

19 A. I'm not -- I'm not sure. I can't recall sitting here.

20 Q. Now, I imagine that when you received this audio, which
21 was, you know, highly classified, that there were -- that there was a
22 receipt or a handling caveat or some kind of explanation of what you
23 were receiving access to?

1 A. The proper classification markings would have been on it.

2 Q. Okay. Did you receive a disc?

3 A. At -- at some point I did, yes.

4 Q. Okay. And so on that disc is an -- is a record of how
5 many phone calls you received; is that right?

6 A. Yes.

7 Q. Was that number more than, equivalent to, or less than
8 118?

9 MTC [MR. TRIVETT]: Sir?

10 MJ [Col McCALL]: Yes.

11 MTC [MR. TRIVETT]: So the concern isn't with the question.
12 It's with the potential answer.

13 MJ [Col McCALL]: Okay.

14 MTC [MR. TRIVETT]: And so we don't know whether or not we
15 would invoke because we're not certain -- I'm not certain what the
16 witness is going to say. If we could find out what the witness is
17 going to say, we would then know if we had to invoke or not.

18 MJ [Col McCALL]: Okay. Yeah. Ms. Waltz, you can go ahead
19 and step off the witness stand and simply tell Mr. Trivett and
20 Lieutenant Commander Baxter what your answer would be to that
21 question.

22 Do you need to hear the question again?

23 WIT: Yes, please.

1 MJ [Col McCALL]: I figured.

2 All right. Mr. Connell.

3 Q. Was the number of phone calls that you received the audio
4 of more than, equal to, or less than 118?

5 **[No audio feed.]**

6 **[Counsel conferred with the witness.]**

7 MTC [MR. TRIVETT]: Sir, we would assert Protective Order #3
8 over the answer to that question.

9 MJ [Col McCALL]: Okay.

10 Q. And however many phone calls you received, at some point
11 you went down to 26; is that right?

12 A. At some point the prosecution decided on 26 calls that
13 they chose to be used affirmatively.

14 Q. And did any phone calls other than the 26 the prosecution
15 chose relate to the 9/11 conspiracy?

16 A. I'm not -- I'm not sure how to answer that question. And
17 that basis of "not sure" is because of either classification or
18 possibly Protective Order #3.

19 Am I able to ----

20 Q. We can return to the question in closed. I don't have any
21 problem with that.

22 A. Okay.

23 Q. Now, you testified on questioning by counsel for

1 Mr. Bin'Attash that you believed that the words on the calls were,
2 quote, spoken voluntarily. Do you recall that answer?

3 A. Well, I think I was asked the question.

4 Q. Yeah.

5 A. And then I -- I don't think those were my words. I think
6 I answered the question as in yes. But I -- those -- it was in
7 answer -- that was the question of counsel and I responded.

8 Q. Okay. And if I were to ask you how you know that those
9 words were spoken voluntarily on the phone calls, you couldn't answer
10 because of Protective Order #3 and national security privilege; is
11 that right?

12 A. Well, as it relates to that line of questioning, I think
13 the questions were in the context of they were -- they occurred. It
14 was about a timing issue.

15 So I believe, if I'm -- if my recollection is correct, the
16 line of questioning had more to do with, based upon the
17 time -- sorry -- based upon the date of the phone calls, that it
18 predated any RDI or black site time.

19 So that was the -- that categorization of voluntariness, or
20 what have you, had more to do with the -- again, the timing and the
21 dates of the calls. They -- they're in 2000 and 2001.

22 Q. So does that mean yes, you could answer why you believe
23 they were spoken voluntarily?

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1 A. I ----

2 MJ [Col McCALL]: I believe she just did.

3 LDC [MR. CONNELL]: Okay. I'm good with -- I think we all
4 heard Commander Baxter say that, too.

5 Q. So if I were to ask you why you believed the dates that
6 are on that chart, you couldn't answer because of national security
7 privilege and Protective Order #3; is that right?

8 A. Can you repeat the question, please?

9 Q. Yeah. If I were to ask you why you think the dates that
10 are on those charts over there are accurate, you couldn't answer
11 because of Protective Order #3 and national security privilege; is
12 that right?

13 A. In some instances I feel like, based upon the content and
14 the corroborative evidence, that I -- that I believe the dates are
15 accurate.

16 Q. Is that only for the 26?

17 A. Based upon my review of the 26, I ----

18 Q. So if I were to ask you about the other 92, if you
19 could -- if I were to ask you for the other 92 how you know that the
20 dates which are on that chart are accurate, could you answer because
21 of national security privilege and Protective Order #3?

22 A. I believe there -- there would be a national security
23 privilege or -- and/or Protective Order #3.

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1 Q. Okay. And you testified on cross-examination, again,
2 because of the dates, that -- you were asked the question: They were
3 not in a black site at the time those words were spoken.

4 And if I were to ask you how you know that this wasn't a
5 performance put on by the CIA in a black site, you wouldn't be able
6 to answer because of Protective Order #3 and national security
7 privilege; is that right?

8 A. You're asking me about a performance?

9 Q. Yes.

10 A. Can you say the question again?

11 Q. Sure. If I were to ask you -- well, I'll give you the
12 predicate again. You testified on cross-examination for counsel for
13 Mr. Bin'Attash that at the time these words were spoken, they were
14 not in a black site. And I understand that you're basing that on the
15 dates.

16 But if I were to ask you how you know that this was not a
17 performance forced by the CIA to be put on while they were in a black
18 site, you couldn't answer that because of Protective Order #3 and
19 national security privilege; is that right?

20 A. Probably. It's a very strange question. I'm sorry. I'm
21 trying to be -- I'm trying to give -- I'm trying to think it -- think
22 about my answer, so...

23 Q. Is there an answer that you can think of that doesn't

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1 violate Protective Order #3?

2 A. Other than my conclusion is that it wasn't a performance.

3 Q. If I were to ask you how you know -- I'll back up.

4 LDC [MR. CONNELL]: I think I've made my point here, Your
5 Honor.

6 MJ [Col McCALL]: You have.

7 LDC [MR. CONNELL]: Thank you very much. That concludes my
8 cross-examination.

9 MJ [Col McCALL]: All right.

10 All right. I don't think it makes sense to press late
11 tonight. We have two more defense teams to do their cross, if they
12 choose to. And I feel like we're still ahead of schedule or right
13 where we kind of expected to be, so we'll go ahead and recess for the
14 evening.

15 Do we need to do any housekeeping?

16 Apparently not. Good. I'll take that as a no.

17 So we'll be back tomorrow at 0900 to continue on with the
18 open cross-examination.

19 Again, Ms. Waltz, please don't discuss your testimony with
20 anyone, to include counsel for any of the parties.

21 But at this time, we're going to go ahead and recess for the
22 evening. We'll be back tomorrow at 0900.

23 WIT: Thank you.

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

3 MJ [Col McCALL]: All right. Commission's in recess.

4 [The R.M.C. 803 session recessed at 1655, 17 April 2024.]

5 [END OF PAGE]