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1 [The R.M.C. 803 session was called to order at 0900,
2 17 September 2019.]

3 MJ [Col COHEN]: Military commission is called to order.
4 Good morning, everyone.

5 Trial Counsel, I recognize that it appears most of
6 your team is here. If anyone is missing that you would like
7 to note, you may do so.

8 CP [BG MARTINS]: Your Honor, all counsel representing the
9 United States remain the same.

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

11 And, Mr. Sowards, I notice that Ms. Radostitz is not
12 currently here. Will she be coming later? If not -- stop.
13 Excuse me, Ms. LeBoeuf. I apologize. Without the headgear,
14 it threw me off a little bit. Sorry.

15 LDC [MR. SOWARDS]: Actually, Ms. LeBoeuf's name is easier
16 to pronounce. She will be here later this morning. She is
17 attending to a matter.

18 MJ [Col COHEN]: All right, thank you. I appreciate that.

19 Ms. Radostitz, I apologize. All right. With the --
20 with the two scarves, I was thrown off. Thank you. I
21 apologize. A little embarrassed by that. I'm sorry about
22 that.

23 Ms. Bormann, it appears that all of your team is

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1 here.

2 None of the accused are here, I will note.

3 LDC [MS. BORMANN]: No, and I understand, because he often
4 wears a scarf, but Mr. Perry is absent.

5 MJ [Col COHEN]: He is.

6 LDC [MS. BORMANN]: He is doing other commission work.

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

8 Mr. Harrington.

9 LDC [MR. HARRINGTON]: We're the same, Judge.

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

11 Mr. Connell.

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

13 MJ [Col COHEN]: Good morning.

14 LDC [MR. CONNELL]: All counsel are present.

15 MJ [Col COHEN]: Thank you.

16 Mr. Ruiz.

17 LDC [MR. RUIZ]: Good morning, Judge. All counsel are
18 present.

19 MJ [Col COHEN]: Thank you. Good morning.

20 All right. Trial Counsel, is there a witness with
21 respect to the absence of the accused? Thank you.

22 ATC [Maj DYKSTRA]: Your Honor ----

23 MJ [Col COHEN]: I'll remind you you are still under oath.

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25604

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1 Thank you.

2 WIT: Thank you, sir.

3 ATC [Maj DYKSTRA]: Thank you, Your Honor.

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

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

7 **DIRECT EXAMINATION**

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

9 Q. And, Major, you are the same assistant staff judge
10 advocate that testified yesterday?

11 A. Yes, sir.

12 Q. Did you have the opportunity to advise the accused --
13 all five accused this morning of their rights to attend
14 today's proceedings?

15 A. I did.

16 ATC [Maj DYKSTRA]: Your Honor, may I approach?

17 MJ [Col COHEN]: You may.

18 Q. And for purposes of the record, I've handed the
19 assistant staff judge advocate what is marked as Appellate
20 Exhibit 660I, J, K, L, and M.

21 And, Major, could you please tell me what those forms
22 are?

23 A. The statement of understanding of right to be present

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1 at commission proceedings.

2 Q. And are those the forms that you used this morning to
3 advise the accused?

4 A. Yes.

5 Q. Thank you. Starting with Mr. Mohammad, what time did
6 you advise him this morning?

7 A. 0629.

8 Q. Mr. Bin'Attash?

9 A. 0635.

10 Q. Mr. Binalshibh?

11 A. 0618.

12 Q. Mr. Ali?

13 A. 0632.

14 Q. And Mr. Hawsawi?

15 A. 0625.

16 Q. And what language did you advise them of their right
17 to attend this morning?

18 A. All of them were advised in English. Bin'Attash
19 reviewed in Arabic and signed the Arabic form.

20 Q. And besides Mr. Bin'Attash, what did the other
21 accused indicate as far as their desire to attend this
22 morning's proceedings?

23 A. They all waived. I did have a conversation with

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25606

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1 Mr. Mohammad about movement time, but ultimately he chose to
2 waive as well.

3 Q. As far as Mr. Hawsawi, did he also indicate a desire
4 to attend today at a later time?

5 A. He did. He wrote something in Arabic by his name,
6 and I asked the linguist what it said. And he said it says
7 something to -- he didn't -- he said specifically, but what I
8 recall was that he would be attending midday.

9 Q. And is JTF going to support them attending later
10 today?

11 A. It's my understanding in speaking with the escort
12 team, yes, they will be moving him here.

13 ATC [Maj DYKSTRA]: Your Honor, no further questions.

14 MJ [Col COHEN]: All right. Thank you. Could I have
15 those documents, please? Thank you.

16 Mr. Sowards, have you had the opportunity to see
17 Appellate Exhibit 660I?

18 LDC [MR. SOWARDS]: Yes, Your Honor. I've seen the waiver
19 form for 17 September. I don't believe it has any appellate
20 exhibit markings on it, but I have seen that.

21 MJ [Col COHEN]: Okay. It's now been marked as -- for
22 your records, AE 660I is what it will be. Do you have any
23 questions about the document?

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1 LDC [MR. SOWARDS]: No, Your Honor. Thank you.

2 MJ [Co1 COHEN]: All right. Thank you.

3 Ms. Radostitz, once again, I apologize. We have
4 spent a few weeks together now so ----

5 ADC [MS. RADOSTITZ]: Sir, honestly, I don't care if you
6 mispronounce my name.

7 MJ [Co1 COHEN]: Thank you. There will be moments when I
8 am human like everyone else and things just -- I just miss
9 things, so I apologize. All right.

10 Ms. Bormann, have you had the opportunity to see what
11 is now Appellate Exhibit 660J, which is a statement purported
12 to be signed this morning at 0635 by your client?

13 LDC [MS. BORMANN]: I have, and I have no questions of
14 this witness.

15 MJ [Co1 COHEN]: Thank you, ma'am.

16 Mr. Harrington, same for you. This is now AE 660K.
17 It purports to be a statement signed by Mr. Binalshibh at 0616
18 this morning. Have you had an opportunity to see it, and do
19 you have any questions?

20 LDC [MR. HARRINGTON]: I have received it, Judge. I have
21 no questions.

22 MJ [Co1 COHEN]: All right. Thank you, sir.

23 AE 660L purports to be a statement signed by Mr. Ali

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1 this morning on 17 September at 0632. Mr. Connell, have you
2 seen it, and do you have any questions?

3 LDC [MR. CONNELL]: I have seen it. I have no questions.

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

5 LDC [MR. CONNELL]: Continuing objection.

6 MJ [Col COHEN]: And, Mr. Ruiz, finally with respect to
7 Mr. al Hawsawi, there's a statement, and the testimony is that
8 he does not want to be here initially this morning, but he may
9 show up later this afternoon. Do you have any questions about
10 his absence for -- at least at this point this morning?

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

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

13 I'll note the standing objection with respect to
14 identity. I'm handing these to the court reporter.

15 I find that with respect to all five accused with
16 respect to the start of the hearings at 0900 this morning,
17 they have all knowingly and voluntarily waived their right to
18 be present here. If they show up later this morning, they're
19 welcome to do so at any time before we recess at 1645 today.
20 And it sounds like they have provided that information to the
21 guards.

22 Trial Counsel, if they don't, I will need someone to
23 let me know that they have waived again this afternoon.

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1 ATC [Maj DYKSTRA]: Yes, Your Honor.

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

3 You will be temporarily excused until a later time.

4 WIT: Thank you, sir.

5 [The witness was temporarily excused.]

6 MJ [Col COHEN]: Mr. Harrington, not to put you completely
7 on the spot, but I just wanted to follow up a little bit.

8 Obviously, Mr. Binalshibh expressed some concerns to
9 me yesterday, as did you. Is there anything at this point
10 that I should be expecting, or is this something that you
11 continue to work as his counsel with the government?

12 LDC [MR. HARRINGTON]: Judge, you should be expecting a
13 new motion; but until that's filed, obviously, you can't take
14 an action on that. And I am continuing to work with
15 Mr. Trivett and the government ----

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

17 LDC [MR. HARRINGTON]: ---- on some other issues. Thank
18 you.

19 MJ [Col COHEN]: Thank you for the update.

20 Like I said, I will let you all work it, and then if
21 there becomes a point when you believe there is judicial
22 intervention needed, obviously you may file any requests for
23 relief that you deem appropriate. Okay.

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1 Other -- I'm ready to take -- start taking up the
2 testimony of the witness again, unless there's some reason
3 that we shouldn't.

4 Mr. Groharing.

5 TC [MR. GROHARING]: Your Honor, I would just ask -- good
6 morning, Your Honor.

7 MJ [Col COHEN]: Good morning.

8 TC [MR. GROHARING]: Your Honor, I would just ask before
9 we recall the witness, I would like to address the video from
10 yesterday.

11 MJ [Col COHEN]: Okay.

12 TC [MR. GROHARING]: That's AE 628AA ZZZ. We were able to
13 get to the bottom of what caused some of the confusion with
14 regard to the video. It seemed as if, when the government
15 provided the video to the defense in discovery, we marked it
16 as a 2017 release.

17 We provided it in 2017 shortly before the
18 jurisdictional hearing in December of 2017. When we provided
19 it, it also has a placeholder. When we give the defense
20 videos, there's a paper placeholder that goes with it where we
21 labeled it the same. When we went to label the exhibits that
22 carried forward for the hearing, we used that same designator
23 as a 2017 release instead of a much more -- well, earlier

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1 release than it was. So that's why it was marked that way.

2 From our perspective, it doesn't do anything to
3 change the foundation that Special Agent Fitzgerald laid for
4 the video. We would rest on our arguments from yesterday as
5 far as both the foundation and the relevance. I'm happy to
6 rehash those if necessary, but I think the court's well aware
7 of what our positions are.

8 MJ [Col COHEN]: Okay.

9 TC [MR. GROHARING]: And we think the video should be
10 played. It's important evidence, and it should be played.

11 MJ [Col COHEN]: Okay. Does the video need to be played?
12 I mean, it's an appellate exhibit. Does it need to be played
13 in open court, or is it just an attachment to your -- as part
14 of your evidence?

15 TC [MR. GROHARING]: Well, it's important unclassified
16 evidence. And the government's position is it should be heard
17 in open court, and Special Agent Fitzgerald's comments on the
18 evidence should be heard in open court. So there's no reason
19 to exclude ----

20 MJ [Col COHEN]: Okay.

21 TC [MR. GROHARING]: ---- the evidence from open court,
22 and the public should see it as well as the parties here.

23 MJ [Col COHEN]: All right. I'm just thinking of judicial

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1 economy-type matters. That's why I was curious as to
2 what ----

3 TC [MR. GROHARING]: I would only add, sir, it's a
4 six-minute video. I suspect Special Agent Fitzgerald's
5 comments on the video to be a few more minutes, as we play it
6 and I stop it a couple of times. But in the grand scheme and
7 the totality of all the testimony, it's a relatively short
8 amount of time.

9 MJ [Col COHEN]: Okay. Mr. Connell.

10 LDC [MR. CONNELL]: Thank you, Your Honor.

11 I don't think that the government's comments this
12 morning have improved the foundation of the document. If
13 anything, or the video -- if anything, we now have less idea
14 of when it was released or what circumstances or its
15 provenance than we did before.

16 Secondly, I just want to remind the court that I
17 tendered a second objection yesterday, which was to the text
18 which appears at the bottom of the video. It does not seem to
19 be an accurate translation of anything that I recognize as
20 English, and the witness has not testified about how that
21 additional text came to be on the video or its authenticity.

22 MJ [Col COHEN]: Okay. What about -- yeah, can the
23 witness testify about that? I mean, in other words, is the

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1 purpose -- it would seem to me that the primary purpose of
2 this video is to -- is that -- these are not findings but just
3 potential information to consider in allowing it or even what
4 weight to give it -- is that it's purportedly released or made
5 by a media organization that has at least some affiliation
6 with al Qaeda; that it appears to be the voice of Usama bin
7 Laden based on the recognition of that voice by Special
8 Agent Fitzgerald; and that it shows images of some of the 9/11
9 attackers and gives their kunyas as well as their actual
10 names.

11 That's the general purpose for which it's being
12 offered? Is that what you are hoping that I take from that?

13 TC [MR. GROHARING]: Well, in particular, to corroborate
14 Mr. Ali's statements on the same matters.

15 MJ [Col COHEN]: Okay.

16 TC [MR. GROHARING]: Yes, Your Honor. That's accurate.

17 MJ [Col COHEN]: Okay, okay. I understand. What about
18 the English translation?

19 TC [MR. GROHARING]: To the best of my knowledge ----

20 MJ [Col COHEN]: Do we know how that got there? Is that
21 something we put on there? Is it something that came with the
22 video when it was put out there? What do we know about that?

23 TC [MR. GROHARING]: My understanding is the English

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1 translation was on the video when it was released.

2 MJ [Col COHEN]: Okay.

3 TC [MR. GROHARING]: And we could ask that of the witness
4 if necessary, to confirm what his understanding is, but that
5 is my understanding of where the -- that's often the case with
6 these videos, is they come with English translation, but I
7 think Special Agent Fitzgerald can testify to the extent it's
8 necessary regarding that.

9 MJ [Col COHEN]: Okay.

10 TC [MR. GROHARING]: I would just add to the extent there
11 are questions of foundation, I would just say it goes to
12 weight as opposed to admissibility, and the defense is free
13 to, you know, if they want, to call witnesses at a later point
14 regarding the translation if they believe it's inaccurate and
15 explain why it's not.

16 But I would say for now -- we have the witness here.
17 We should play it for him, and then he can comment on it, and
18 later on the judge can give all of the evidence the weight it
19 deserves.

20 MJ [Col COHEN]: Okay.

21 TC [MR. GROHARING]: We'd be in a different position, Your
22 Honor, if we were in front of a jury, obviously. We would
23 want to do all of that ahead of time. But as a military

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1 judge, I think you're well able to consider all the evidence
2 and to take it for what it's worth.

3 MJ [Col COHEN]: Okay. I'll tell you what I allow to do.
4 As it is motions practice, we'll ----

5 LDC [MR. SOWARDS]: Your Honor, I'm sorry. Before you
6 rule, may I be heard?

7 MJ [Col COHEN]: You may.

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

9 Thank you, Your Honor. Good morning.

10 MJ [Col COHEN]: Good morning.

11 LDC [MR. SOWARDS]: Gary Sowards on behalf of
12 Mr. Mohammad, and we join Mr. Connell's observations about
13 nothing changing in terms of relevance. This is completely
14 redundant of what the agent has already testified to in terms
15 of matching kunyas with names and being aware of sources that
16 corroborate Mr. Ali.

17 My further objection, though, is that -- and I
18 apologize that I cannot cite the actual AE number, but some
19 time back the trial judiciary promulgated a rule that requires
20 anytime a party offers information, particularly evidence,
21 pleadings or arguments, that are in a foreign language, to
22 include Arabic, the pleading or proffer or filing must include
23 not only an accurate English translation, but a certification

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1 that the accompanying translation is accurate.

2 And at least -- I would ask the military judge to at
3 least reserve display of this particular item in public until
4 the government can provide you with certification from a
5 qualified person that any English appearing on the screen is
6 an accurate translation of the spoken word.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. SOWARDS]: Thank you.

9 MJ [Col COHEN]: Thank you.

10 Mr. Groharing, with respect to the issue of the
11 government's obligation to, if you're going to offer something
12 in a foreign language, it must be translated with a
13 certification, you may address that if you wish to.

14 TC [MR. GROHARING]: Your Honor, my understanding is --
15 and I believe that's a change to the court rules that I didn't
16 have in front of me, but that is if the government is going to
17 offer that translation -- the government's going to translate
18 it and offer that affirmatively against the defense.

19 My understanding is this was released by al Qaeda and
20 translated by al Qaeda, and in that case, I don't believe the
21 rule requires us to then certify that translation. I think
22 the military judge can take the evidence for what it's worth.
23 And if the defense has issues with how al Qaeda translated a

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1 media release, they can call someone who speaks the language
2 and testify about where it's inaccurate. So I don't believe
3 we have an obligation to certify that.

4 MJ [Col COHEN]: Okay.

5 Mr. Sowards.

6 LDC [MR. SOWARDS]: Thank you, Your Honor. Yes, Your
7 Honor, with due respect to Mr. Groharing, we don't -- he
8 hasn't articulated the basis of his understanding, that
9 that's -- who translated it or where it came from.

10 All we know is that someone or group may have taken a
11 voice that may or may not be Usama bin Laden's or sound a lot
12 like it and then has created a video that they they've
13 attached some translation to.

14 So we're getting even further afield in terms of what
15 the proffer of the evidence is for, and that is just to repeat
16 kunyas and actual names. But the ----

17 MJ [Col COHEN]: Have you had the opportunity -- have you
18 had the opportunity to review the video?

19 LDC [MR. SOWARDS]: I have not, Your Honor.

20 MJ [Col COHEN]: Okay.

21 LDC [MR. SOWARDS]: But they may have provided it to us.
22 I have not seen the video. I have seen similar videos. Well,
23 I can tell you that I have seen similar videos that they

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1 played some time ago in connection with the hostilities
2 litigation.

3 MJ [Col COHEN]: Okay.

4 LDC [MR. SOWARDS]: And we were very much aware that what
5 was being said by the speakers -- and I believe this was their
6 translation -- was not being translated on the screen. And in
7 particular, there were several references to the Ummah, the
8 international Muslim community, and defending the Ummah, and
9 that was never translated there, so that's why in part we have
10 concerns ----

11 MJ [Col COHEN]: Okay.

12 LDC [MR. SOWARDS]: ---- about the accuracy of this.

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

14 Mr. Connell, have you had the opportunity to review
15 this video?

16 LDC [MR. CONNELL]: I have, Your Honor. It was provided
17 in discovery.

18 MJ [Col COHEN]: Okay. All right. Mr. Groharing, what
19 I'm going to allow you to do at this point as I go back and
20 look at these issues, whether or not I consider it is a
21 decision I can make, but you may publish it to counsel table
22 and to the judge. The witness may make his markings on there,
23 and then -- and then I can consider whether or not I will

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1 admit it. But we won't publish it to the gallery at this
2 point.

3 TC [MR. GROHARING]: I understand your ruling, Your Honor.

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

5 TC [MR. GROHARING]: I think we'll be ready by the time
6 Special Agent Fitzgerald gets here.

7 MJ [Col COHEN]: Not a problem.

8 TC [MR. RYAN]: Your Honor, excuse me, sir.

9 MJ [Col COHEN]: Yes, Mr. Ryan.

10 TC [MR. RYAN]: May I have your permission to step in and
11 out this morning as I need to without asking every time?

12 MJ [Col COHEN]: Absolutely.

13 TC [MR. RYAN]: Thank you, sir.

14 MJ [Col COHEN]: Thank you. Please call the witness.

15 Agent Fitzgerald, if you will please take your seat.

16 I recognize Special Agent Fitzgerald is the same
17 person who was testifying yesterday. Sir, I remind you you
18 are still under oath.

19 WIT: Yes.

20 MJ [Col COHEN]: Okay. Thank you.

21 And the publication should only go to counsel and the
22 commission.

23 You may proceed.

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

2 JAMES M. FITZGERALD, civilian, was called as a witness for the
3 prosecution, was reminded of his previous oath, and testified
4 as follows:

5 DIRECT EXAMINATION CONTINUED

6 Questions by the Trial Counsel [MR. GROHARING]:

7 Q. Special Agent Fitzgerald, yesterday you will recall
8 that you testified about a particular video?

9 A. Yes.

10 Q. I'm going to play that video now and ask you some
11 questions as we move through it.

12 A. I understand.

13 Q. One moment.

14 TC [MR. GROHARING]: Judge, apparently ----

15 MJ [Col COHEN]: One second. I have a tech guy coming in,
16 so ----

17 [Pause.]

18 TC [MR. GROHARING]: Actually, this is where I would have
19 stopped it in the first instance, so we can start there.

20 MJ [Col COHEN]: That's fine. Like I say, we'll take the
21 screen shots, because I know you want to take some images and
22 have him mark it, so I'll allow you to do so.

23 TC [MR. GROHARING]: Okay.

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1 MJ [Col COHEN]: What's your time count on the video right
2 now?

3 TC [MR. GROHARING]: Judge, I'm -- Judge, the time hacks
4 are not appearing as we stop it.

5 MJ [Col COHEN]: Okay.

6 TC [MR. GROHARING]: I would estimate that it's 20 seconds
7 into the video.

8 MJ [Col COHEN]: Approximately 20 seconds in the video
9 with an image of the -- of a gentleman on the screen. I
10 understand.

11 TC [MR. GROHARING]: Okay.

12 [AE 628AA Attachment ZZZ was played.]

13 Q. Special Agent Fitzgerald, what do we see on the
14 screen?

15 A. We see images of the five hijackers of American
16 Airlines Flight 11.

17 Q. And could you please identify the individuals about
18 whom Mr. Ali spoke during your interview.

19 A. Yes. Waleed al Shehri and Wail al Shehri, although
20 when he identified them, he wasn't sure who was whom.

21 TC [MR. GROHARING]: Let the record reflect the witness
22 has circled two individuals on the right side of the screen.

23 MJ [Col COHEN]: Okay. Give us a moment to do a screen

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1 shot.

2 TC [MR. GROHARING]: Judge, it might be easier, if it were
3 permissible to the court, to capture it at the end of his
4 testimony as far as the screen shot goes, or we can do it as
5 we -- as he goes, whichever way the court prefers.

6 MJ [Col COHEN]: Court reporter is telling me we need to
7 do it as we go along.

8 TC [MR. GROHARING]: All right. Thanks.

9 MJ [Col COHEN]: The way we'll mark that is AE 628 (Gov)
10 Attachment ZZZ, and then this first one will be sub 1.

11 Mr. Connell.

12 LDC [MR. CONNELL]: Sir, you said 628 (Gov), but I think
13 you meant 628AA (Gov).

14 MJ [Col COHEN]: That is correct. AA, that is correct.
15 Thank you, Mr. Connell. Attachment ZZZ, sub 1, and then each
16 of these will then be sub 2, sub 3, et cetera ----

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

18 MJ [Col COHEN]: ---- going forward. Thank you.

19 TC [MR. GROHARING]: I'm just waiting on a thumbs up from
20 the court reporter, Your Honor.

21 MJ [Col COHEN]: We're good to go. You may proceed.
22 Thank you.

23 Q. Special Agent Fitzgerald, are there any other

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1 individuals on the screen about whom Mr. Ali spoke?

2 A. Yes.

3 Q. Which ones?

4 A. He spoke about this individual here, Mohamed Atta.

5 He advised that he never met him, but he recognized his photo
6 from after September 11th. And he speculated that he may have
7 briefly spoke to him on the phone one time, but was not sure
8 if it was him.

9 TC [MR. GROHARING]: Okay. Let the record reflect that
10 Special Agent Fitzgerald has underlined the photo in the
11 middle of the screen. I would ask the screen capture be made.

12 MJ [Col COHEN]: We're good to go. Thank you. That is
13 sub 2.

14 Q. Okay. Did Mr. Ali speak about any of the other
15 individuals on the screen?

16 A. He did not.

17 [AE 628AA Attachment ZZZ was played.]

18 TC [MR. GROHARING]: Let the record reflect I again
19 stopped the video.

20 Q. Special Agent Fitzgerald, what do we see on the
21 screen right now?

22 A. These are the hijackers of United Airlines
23 Flight 175.

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25624

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1 Q. Could you again identify any of the individuals on
2 the screen about whom Mr. Ali spoke?

3 A. Yes. He spoke about Hamza al Ghamdi ----

4 Q. Let me stop you. I think it would be -- let me stop
5 you each time as you circle and make a sub-exhibit, if
6 that's ----

7 MJ [Col COHEN]: That's all right, Counsel. Let's just
8 mark the exhibit, and then I'll just save it one time. And
9 then we'll just reflect it as circles versus lines and those
10 kind of things. As long as we tell the record what it is, one
11 picture should suffice. All right. Thanks.

12 Q. Okay. Please continue.

13 A. He also identified Mohand al Shehri; he spoke about
14 Marwan al Shehhi, and Ahmed al Ghamdi.

15 MJ [Col COHEN]: All of which are -- have been circled by
16 the witness.

17 TC [MR. GROHARING]: Okay. Would you like to make it a
18 sub-exhibit at this point, Your Honor?

19 MJ [Col COHEN]: Yes, please. That will be sub 3. Thank
20 you. We're ready to go.

21 [AE 628AA Attachment ZZZ was played.]

22 TC [MR. GROHARING]: Let the record reflect that I've
23 again stopped the video.

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1 Q. Special Agent Fitzgerald, who do you see on the
2 screen now?

3 A. These are the hijackers of American Airlines
4 Flight 77.

5 Q. And as you did before, could you please identify any
6 of the individuals about whom Mr. Ali spoke during the
7 interview?

8 A. He spoke about Hani Hanjour. He spoke about Majed
9 Moqed. He did not meet in person, but he spoke about Nawaf al
10 Hazmi. I believe he also spoke about Khalid al Mihdhar, but
11 I'm going to -- without referring specifically to my notes,
12 I'll just stay with those three.

13 TC [MR. GROHARING]: Okay. Let the record reflect the
14 witness has circled three individuals on the right center of
15 the screen. We'll make that ----

16 MJ [Col COHEN]: Sub 4. Make that as sub 4, please.

17 Thank you. Carry on.

18 [AE 628AA Attachment ZZZ was played.]

19 TC [MR. GROHARING]: Let the record reflect I have again
20 stopped the video.

21 Q. Special Agent Fitzgerald, same practice. Please
22 identify any of the individuals on the screen about whom
23 Mr. Ali spoke.

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1 A. He spoke about Ahmed al Haznawi and Ahmed al Nami,
2 and that's United Airlines Flight 93.

3 TC [MR. GROHARING]: Let the record reflect Special
4 Agent Fitzgerald has circled the individual on the top left of
5 the screen and the bottom center of the screen.

6 MJ [Col COHEN]: Thank you. That will be sub 5, please.
7 Carry on.

8 [AE 628AA Attachment ZZZ was played.]

9 TC [MR. GROHARING]: Can I clear the screen, Your Honor?

10 MJ [Col COHEN]: You may.

11 Q. And Special Agent Fitzgerald, how many individuals
12 were identified in that video?

13 A. All of the 19 hijackers.

14 Q. And were those 19 hijackers -- is that consistent
15 with the FBI's identification of the hijackers on
16 September 11th, 2001?

17 A. Yes, it is.

18 Q. To the extent that any kunyas were used during the
19 video, were the kunyas the same as those that Mr. Ali
20 identified when he spoke to you?

21 A. Yes, they were consistent with them. The spelling
22 might have been a little bit different, but the pronunciation
23 was consistent.

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1 TC [MR. GROHARING]: Okay. Just one moment, Your Honor.
2 We'll move on to the next exhibit.

3 MJ [Col COHEN]: Okay.

4 Q. Special Agent Fitzgerald, you testified yesterday
5 regarding statements Mr. Ali made about operatives and how he
6 defined operations. Did Mr. Ali give examples of specific
7 operations?

8 A. Yes, he did.

9 Q. What did he say?

10 A. He identified the USS COLE attack and 9/11 as
11 examples of operations.

12 Q. Did Mr. Ali use the term "planner"?

13 A. Yes, he did.

14 Q. How did he define a planner?

15 A. He used that to describe someone who organized or put
16 together an operation.

17 Q. Did Mr. Ali talk about facilitators?

18 A. Yes.

19 Q. How did he define a facilitator?

20 A. A facilitator was on a different level than a
21 planner. A facilitator would take the guidance from the
22 planner and essentially make an operation happen, do the
23 logistics of making things happen.

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1 TC [MR. GROHARING]: Okay. Could I have the courtroom
2 feed, please?

3 MJ [Col COHEN]: You may.

4 Q. Special Agent Fitzgerald, do you recognize ----

5 TC [MR. GROHARING]: Actually, Your Honor, this has been
6 approved for display to the gallery. I'd ask that it be
7 displayed to the gallery.

8 MJ [Col COHEN]: It may be.

9 Q. Special Agent Fitzgerald, do you recognize this
10 document?

11 A. Yes, I do.

12 Q. What is it?

13 A. It's a sketch created by Mr. Ali to define the
14 difference between different roles.

15 MJ [Col COHEN]: Counsel, remind me again, what ----

16 TC [MR. GROHARING]: AE 628 Attachment -- AE 628AA (Gov)
17 Attachment P.

18 MJ [Col COHEN]: Thank you.

19 Q. And do you recognize this document?

20 A. Yes, I do.

21 Q. And what is it?

22 A. It shows different levels. The top level being
23 planner or leader, the middle level being facilitator, and the

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1 bottom level being operatives, with some overlap.

2 Q. And who wrote this document?

3 A. Mr. Ali wrote this document.

4 Q. How did it come about that Mr. Ali was writing this
5 document?

6 A. I was asking him to explain the difference between
7 planners and facilitators and operatives.

8 Q. Did you ask him to write the document or did he
9 volunteer to write the document?

10 A. I don't recall right now whether I asked him or
11 whether he volunteered.

12 Q. On the top of the document "KSM" appears in a circle.
13 What, if anything, did Mr. Ali say about KSM?

14 A. KSM -- he was referring to his uncle, Khalid Shaikh
15 Mohammad -- he defined as a planner, someone who would
16 organize an operation.

17 Q. And off in the upper right-hand corner, there are the
18 letters UBL in a circle. What did Mr. Ali say about that?

19 A. That was Usama bin Laden, and he defined him as a
20 leader.

21 Q. And did Mr. Ali talk about what role Usama bin Laden
22 played in al Qaeda?

23 A. Yes. He described him as the leader of al Qaeda.

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1 Q. Is that consistent with what you understood Usama bin
2 Laden role -- his role to be?

3 A. Yes.

4 Q. Below KSM and UBL there are four different sets of
5 either names or letters, I guess. Could you please just walk
6 through each of those and explain what Mr. Ali said about
7 them?

8 A. Yes. So he wrote the word "Ramzi" for Ramzi
9 Binalshibh; "Atta" for Mohamed Atta; "Me," meaning himself;
10 and then after that, there's an equals sign or what looks to
11 be an equal sign, and the letters "AL HAW," H-A-W -- A-L
12 H-A-W or ----

13 Q. Let's start with ----

14 A. Go ahead. I'm sorry.

15 Q. Let's start with Ramzi. What did he say about Ramzi?

16 A. He described Ramzi as a facilitator who worked with
17 Marwan al Shehhi.

18 Q. And is Mr. Ali, when he drew this diagram and you're
19 discussing it with him, is he talking about -- specifically
20 about the 9/11 operation?

21 A. Yes, he is.

22 Q. What did he say about Mohamed Atta?

23 A. Regarding Mohamed Atta, most of his knowledge of Atta

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1 was after September 11th. Again, he mentioned he may have
2 spoken with him on the phone. But he described him as someone
3 who would have been in the position to be a leader, a midlevel
4 leader/facilitator, in the United States.

5 Q. Okay. He writes "Me" on the chart. Presumably
6 that's -- he's referring to himself?

7 A. That's correct.

8 Q. What did he say about his own role in the 9/11
9 attacks?

10 A. He described himself as a facilitator, someone who
11 helped things get done.

12 Q. And finally, "AL HASH," what did he say about that
13 individual?

14 A. For Al Haw ----

15 Q. Al Haw?

16 A. ---- A-L and then H-A-W. He was describing Mustafa
17 al Hawsawi in general terms and his role, which he described
18 as equivalent to his, Mr. Ali's.

19 Q. Immediately below, there are another series of names.
20 The first looks to be "Tariq or Ziyad." Who did you
21 understand that to be?

22 A. Tariq or Ziyad was Ziad Jarrah.

23 Q. What did Mr. Ali say about him?

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1 A. He described him as the pilot hijacker aboard
2 Flight 93. He didn't specify Flight 93, but he was describing
3 Ziad Jarrah as someone who was both a facilitator and an
4 operative, someone who sort of held a dual role between
5 helping get things done and being an operative himself.

6 Q. So Mr. Ali identified him as a pilot hijacker. Is
7 that consistent with the FBI investigation's findings?

8 A. To go back to my testimony, I'm not sure if at that
9 specific time he defined him as a pilot hijacker, but simply
10 at that point as a leader, someone who occupied a leadership
11 role and did the job as a -- both a facilitator in the United
12 States and someone who obviously was an operative as well.

13 Q. Okay. Moving along, the next name is "Marwan." Is
14 that Marwan al Shehhi?

15 A. Yes.

16 Q. What did Mr. Ali say about Marwan al Shehhi?

17 A. He described Marwan al Shehhi as someone who received
18 funds for the hijackers and so was a facilitator, in the
19 respect that he was taking care of finances, and also an
20 operative, because he was one of the hijackers.

21 Q. The next name is Hani -- looks like Hanjour. What
22 did Mr. Ali say about Hani Hanjour?

23 A. Again, a similar role, in that Hanjour was both a

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1 leader and a facilitator and someone who he also described as
2 an operative.

3 Q. Okay. Below those names it appears that "hijackers"
4 is written and circled. Was that written by Mr. Ali as well?

5 A. Yes, it was.

6 Q. What did Mr. Ali say about the 9/11 hijackers?

7 A. That their role was as an operative and they did not
8 have additional roles as facilitators.

9 Q. Did Mr. Ali talk about whether there were security
10 reasons for people having different jobs within al Qaeda?

11 A. Yes.

12 Q. What did he say about that?

13 A. There were different roles to make things more
14 secure; meaning if one person was arrested, they hopefully
15 would not be in the position to give up everybody else.
16 There's only -- they would have a limited amount of knowledge
17 about the rest of the co-conspirators.

18 TC [MR. GROHARING]: Clear the screen, please.

19 MJ [Col COHEN]: You may.

20 Q. Did you talk to Mr. Ali about the purpose of the 9/11
21 attacks?

22 [Alarm in courtroom went off.]

23 MJ [Col COHEN]: We're getting at least a -- what appears

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1 to be a daily alert for cells. Would everyone please check
2 one more time for any -- anything that's setting it off.

3 General Martins, it is my inclination to proceed.
4 Any objection to doing so from the government? It is a secure
5 building owned by the government, so ----

6 CP [BG MARTINS]: Your Honor, I have no objection.

7 MJ [Col COHEN]: Okay. All right. Well, let's just
8 proceed.

9 Q. What did Mr. Ali say was the purpose of the 9/11
10 attacks?

11 A. To express discontent or -- or opposition to U.S.
12 support of Israel.

13 Q. Did Mr. Ali say how he wanted the attacks to make the
14 Americans feel?

15 A. Yes.

16 Q. What did he say?

17 A. He wanted them, American people, to understand what
18 Palestinians felt like.

19 Q. Did he talk about the message that he wanted to send?

20 A. Yes, he did.

21 Q. What message did Mr. Ali say that he wanted to send
22 by the attacks?

23 A. The message that he wanted to send was to stop U.S.

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1 support of Israel and, concurrently with that, stop the
2 support of people being hurt or killed in Palestine, as he
3 essentially summarized it.

4 Q. Did you talk with Mr. Ali about how al Qaeda chooses
5 targets?

6 A. Yes.

7 Q. What did Mr. Ali say about that?

8 A. Mr. Ali stated that al Qaeda chose targets that
9 either had political significance or military significance.

10 Q. And did he talk about how al Qaeda prioritized
11 targets?

12 A. Yes, that that was the -- the priority was to strike
13 either political or military targets over other targets. The
14 objective was not the number of people killed, the objective
15 was to make a statement.

16 Q. Did he talk about the symbolic value of attacks?

17 A. Yes.

18 Q. What did he say about that?

19 A. He noted the value of being able to strike symbolic
20 targets and the statement that that would make.

21 TC [MR. GROHARING]: Your Honor, the next exhibit I only
22 want to display to the witness and the court. It's not
23 approved for public release. So if I could have the feed but

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1 cut the feed to the gallery. I just want to make sure it
2 doesn't come up there.

3 MJ [Col COHEN]: Okay. Is it going to counsel?

4 TC [MR. GROHARING]: Oh, and counsel.

5 MJ [Col COHEN]: All right, that's fine. Yeah, I have no
6 problem with that. And what tab will this be?

7 TC [MR. GROHARING]: It will be AE 628AA Attachment KKKK.

8 MJ [Col COHEN]: All right. That's what I have as well.
9 Thank you, Counsel.

10 Q. Special Agent, do you have the document on your
11 screen?

12 A. Yes, I do.

13 Q. Do you recognize this document?

14 A. Yes.

15 Q. What is it?

16 A. It's a fatwa.

17 Q. What is a fatwa?

18 A. My understanding of a fatwa is a religious edict.

19 Q. And do you know when this particular fatwa was
20 issued?

21 A. Yes. Approximately 1998.

22 Q. And do you know who issued this fatwa?

23 A. Yes. Usama bin Laden.

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1 Q. And did Usama bin Laden and -- do you know if anyone
2 else is an author of the fatwa?

3 A. Yes. The document was signed by additional names as
4 well.

5 Q. Okay. And did the individuals collectively call
6 themselves The International Islamic Front for Jihad against
7 the Jews and the Crusaders?

8 A. Yes, they did.

9 Q. And who do you understand the crusaders to be?

10 A. I understand crusaders to mean Americans.

11 Q. I've called out a portion of the first page. Special
12 Agent Fitzgerald, could you please read that text?

13 A. Yes.

14 "First: The United States has been occupying the
15 most sacred area of Islamic land, the Arabian peninsula, for
16 about seven years, robbing it of its riches, dictating to its
17 rulers, humiliating its people, terrorizing its neighbors, and
18 making its bases on the peninsula into a spearhead with which
19 to fight the Islamic peoples nearby. While some may have
20 argued about the reality of this occupation in the past, all
21 the people on the peninsula acknowledge it now. There is no
22 better proof of this than the Americans' continued aggression
23 against the people of Iraq, with the peninsula as a staging

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1 ground. Despite the fact that all its rulers reject the use
2 of their land for that purpose, they are helpless."

3 Q. I've called out another paragraph. Could you please
4 read that.

5 A. Yes.

6 "Second: Despite the major devastation inflicted on
7 the Iraqi people at the hands of the Crusader-Jewish alliance,
8 despite the horrifying number of those killed, which exceeds
9 one million-despite all of that, the Americans are trying once
10 again to repeat these horrific massacres, as though they were
11 not satisfied with the long, drawn-out blockade imposed after
12 the ferocious Gulf War, or the fragmentation and devastation
13 it caused. So, here they come today, to wipe out what is left
14 of this people and to humiliate its Muslim neighbors."

15 TC [MR. GROHARING]: Your Honor, I've moved to the next --
16 I've moved to the next page, and I've called out text from the
17 middle of the second page of the document.

18 Q. Can you please read that text?

19 A. Yes.

20 "We, in the name of God, call on every Muslim who
21 believes in God and desires to be rewarded, to follow God's
22 order to kill Americans and plunder their wealth wherever and
23 whenever they find it. We also call upon the sincere Muslim

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1 Ulema and leaders and faithful youth and soldiers to launch an
2 assault on the Satanic American troops and their allies that
3 are in the support of Satan, and to drive away those behind
4 them so they remember."

5 Q. Special Agent Fitzgerald, are you also familiar with
6 a declaration of war released by Usama bin Laden in 1996?

7 A. Yes.

8 Q. And are the statements in this fatwa consistent with
9 the statements in Usama bin Laden's declaration of war against
10 the United States?

11 A. Yes, they are consistent.

12 TC [MR. GROHARING]: Your Honor, I'm now calling up an
13 additional document. This is AE 628AA JJJJ. This document
14 has been approved for public release, so I would ask that the
15 gallery is provided with the feed.

16 MJ [Col COHEN]: It may be published.

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

19 A. Yes, I do.

20 Q. What is it?

21 A. It's titled The Islamic Nuclear Bomb.

22 Q. And are you familiar with who issued The Islamic
23 Nuclear Bomb?

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1 A. Yes.

2 Q. Who?

3 A. Usama bin Laden.

4 Q. Could you please read the text that's highlighted in
5 the callout. And for the record, I've called out text from
6 the middle of the page.

7 A. Yes.

8 It states, "And we take advantage of this opportunity
9 to remind Pakistan that India is just her traditional and
10 apparent enemy. In reality, her enemy is the Crusader-Israeli
11 alliance headed by America that occupies the holy lands
12 (referring here to Saudi Arabia) and Israel which is occupying
13 by force the lands upon which we prayed in peace. For Israel
14 is the head of the Jews, and it is they who supported the
15 Indian nuclear program. And America is the head of the
16 crusaders, and it is they who gave India the green light
17 during Bill Richardson's last visit to the area."

18 Q. Based on your experience, is it fair to say that
19 al Qaeda justifies attacking America based on the United
20 States' support for Israel?

21 A. At least in part, yes.

22 Q. And were Mr. Ali's comments about his justifications
23 for attacking the United States on September 11th, 2001,

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1 consistent with those reasons provided by al Qaeda?

2 A. They were consistent, yes.

3 TC [MR. GROHARING]: If I clear the screen, please.

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

5 Q. And you testified before you're aware of videotapes
6 that were released by al Qaeda taking responsibility for the
7 attacks?

8 A. Yes.

9 Q. Did those videos contain justifications for the
10 attacks?

11 A. Yes.

12 Q. And do they often justify America's support to Israel
13 as a reason for the attacks?

14 LDC [MR. CONNELL]: Your Honor, objection to foundation.
15 I'm not sure which -- the earlier video I had seen. I'm not
16 sure what video is being referred to here or how we know what
17 its authenticity is.

18 MJ [Col COHEN]: Okay. Counsel, even though the rules are
19 relaxed, if you could just ask a few more questions as to what
20 videos we are talking about. That will be sufficient. So
21 I'll sustain but allow you to ----

22 TC [MR. GROHARING]: Thank you, Your Honor. I understand.

23 MJ [Col COHEN]: Thank you.

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1 Q. During your testimony, you talked about reviewing
2 martyrdom videos. Do you recall that testimony?

3 A. Yes. Yes, I do.

4 Q. How many videos of that nature have you seen in the
5 course of your career, would you estimate?

6 A. For martyrdom videos, I would approximate 11.

7 Q. And are you familiar with other videos released by
8 al Qaeda in addition to martyrdom videos?

9 LDC [MR. CONNELL]: Objection to foundation to -- for
10 "released by al Qaeda." A lot of videos on YouTube.

11 MJ [Col COHEN]: Okay. Counsel, why don't you just ask --
12 I'll sustain it but allow you to ask questions about how --
13 why he believes they're al Qaeda videos.

14 Q. To the extent you know, are there videos -- in
15 addition to the martyrdom videos, are there videos that have
16 been released by al Qaeda justifying the September 11th
17 attacks?

18 A. Yes. I'm aware of videos produced by an organization
19 called As Sahab.

20 Q. And what is As Sahab, what's your understanding?

21 A. My understanding is it's a media arm or a -- a group
22 that supports al Qaeda, and its ideals, and publishes the
23 message of al Qaeda.

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1 LDC [MR. CONNELL]: Your Honor ----

2 Q. Are you familiar with any videos ----

3 LDC [MR. CONNELL]: ---- objection.

4 MJ [Co] COHEN]: Basis?

5 LDC [MR. CONNELL]: Same objection as to foundation. It's
6 not that I don't think this witness can testify about
7 generally what some people believe, but a statement like, one
8 organization is wholly incorporated in another organization
9 needs some foundation to it.

10 MJ [Co] COHEN]: Counsel ----

11 TC [MR. GROHARING]: I think I can ----

12 MJ [Co] COHEN]: Counsel, let me say this. I'll sustain
13 it. I don't mind if you want to spend just a few minutes
14 talking about -- it probably would be beneficial to me with
15 respect to weight to understand what is the connection, how do
16 we know -- how does the United States know this, you know,
17 those kinds of things. That would -- that would -- otherwise,
18 it's evidence, but how much weight do you give it depends on
19 the substance of it.

20 TC [MR. GROHARING]: All right.

21 Q. Special Agent Fitzgerald, are you familiar with
22 videos that were found at a location called Tariq Road?

23 A. Yes, I am.

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1 Q. Could you please describe for the military judge the
2 nature of those videos?

3 A. One of the videos that was recovered that I can
4 recall is a video roughly titled The Destruction of the
5 Destroyer USS COLE.

6 Q. Describe that video for the military judge.

7 A. It's a video which depicts video, television video
8 taken from around that time of the destroyer USS COLE. It
9 shows the hole -- it shows a hole in the side of the
10 destroyer, it shows boats driving by it, and there's an
11 overlay of audio describing the attack of the USS COLE.

12 Q. Okay. Were there also other videos at that location?

13 A. Yes.

14 Q. What were the nature of the other videos found at
15 that location?

16 A. The only one I'm recalling right now is that specific
17 one about the USS COLE. I know there were other videos, I
18 don't know how to categorize them at this point.

19 Q. Okay. Are you able to connect the USS COLE video
20 with a release from As Sahab?

21 A. Yes, I am.

22 Q. Okay. And so that's -- that's who officially
23 released that video when it was released on the Internet?

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1 LDC [MR. CONNELL]: Objection to leading, Your Honor. I
2 think the witness may be able to say who released it, but
3 that's different than counsel testifying.

4 MJ [Col COHEN]: I'll overrule. I'll allow both sides
5 some leeway with respect to foundational -- some foundational
6 questions.

7 Q. Are you aware of how that video was released?

8 A. Yes, I am.

9 Q. How was it released?

10 A. It was released by As Sahab.

11 Q. In that video, did al Qaeda provide justification for
12 the attacks on the United States?

13 A. Yes, they did.

14 Q. And did those justifications include U.S. support for
15 Israel?

16 A. Yes, they did.

17 Q. And again, that sentiment, that justifying attacks
18 based on U.S. support for Israel, is that sentiment consistent
19 with the justification that Mr. Ali provided for al Qaeda's
20 attacks on the United States?

21 A. Yes, it is.

22 TC [MR. GROHARING]: Just one moment, Your Honor.

23 MJ [Col COHEN]: You may.

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1 TC [MR. GROHARING]: Permission for the -- to have the
2 feed, Your Honor.

3 MJ [Col COHEN]: You may.

4 TC [MR. GROHARING]: This document has also been approved
5 for public release. It's AE 628AA Attachment L.

6 Q. Special Agent Fitzgerald, have you later learned of
7 additional statements made by Mr. Ali regarding the 9/11
8 attacks?

9 A. Yes, I have.

10 Q. Do you recognize the document that appears on the
11 screen?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's a letter to the military judge regarding a
15 filing made by, at the time, pro se defendants in this case.

16 Q. And are you familiar with a document titled The
17 Islamic Response?

18 A. Yes, I am.

19 Q. What was The Islamic Response?

20 A. The Islamic Response was a reply by the then pro se
21 defendants providing feedback on what they considered or what
22 they thought of the charges that were being levied against
23 them.

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1 Q. And are you familiar with those charges?

2 A. Yes, I am.

3 Q. And were those the charges in the first iteration of
4 military commissions against the accused?

5 A. Yes, they were.

6 Q. Do you know when D-101 was filed?

7 A. Yes, I do.

8 Q. When was that?

9 A. On March 9th, I believe the year was 2008. I don't
10 have it in front of me, but I believe it was March 9th, 2008.

11 I can see on the letter here in front of me, it's
12 saying March 5, but the commission received it -- March 9th is
13 when the military judge responded.

14 Q. Okay. And do you recognize the document on the
15 screen now?

16 A. Yes, I do.

17 Q. What is that?

18 A. That's the document we were referring to, The Islamic
19 Response to the government's nine accusations.

20 Q. Let the record reflect that I've called out a
21 paragraph from the first page of the document. Could you
22 please read that paragraph.

23 A. "With regards to these nine accusations that you are

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1 putting us on trial for, to us, they are not accusations. To
2 us, they are badges of honor, which we carry with pride. Many
3 thanks to God, for his kind gesture, and choosing us to
4 perform the act of Jihad for his cause and to defend Islam and
5 Muslims. Therefore, killing you and fighting you, destroying
6 you and terrorizing you, responding back to your attacks, are
7 all considered to be great legitimate duty in our religion.
8 These actions are our offerings to God. In addition, it is
9 the imposed reality on Muslims in Palestine, Lebanon,
10 Afghanistan, Iraq, in the land of the two holy sites (Mecca
11 and Medina, Saudi Arabia) and the rest of the world, where
12 Muslims are suffering from your brutality, terrorism, killing
13 of the innocent, and occupying their lands and their holy
14 sites. Nevertheless, it would have been the greatest
15 religious duty to fight you over your infidelity. However,
16 today, we fight you over defending Muslims, their land, their
17 holy sites, and their religion as a whole."

18 Q. Calling out another paragraph from page 1 of the
19 document. Could you please read that paragraph.

20 A. It's titled, "First, 'the conspiracy accusation.'"

21 "This is a very laughable accusation. Were you
22 expecting us to inform you about our secret attack plans?
23 Your intelligence apparatus, with all its abilities, human and

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1 logistical, had failed to discover our military attack plans
2 before the blessed 11 September operation. They were unable
3 to foil our attack. We ask, why then should you blame us,
4 holding us accountable and putting us on trial? Blame
5 yourselves and your failed intelligence apparatus and hold
6 them accountable, not us."

7 TC [MR. GROHARING]: Your Honor, I've now moved to the
8 second page of the document and called out text from the
9 middle portion of the page.

10 Q. Could you please read the highlighted text.

11 A. "You are attacking us in Palestine and Lebanon by
12 providing political, military, and economic support to the
13 terrorist state of Israel, which in turn, is attacking unarmed
14 innocent civilians. In addition, Israel attacks Palestinian
15 and Lebanese civilian objects by bombing them and destroying
16 them."

17 Q. Were Mr. Ali's statements to you justifying the
18 attacks based on U.S. support for Israel consistent with the
19 statements in this document that Mr. Ali and the other accused
20 filed with the previous military commission?

21 A. Yes. Yes, they were consistent.

22 Q. I've called out another paragraph on page 2. Could
23 you please read that paragraph.

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1 A. "You are the last nation that has the right to speak
2 about civilians and killing civilians. You are professional
3 criminals, with all the meaning the words carry. Therefore,
4 we will treat you the same. We will attack you, just like you
5 have attacked us, and whomever initiated the attacks is the
6 guilty party."

7 Q. Let the record reflect I've called out text on the
8 next page of the document, page 3 of The Islamic Response.

9 Could you please read that text?

10 A. "You have violated the law of war by supporting the
11 Israeli occupation of Arab land in Palestine and Lebanon, and
12 for displacing five million Palestinians outside their land.
13 You have supported the oppressor over the oppressed and the
14 butcher over the victim."

15 Q. And are these statements also consistent with the
16 statements made by Mr. Ali during your interview?

17 A. In general, they are consistent.

18 Q. I've now called out text on the next page of the
19 document. Could you please read that text.

20 A. "In return, we ask you: Which is more dangerous,
21 hijacking and/or endangering a vessel or an aircraft, or
22 endangering an entire population with a military occupation,
23 killing and endangering innocent civilians by starving them

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1 with an economic sanction?

2 "If you do not respect the innocent in our countries,
3 then we will do the same by exposing you to danger and
4 hijacking in the air, at sea, and land."

5 Q. I've called out another paragraph on that page.
6 Would you please read that.

7 A. "In addition, America is the main shepherd of the
8 main support to the Israeli terrorism against Muslims in the
9 occupied state of Palestine, and also support and bond with
10 the terrorist governments of the Arab and Islamic world,
11 which, in turn, oppress and suppress their own people that are
12 calling for freedom and the application of Islamic law."

13 Q. I've called out another paragraph on the same page.
14 Please read that paragraph.

15 A. "We do not possess your military might, not your
16 nuclear weapons. Nevertheless, we fight you with the Almighty
17 God. So, if our act of Jihad and our fighting with you caused
18 fear and terror, then many thanks to God, because it is him
19 that has thrown fear into your hearts, which resulted in your
20 infidelity, paganism, and your statement that God had a son
21 and your trinity beliefs."

22 TC [MR. GROHARING]: Judge, I've now moved on to the next
23 page.

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1 MJ [Col COHEN]: Page 5?

2 TC [MR. GROHARING]: I believe it's page 6, Your Honor.

3 MJ [Col COHEN]: Oh, you're right. Page 6 of the
4 document. That's correct. Page 5 of ----

5 TC [MR. GROHARING]: Page 5 of The Islamic Response,
6 page 6 of the document.

7 MJ [Col COHEN]: Okay. Thank you.

8 Q. Would you please read the text on that page?

9 A. "America is the number one, and the largest country
10 in the world in spreading military might and terrorism. Also,
11 America is the principle and greatest supplier to the
12 occupying terrorist state of Israel in Palestine. Also,
13 America supports and finances the terrorist regimes that
14 govern the countries of the Arab world, such as Egypt, Saudi
15 Arabia, and Pakistan."

16 Q. I move to the final page of the document. Could you
17 please read that text.

18 A. "We ask to be near to God, we fight you and destroy
19 you and terrorize you. The Jihad in god's cause is a great
20 duty in our religion. We have news for you, the news is: You
21 will be greatly defeated in Afghanistan and Iraq and that
22 America will fall, politically, militarily, and economically.
23 Your end is very near and your fall will be just as far --

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1 your fall will be just as the fall of the towers on the
2 blessed 9/11 day. We will raise from the ruins, God willing.
3 We will leave this imprisonment with our noses raised high in
4 dignity, as the lion emerges from his den. We shall pass over
5 the blades of the sword into the gates of heaven.

6 "So we ask from God to accept our contributions to
7 the great attack, the great attack on America, and to place
8 our nineteen martyred brethren among the highest peaks in
9 paradise."

10 Q. Let the record reflect I've called out the text on
11 the bottom of that page.

12 What does that say?

13 A. It states, "Signed: The 9/11 Shura Council, Khalid
14 Sheikh Mohammed, Ramzi bin As-Shibh, Walid bin'Attash, Mustafa
15 Ahmed Al-Hawsawi, 'Ali 'abd Al-'Aziz 'Ali." It then states,
16 "Sunday," and it provides a Hijri date, "Guantanamo Bay,
17 Cuba."

18 Q. And were the statements in that document filed by
19 Mr. Ali and the other accused in the previous military
20 commission, were the statements in that document justifying
21 the attacks in response to America's support for Israel? Were
22 those statements consistent with the justifications that
23 Mr. Ali provided to you during your interview?

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1 A. Yes.

2 TC [MR. GROHARING]: Your Honor, I've pulled up AE 628AA
3 Attachment M.

4 MJ [Col COHEN]: Thank you.

5 Q. Special Agent Fitzgerald, what is that document?

6 A. That is a chain of custody.

7 Q. Do you recognize that particular chain of custody?

8 A. Yes, I do.

9 Q. What is it?

10 A. That's the chain of custody that I initiated when I
11 received the letter that I just read.

12 Q. Did you receive that -- any other documents with that
13 letter?

14 A. Yes.

15 Q. I'm going to ask you about those.

16 Is this one of the documents that you received with
17 that chain of custody?

18 A. Yes, it is.

19 Q. Just a moment. I believe I can call this out. One
20 second.

21 TC [MR. GROHARING]: Let the record reflect I've called
22 out the document.

23 MJ [Col COHEN]: Thank you.

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25655

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1 Q. Could you please read that document for the
2 commission?

3 A. Yes.

4 It states, "In the name of God." On the right-hand
5 side upper right corner, it states, "TUE," for Tuesday,
6 "March 10, 2009. Re: The Judge's order Re: D-101." Below
7 that in parenthesis, "DTD," I believe for dated, "March 9,"
8 although that's difficult for me to read.

9 The text goes on to state, "I'd like to comment to
10 Paragraph 4 about a translated copy of 'the Islamic Responses
11 to the Gov. 9 accusations.' The original Arabic copy is
12 available with us, as we would like to submit our own original
13 Arabic copy rather than a new translated one by the clerk of
14 the court. An Arabic copy would be sent to the court for the
15 following purpose promptly from the Pro Se."

16 Next line, "By Ammar Al-Baluchi," parentheses -- or
17 correction, quotes, Ali Abdul-Aziz Ali, end quotes, "Pro Se,"
18 signature, "10 March 2009." Below that states, "Attch:
19 Commission order Regarding D-101," with one word obliterated.

20 Q. And do you recognize this document?

21 A. Yes, I do.

22 TC [MR. GROHARING]: Your Honor, that's still part of the
23 same exhibit. It's a later page within the same exhibit.

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1 MJ [Col COHEN]: I recognize that, thank you.

2 TC [MR. GROHARING]: And I've called out the text.

3 Q. What is that document?

4 A. This is a copy of the military judge's letter. At
5 the top is a handwritten notation and there's some underlining
6 on number 4 of the document.

7 Q. And what's the handwritten notation?

8 A. It states "Attachment."

9 Q. And is this the attachment referenced in Mr. Ali's
10 letter that you just read?

11 A. Yes, it is.

12 Q. I've moved to the next page and called out text. Do
13 you recognize this document?

14 A. Yes, this was a sticky note included with the
15 documents.

16 Q. Could you please read it for the commission.

17 A. "Note: This is the original Arabic copy. However,
18 page 2 and 3 are missing. I'll be sending the complete set
19 soon. This is just to show you that we do have the Arabic
20 copy and want to submit," and then there's an arrow pointing
21 to the back side of the sticky.

22 TC [MR. GROHARING]: Clear the screen, please.

23 Your Honor, I'm not sure what you had in mind for a

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1 morning recess, but this would be a time to break in the
2 presentation if it's appropriate for you.

3 MJ [Col COHEN]: It will be. Like I said, I'm trying to
4 let you guys steer me a little bit. But let's go ahead and
5 take a 15-minute recess. Same instructions to the witness.

6 [The R.M.C. 803 session recessed at 1022, 17 September 2019.]

7 [END OF PAGE]

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2 [The R.M.C. 803 session was called to order at 1042,
3 17 September 2019.]
4 MJ [Col COHEN]: Commission is called to order. I
5 recognize that Mr. Mohammad and Mr. Hawsawi have joined us.
6 The witness remains on the stand. He's still under direct
7 examination.
8 Mr. Groharing, your witness.
9 TC [MR. GROHARING]: Thank you, Your Honor.
10 MJ [Col COHEN]: You're welcome.
11 TC [MR. GROHARING]: Permission to have the courtroom
12 feed.
13 MJ [Col COHEN]: You may.
14 TC [MR. GROHARING]: Your Honor, these next exhibits have
15 all been approved for release to the gallery.
16 MJ [Col COHEN]: Okay.
17 **DIRECT EXAMINATION CONTINUED**
18 **Questions by the Trial Counsel [MR. GROHARING]:**
19 Q. Special Agent Fitzgerald, I'd like to ask you next
20 about some records of statements of the accused.
21 A. Yes.
22 Q. Are you familiar with the document on the screen?
23 A. Yes, I am.

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1 Q. What is that?

2 A. That is the front page of a record of a statement.

3 MJ [Col COHEN]: Counsel, what tab are we in?

4 TC [MR. GROHARING]: My apologies, Your Honor.

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

6 TC [MR. GROHARING]: AE 628AA Attachment F.

7 MJ [Col COHEN]: Thank you.

8 TC [MR. GROHARING]: The Bates number ends in five zeros
9 and 39, Your Honor, if that helps.

10 MJ [Col COHEN]: It does. I found it. Thank you.

11 Q. And that's a nine-page document?

12 A. Yes, that's correct.

13 Q. And within that document, does it contain records of
14 statements made by the accused?

15 A. Yes.

16 LDC [MR. CONNELL]: Objection.

17 MJ [Col COHEN]: Counsel, basis?

18 LDC [MR. CONNELL]: Your Honor, I just wanted to state
19 that I do understand that the foundation witness for this
20 document will be testifying later. And so I understand that
21 order of presentation is the one that we've agreed, I don't
22 have any problem with that. I don't know what this witness is
23 going to testify about this document, but my lack of further

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1 objection is conditioned on my understanding that the
2 foundation witness will testify later.

3 MJ [Col COHEN]: Okay. Thank you, Counsel.

4 Carry on.

5 Q. Special Agent Fitzgerald, what are the date -- what
6 is the date of the statements of the accused contained in this
7 record?

8 A. January 26th, 2007.

9 Q. Just to -- that would be after the first three days
10 of your interviews with Mr. Ali?

11 A. Correct. After the first three days but before the
12 last day.

13 TC [MR. GROHARING]: Judge, I've moved to the Bates number
14 0042 within the attachment.

15 MJ [Col COHEN]: Thank you.

16 TC [MR. GROHARING]: And within that, I've called out
17 certain text.

18 Q. Special Agent Fitzgerald, could you please read the
19 text displayed on the screen?

20 A. Yes.

21 "They showed me disasters" -- "matters" -- "I
22 mean" -- "very personal matters related to me, I don't know,
23 they dug up things from all over" -- "my customers" -- "you

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1 know, my customers?"

2 TC [MR. GROHARING]: Another callout from the same page,
3 Your Honor.

4 Q. Special Agent Fitzgerald, could you please read that
5 text?

6 A. On the left-hand side it states "Ammar." Then it
7 states, "They went to them, anything about me" -- "I mean
8 anything that I give" -- "I mean like" -- "business card" --
9 redaction.

10 TC [MR. GROHARING]: For the record, I've moved to the
11 next page, Your Honor, ending in 0043, and called out a
12 portion of the text from that page.

13 Q. Could you please read the text on the screen.

14 A. Yes. On the left-hand side, it states "Ammar."
15 "They showed them my picture" -- redaction, and then there's a
16 redacted blank for, I suspect, a response.

17 And then "Ammar" again. "... all of it, the
18 tape" -- "I don't know how they got this from" -- and then
19 it's redacted.

20 Then the next line down begins with, on the left-hand
21 side, "G," and indicating a person, "Glory to God."

22 "Ammar," then, quote, Do you know this, and then the
23 item is redacted.

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1 Then there's another redaction and at the bottom, it
2 states, "Ammar. Things, disasters. They obtained the bank
3 accounts, the banks" -- "that I had opened, things that I
4 bought - I mean disasters."

5 Q. I've moved down to the next page ending in Bates
6 number 0044. Special Agent Fitzgerald, could you please read
7 the text on that page.

8 A. Yes.

9 First from under -- I'll call it the heading "Ammar."
10 "So everything was there, so disasters" -- "I mean. They
11 showed me papers. Disasters, disasters, I mean, like that."
12 Redacted -- "that is why they" -- redacted -- "were asking me
13 to sign, because these were official papers."

14 Response from G is "Hmm."

15 From Ammar, "To their advantage. So the more
16 official paperwork you have they will benefit more."

17 Response from G, "Yes."

18 Ammar again, "So that's why, I was thinking, myself
19 and 'Ubaydah have the most official paperwork."

20 And response from G is redacted.

21 And then from Ammar, "Mukh" -- "has nothing at all."
22 Redaction -- "I mean they only ask him: 'Did you know this or
23 not know this?' Right? So uh -- we -- we used to move around

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1 using our names and our passports and our" -- blank -- "cards,
2 so everywhere we would leave" -- redacted -- "a picture - I
3 mean something."

4 Response from G, "Yes."

5 Again, from Ammar, "We would leave" -- redacted -- "a
6 bank account, we would leave" -- redacted -- "my travel
7 tickets, they found and brought all of them. All of them!"

8 Q. And these statements according to the record were
9 made by Mr. Ali on 26 January 2007?

10 LDC [MR. CONNELL]: Objection, Your Honor. That's the
11 part we don't have any foundation for yet.

12 MJ [Col COHEN]: Counsel, please, if you will -- if he
13 knows, then ----

14 TC [MR. GROHARING]: Yes, Your Honor.

15 MJ [Col COHEN]: ---- give me some context. Thank you.

16 Q. Do you know, based on this record, when the
17 statements were made?

18 A. Based upon this record, yes, I know the date they
19 were made.

20 Q. And when was that?

21 A. January 26th, 2007.

22 TC [MR. GROHARING]: Clear the feed, please.

23 MJ [Col COHEN]: Thank you. Sustained. Counsel rephrased

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1 the question.

2 TC [MR. GROHARING]: Actually, I'm going to ask you for
3 the feed again. I apologize for asking you to clear the
4 screen.

5 MJ [Col COHEN]: That's all right.

6 Q. Special Agent Fitzgerald, are you aware that Mr. Ali
7 participated in a Combatant Status Review Tribunal on 30 March
8 2007?

9 A. Yes, I'm aware.

10 Q. Do you recognize ----

11 TC [MR. GROHARING]: Your Honor, it's AE 628AA
12 Attachment AAAA.

13 MJ [Col COHEN]: I see that. Thank you, Counsel.

14 Q. And do you recognize the document on the screen?

15 A. Yes, I do.

16 Q. Is that document a Detainee Election Form related to
17 Mr. Ali's CSRT proceeding?

18 A. Yes, I see it refers to ISN 18. So, yes, I can
19 confirm that.

20 MJ [Col COHEN]: Mr. Connell.

21 LDC [MR. CONNELL]: Objection. I just wanted to also note
22 we're going to have the foundation witness for this later. I
23 don't know what value there is to having, you know, a

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1 different witness just read from a document, but if -- to some
2 extent I'm sure that counsel can do that, but there are
3 foundation concerns here as well.

4 MJ [Col COHEN]: Okay. Thank you, Counsel. I will -- I
5 will note the potential objection, if that witness doesn't
6 show up. All right. Thank you.

7 Q. Special Agent Fitzgerald, does this form ----

8 LDC [MR. CONNELL]: Your Honor, I'm sorry. This is my
9 mistake. To my understanding, for this document, there is no
10 foundational witness who is called to testify. Only the
11 Judge Delury will testify about the CSRT, but this is related
12 to the personal representative who the government has invoked
13 national security privilege over and not given us their -- any
14 information for them. So I do object to this particular
15 document.

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

17 Counsel, in light of that, that objection, although
18 hearsay is admissible, give me a little bit more context,
19 please, as to how we know this is attributable to the accused
20 through this witness, if you can.

21 TC [MR. GROHARING]: Yes, Your Honor. And Judge Delury
22 will, in fact, testify about this document and CSRT records --
23 CSRT records in these hearings.

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1 MJ [Col COHEN]: Okay.

2 TC [MR. GROHARING]: And he will identify and I believe --
3 well, I don't want to -- I can ask Special Agent Fitzgerald
4 how he knows.

5 MJ [Col COHEN]: Okay. That would be fine. So you're
6 saying there's going to be another witness who can testify
7 that these -- that this -- this exhibit, for example, is
8 maintained in -- in -- in government records?

9 TC [MR. GROHARING]: Yes, Your Honor.

10 MJ [Col COHEN]: Okay. All right. I'll give you a little
11 leeway with this witness as to -- yeah, since you're having
12 him use this exhibit, let's figure -- give me more background
13 as to, you know, what his familiarity is with it. And then,
14 like I said, I'll address the other issue once the judge --
15 judge testifies. So deferred ruling for now on that.

16 Q. Special Agent Fitzgerald, does this form reflect that
17 Mr. Ali voluntarily agreed to participate in CSRT proceedings?

18 A. Yes, it does.

19 Q. And that Mr. Ali elected to have the assistance of a
20 personal representative?

21 A. Yes.

22 Q. Could you please read the text in the "Meeting three"
23 block at the bottom of the exhibit.

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1 A. Yes.

2 "Meeting three: The Detainee had several questions
3 regarding the Summary of Evidence. He communicated that he
4 was working on his statement to the board. He did indicate
5 that he would be attending his CSRT hearing. He was unsure of
6 asking for any witnesses or evidence."

7 Q. Could you please read the text in "Meeting four."

8 A. "Meeting four: The Detainee provided seven pages --
9 provided seven page oral statement in Arabic. He also
10 provided the following list of witnesses and evidence: KSM,
11 Ramzi, Paracha, Ammar al Tesqui" -- last name spelled
12 T-E-S-Q-U-I -- "Samir al Tesqui, Samir, letter revoking UAE
13 Visa, Fawaz Trading company business license, MEC payroll."

14 Q. All right. Move to the second page of the exhibit.
15 Are you aware whether Mr. Ali ultimately sent requests for
16 witnesses in his CSRT?

17 A. Yes, I know that he sent requests for witnesses.

18 Q. Is your awareness based on the materials in the CSRT
19 records?

20 A. That's correct, from my review of the CSRT.

21 Q. Could you please read the text of "Meeting seven"?

22 A. "Meeting seven: Per Ramzi request, the Detainee
23 wrote the witness questions in his own handwriting. Per

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1 suggestion from the Tribunal President, due to the delay in
2 getting witnesses and evidence, I approached the Detainee as
3 to whether he wants to go forward to the CSRT without all of
4 his evidence and witness. He replied that he wants to wait
5 for all of his witnesses and evidence. I asked him to write
6 up the witnesses expected testimony in preparation of NOT
7 getting all of the requested evidence and witnesses."

8 Q. Special Agent Fitzgerald, did you review the
9 transcript of the actual CSRT proceedings?

10 A. Yes.

11 Q. And as well as statements submitted by Mr. Ali to the
12 CSRT?

13 A. Yes.

14 Q. Did you compare those statements with the statements
15 that Mr. Ali provided to you?

16 A. Yes.

17 Q. Were they in any way different?

18 A. Yes.

19 Q. In general terms, how were Mr. Ali's statements to
20 the CSRT different than what he said to you?

21 A. In general terms, Mr. Ali denied any connection to
22 al Qaeda, and he also characterized his association with
23 Marwan al Shehhi differently than he had when he spoke with

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1 me.

2 Q. Generally, what statements did Mr. Ali make that were
3 consistent with what he had said to you?

4 A. Some of the statements that were consistent were the
5 sending of money, in general terms his association with a
6 person named Marwan al Shehhi, his working at a business in
7 Dubai. I'm trying to recall some of the other facts. But
8 also the fact that he had to leave the UAE on or about, I will
9 estimate, end of August, beginning of September, due to the
10 revocation of his work permit -- I'll call it a work permit,
11 although it may have been something different -- because his
12 company, MEC, was closing.

13 TC [MR. GROHARING]: Your Honor, I've now put AE 628AA
14 Attachment H on the monitors.

15 Q. Special Agent Fitzgerald, is this document another
16 record of a statement of Mr. Ali?

17 A. Yes.

18 Q. And is the date on this document April 8th, 2008?

19 A. Yes.

20 TC [MR. GROHARING]: I've called out text from the third
21 page of the exhibit, but the Bates numbers end in 341, Your
22 Honor.

23 MJ [Col COHEN]: Okay. Thank you.

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1 Q. Could you please read that text.

2 A. Yes.

3 On the left-hand side it's blank, and then it says,
4 "They keep talking about names."

5 G replies, "Do you only go by Ammar?"

6 Ammar replies, "No, the most thing I have are the
7 names" -- "Ammar; Ali; Hani. These were the transfers. I
8 sent transfers through the bank. So these are the names for
9 those transfers. And then" -- redacted.

10 G replies, "Hani?"

11 Ammar replies to him, "Hani, Hani."

12 G replies, "Oh, Hani."

13 Ammar states, "Hani Hanjur. Hani. Isam Mansur.
14 Isam Mansar." And the next space is redacted.

15 Q. And are the names mentioned by Ammar consistent with
16 the names Mr. Ali stated that he used for bank transfers
17 during your interview with him?

18 A. Yes. The names Isam Mansur and Isam Mansar are
19 consistent with the transfers that I attributed to him
20 circumstantially through the totality of the evidence. The
21 name Hani Hanjour is consistent with the name of the
22 individual he opened an account for in the UAE. And the name
23 Hani is also consistent with another transfer that had a

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1 fingerprint that was matched to the accused.

2 TC [MR. GROHARING]: Judge, the next document is AE 628AA
3 Attachment I.

4 MJ [Col COHEN]: Thank you.

5 Q. Special Agent Fitzgerald, is the date on this
6 document October 19, 2008?

7 A. Yes.

8 TC [MR. GROHARING]: Your Honor, I've moved on to the page
9 that ends in Bates number 352. I believe it's the third page
10 of the exhibit.

11 MJ [Col COHEN]: Thank you. Yeah, I have the
12 MEA-XYMA-0 -- ending in 352 at the bottom of the right page.
13 Thank you.

14 Q. Special Agent Fitzgerald, could you please read that
15 document.

16 A. Yes. I'll read the name on the left and then the
17 statement.

18 "Ammar." "The infidels originally" -- redacted --
19 "that book, the Americans say that they had wanted to attack
20 Afghanistan; you know, on the 8th or 9th of September, there
21 were decisions about attacking Afghanistan before the
22 operations by days. They had prepared themselves. They
23 wanted to attack Afghanistan" -- redacted.

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1 G replies, "For what reason?"

2 Ammar replies, "What?"

3 G replies, "For what reason?"

4 Ammar states, "The brothers. They sent a threatening
5 letter so that the Taliban would kick out the Shaykh and the
6 brothers" -- redacted. "Planning" -- "they had been planning
7 since the year 2000 so they can attack, the Shaykh and" --
8 redacted. "They had made plans, and when September 11th
9 happened they were coming no matter what would have happened.
10 They stated this very clearly. There was a book called
11 *9/11 Commission Report* that my lawyer sent. This has" --
12 redacted.

13 G replies, "A lot?"

14 Ammar states, "I mean it has things about the
15 brothers, and about the Shaykh, many things. I mean very
16 helpful things that one should know. Very helpful
17 information."

18 G replies, "What is it called?"

19 Ammar states, "*The 9/11 Commission Report.*"

20 G replies, "*Commission Report?*"

21 Ammar states, "Yes." -- redacted. "The Shayikh
22 said: If America goes to war with the sons of the Land of the
23 Two Holy mosques, it will not get out of it in good shape."

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1 Then there is a redaction, and down below -- do you want me to
2 continue to read?

3 Q. Please continue.

4 A. There's nothing on the left-hand side.

5 "G says it is a conspiracy by the Americans. Ammar
6 agrees that it is all a conspiracy and adds that just like the
7 US and the Americans support Israel, he supported the
8 hijackers and if he is called an enemy combatant then all
9 Americans should also be called enemy combatants. Ammar adds
10 that the Americans know 100% that they are responsible for
11 killing innocent people."

12 Q. And you testified before about the name Ammar?

13 A. Yes.

14 Q. Is that a name you know that is used by Mr. Ali?

15 A. Yes.

16 Q. In the context of these statements, who do you
17 understand Ammar to be referring to?

18 A. In -- could you be more specific?

19 Q. Is the Ammar in these statements -- who do you
20 understand that person is?

21 A. I understand Ammar to be ----

22 LDC [MR. CONNELL]: Objection to foundation.

23 MJ [Col COHEN]: Counsel, ask -- before he answers that

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1 question, let's find out how he would know that.

2 Q. Do you ----

3 MJ [Col COHEN]: Sustained. But you may go along those
4 lines. Thank you.

5 Q. What names do you know Mr. Ali by?

6 A. I can specifically point to the letter that I just
7 read in red ink, the March 9th -- or correction, March 10th
8 letter. And it was signed by Ammar al Baluchi. And then
9 beside that in quotes it stated, "Ali Abdul Aziz Ali," and
10 then it had his signature and a date. So that's one of the
11 ways I can associate the name Ammar with Mr. Ali Abdul Aziz
12 Ali.

13 TC [MR. GROHARING]: Okay. I don't have any additional
14 questions on that point, Your Honor.

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

16 Q. In that document, Ammar refers to the "Shayikh."
17 Does that name have any significance to you?

18 A. Yes.

19 Q. Who do you understand the Shayikh to be?

20 A. I understand the Shayikh to be Usama bin Laden.

21 Q. And based on your experience, what do -- how do
22 members of al Qaeda refer to Usama bin Laden?

23 A. I've heard them refer to him as the Shaykh, the Amir,

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1 the Stick, names such as that.

2 TC [MR. GROHARING]: Okay. The next document on the
3 screen is from AE 628AA Attachment K -- KK -- or, I'm sorry,
4 just single K. And the Bates number on the screen ends in
5 860, Your Honor. There are a number of documents within
6 Attachment K.

7 Q. Do you recognize this document?

8 A. Yes, I do.

9 Q. What's the date on this document?

10 A. It is November 5th, 2008.

11 Q. And is this also a record of statements of Mr. Ali?

12 A. Yes.

13 TC [MR. GROHARING]: Your Honor, I've moved to page 2 of
14 the document. It's Bates 861, and I've called out text from
15 the bottom of that document.

16 MJ [Col COHEN]: Just one second, Counsel. I'm --
17 Counsel, my copy -- my courtesy copy that you provided me
18 jumps from 353, and the next one that I pick up with is 883.
19 And then I don't have -- and then from there it's in
20 sequential order, essentially, through the 900s.

21 TC [MR. GROHARING]: Your Honor, in the initial documents
22 there were two identical versions of the same document with
23 different Bates numbers, and they were put in the original

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1 binder. They've been fixed in the appellate exhibit, but I
2 don't believe -- it doesn't appear that those ----

3 MJ [Col COHEN]: Would you please go back two slides.

4 Okay.

5 TC [MR. GROHARING]: There it is. It's -- if it's
6 helpful, Your Honor, the date ----

7 MJ [Col COHEN]: Yeah.

8 TC [MR. GROHARING]: ---- should be 5 November 2008 on
9 both documents.

10 MJ [Col COHEN]: Thank you.

11 Counsel, I'm not going to completely stop us here,
12 but my K does not match what you -- what you said. So I don't
13 have -- this may be somewhere in here, but it's not under K
14 for me, so ----

15 TC [MR. GROHARING]: May I just have one moment, Your
16 Honor?

17 MJ [Col COHEN]: You may.

18 [Pause.]

19 MJ [Col COHEN]: Mr. Groharing.

20 TC [MR. GROHARING]: Okay.

21 MJ [Col COHEN]: We can make these exhibits Tab K and swap
22 them out later. But so I'll treat -- unless you tell me that
23 you found them somewhere else later, but otherwise for now

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1 I'll refer to these as Tab K, and let's go ahead and proceed.

2 TC [MR. GROHARING]: I think you might have it under Bates
3 356, Your Honor. That's the Bates number that was in the
4 original ----

5 MJ [Col COHEN]: I do have 356. All right. Thank you.

6 TC [MR. GROHARING]: May I continue, Your Honor.

7 MJ [Col COHEN]: You may. Thank you. So we're now on to
8 the second page of that document. You have pulled out text.

9 TC [MR. GROHARING]: It's Bates number 861 from the filed
10 notice, the correct copy of the notice of the exhibits.

11 MJ [Col COHEN]: Okay. And I'm tracking it as 357 as
12 well. Thank you.

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

14 Q. Please read the text on that document.

15 A. On the left-hand side from Ammar, "Praise be to God
16 that I translated the letter today. I got guidance from God
17 Almighty; I translated it. I sent it; I sent it in Arabic and
18 in English."

19 G replies, "You sent it?"

20 Ammar states, "I did send it. Plea guilty" --
21 redacted -- "Signed. A complete letter, complete. There is
22 no chance. We cancelled all of the motions."

23 G replies, "The problem is, Ammar, that you cannot

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1 change your statement."

2 TC [MR. GROHARING]: Your Honor, I moved on to the next
3 page which is Bates number 862.

4 Q. Could you please read the text on that page, Special
5 Agent Fitzgerald.

6 A. Yes.

7 It starts with "Ammar," who states, "Yeah?"

8 G replies, "Let me ask you when" -- redacted -- "the
9 brothers wanted to do this action, did you know about it?"

10 Ammar states, "Which one?"

11 G replies, "The operation that the brothers wanted
12 you to do; you didn't know!"

13 Ammar states, "No. I did know!"

14 G replies, "Okay. So where is the guilt here?"

15 Ammar states, "The guilty" -- redacted. "I did the
16 action that I wanted to do, not the one they did, the one I
17 did. You understand?"

18 G replies, "Yes."

19 Ammar states, "And if I am guilty in regards to the
20 action I did, then I am guilty. That is only what" --
21 redacted.

22 G states, "Ammar! You have a case, you have a
23 case" -- redacted.

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1 Ammar states, "I know."

2 G replies, "You are" -- redacted -- "what it should
3 be is that from the beginning" -- "that's -- it's" -- "you won
4 this case. But it's your pride, just pride, not" --
5 redacted -- "for nothing, you will lose this one."

6 Ammar. Redacted.

7 G replies, "I mean" -- "you did it for the sake of
8 God. For example."

9 Ammar replies, "Yes, yes."

10 G states, "And you didn't know that it was for, for
11 the sake of God; you served your maternal uncle who told you:
12 Do this! And you did it."

13 Ammar reply redacted.

14 G states, "Okay, if you say 'for the sake of"
15 -- redacted -- "did this for the sake of God" -- redacted --
16 "and you didn't know that those were doing it for the sake of
17 God. You are putting yourself in trouble that you are not
18 involved in. Your mother and your brothers are waiting for
19 you and" -- redacted. "They are worried sick and stressed and
20 you are" -- redacted -- "what you call it" -- redacted.

21 Ammar replies, redacted. "I know, I know. I know.
22 I know."

23 G replies, "Why is this?"

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1 Ammar states, "There are things, there are things."

2 G states, redacted. "What" -- "I don't understand
3 this" -- "there are things and you are creating a problem,
4 putting yourself in trouble just because uh" -- redacted --
5 "you didn't do it or you didn't know."

6 Ammar replies, "You will find out, you will find out;
7 I am not going to tell you here. I will tell my lawyers and
8 they will tell you."

9 G replies, redacted.

10 Ammar states, "No, no; don't rush, don't rush,
11 please. Look at this white butterfly, you see it?"

12 G states, "God willing, it is a good sign."

13 Ammar reply redacted --

14 TC [MR. GROHARING]: I've moved on to the next page of the
15 document, Your Honor, and I've called out text.

16 Q. Could you please read that text.

17 A. -- G states, "I mean if you say" -- redacted -- "just
18 like it happened. Look" -- redacted.

19 Ammar replies, redacted.

20 LDC [MR. CONNELL]: Your Honor, for the sake of
21 completeness, I think counsel omitted three lines that should,
22 in fairness, be included.

23 MJ [Col COHEN]: Counsel, could you go back and -- go back

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1 to the un-pulled-out version? Will you have him read from the
2 beginning, please.

3 TC [MR. GROHARING]: All right. Yes, Your Honor. Should
4 we read the first two lines and then call out the text, just
5 for ease of ----

6 MJ [Col COHEN]: That would be fine.

7 TC [MR. GROHARING]: ---- viewing?

8 WIT: I can read the whole thing.

9 Q. Could you please read the first two lines and then
10 I'll call it out.

11 A. First line from G, "I don't want you to" --
12 redacted -- "what you call it" -- redacted.

13 Ammar, "No, your words will not change my opinion,
14 and I understand; I don't think -- don't think I don't
15 understand."

16 Shall I ----

17 MJ [Col COHEN]: Allow him to pull it out to make it
18 easier to read, and then if we need you to read those last few
19 lines, that will be fine, too.

20 Q. I've called the document back out. Can you please
21 continue reading.

22 A. G states, "I mean if you say" -- redacted -- "just
23 like it happened. Look."

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1 Ammar replies ----

2 TC [MR. GROHARING]: Your Honor, excuse me. I don't think
3 the microphone is picking up Special Agent Fitzgerald. Could
4 you just --

5 MJ [Col COHEN]: There we go.

6 TC [MR. GROHARING]: Thank you.

7 A. Ammar replies -- "I did say" -- "I said it happened
8 -- I said it like it happened. The issue is there were a lot
9 of questions that needed answers. We sat down and answered
10 them. The biggest question was that we take the
11 responsibility of September 11th. We announce it, not
12 putting -- not them putting the charges on us. These charges
13 are in court, believe me; they are there, printed on paper and
14 with evidence, no one believes it in the whole world" --
15 redacted. "The Shaykh talked a thousand times, there are
16 books with the American people, there are programs that they
17 watch, they say the Shaykh works for the CIA. Okay? You
18 understand? Up until now, there are people who do not believe
19 the Shaykh; they say this is a fictional thing; the CIA did
20 this and it is a game by the CIA. Until now! Until now,
21 inside America. So for me, my lawyers did not help me to
22 understand things" -- redacted. "There are people who do not
23 believe it, and still don't. You see. So we have to accept

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1 reality and give a very clear picture, not leave any shadow of
2 doubt."

3 G replies, "This not" -- redacted.

4 Ammar states, redacted -- "Listen, listen, listen!
5 This is not case" -- "talk, not legal. Legal" -- redacted --
6 "this talk" -- "I mean legal" -- "put an x on it. It is
7 not" -- redacted. This is about principle, you understand?
8 So the complete announcement is some kind of" -- redacted --
9 "I mean" -- redacted. "God willing, for the Islamic
10 religion" -- redacted -- "and God will" -- redacted. It
11 cannot be that someone says: 'I did this thing' and another
12 says: 'I didn't know.' Or" -- redacted -- "I am saying that
13 I did know. I will say what I did. 'My role was this and I
14 did this. And you, judge me.' So I will not add or subtract,
15 I will say: This is my role. This thing, this idea is not a
16 new idea; I have been working on it since August" -- redacted
17 -- "and I talked to them and they said this and that; then
18 Mukh sat down and fixed the matter." Redacted. "Noting that
19 when he came, every brother started accusing him saying: 'You
20 stole my ideas, you stole my ideas.' And I" -- redacted --
21 "nothing." -- redacted.

22 G replies, "But, Ammar, sometimes" -- redacted.

23 Ammar states, "I think that" -- redacted --

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1 unreadable -- "yesterday there was an extensive discussion, an
2 Islamic Shari'ah, worldly and legal discussion. Legal and
3 this and that, etc., etc. Many aspects."

4 TC [MR. GROHARING]: And, Your Honor, did you indicate
5 that you wanted the remainder of that text read?

6 MJ [Col COHEN]: If counsel requests it; otherwise, I will
7 want to move on. I have the whole document for my review, but
8 I have no problem with a general rule of completeness here.

9 LDC [MR. CONNELL]: If that's all there is from this
10 document, then counsel can stop there.

11 MJ [Col COHEN]: Okay. Thank you.

12 LDC [MR. CONNELL]: If counsel intends ----

13 MJ [Col COHEN]: All right. Then let's just move on then.
14 I have the whole document.

15 Q. Special Agent Fitzgerald, I note in that document
16 there's -- the term "Mukh" is used. Are you familiar with
17 that name?

18 A. I have heard the name before, yes.

19 Q. Is that a name you learned during your investigation
20 into the 9/11 attacks?

21 A. Yes.

22 Q. Who was referred to -- when you've heard that, who
23 was referred to by that name?

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1 A. I have heard -- let me start over.

2 I've heard the name Mukhtar in relation to Khalid
3 Shaikh Mohammad, and I have also heard the name Mukh.

4 TC [MR. GROHARING]: Okay. I've now pulled up AE 628AA
5 Attachment J. Bates should be 362.

6 Q. Special Agent Fitzgerald, do you recognize that
7 document?

8 A. Yes, I do.

9 Q. What is the date of that document?

10 A. November 25th, 2008.

11 TC [MR. GROHARING]: Your Honor, I'm on Bates number 364.

12 MJ [Col COHEN]: I see that. Thank you.

13 TC [MR. GROHARING]: And I've called out text on that
14 page.

15 Q. Special Agent Fitzgerald, could you please read that
16 text?

17 A. Yes.

18 First starting with Ammar. "Do you want to hear my
19 plea or you don't?"

20 G replies, "What?"

21 Ammar states, "Do you want to hear my plea guilty?"

22 G replies, "Do you have a problem?"

23 Ammar states, "I do have a problem, you will use it

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1 against me later."

2 G's reply is redacted.

3 Ammar states, "They will bring you to testify. They
4 will tell you: 'We will let you out.'"

5 G's reply is redacted.

6 Ammar states -- and there's an initial redaction --
7 "Praise be to God, the one and only, who did not give birth
8 and was not born, and who has no equivalent whatsoever. And I
9 pray and greet on the last of the prophets and those who were
10 sent, Muhammad the son of 'Abdallah, and on all of his family
11 and companions. I consider the military operations in
12 New York and Washington on September the 11th are of the best
13 of my deeds that I will face God Almighty with on the day of
14 judgment, therefore I am very happy to" -- redacted -- "am
15 extremely very happy to announce today in front of all people,
16 those who are infidels and those who are believers, that I
17 participated in financing this operation through transferring
18 amounts of monies to the following: the martyr Muhammad Atta
19 and Marwan Al-Shihi, God have mercy on him, in order for them
20 to complete their studies and preparedness for the operation.
21 And" -- redacted -- "I received all these monies from my
22 mujahid brother Khalid Shaykh Muhammad. And I was also the
23 link" -- "You know what the link means" -- "between the

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1 leadership HQ in each of Pakistan and Afghanistan, and Germany
2 and the America. And I had the honor of participating in
3 preparing some of the mujahidin brother who carried out these
4 attacks by providing logistic support to them while they were
5 present in the Emirates before they traveled to the United
6 States. And it was my intention to follow" -- "to join
7 them" -- "and it was my intention to join the battalions of
8 this blessed raid but unfortunately, I could not obtain an
9 entry visa in America" -- redacted. I carried out this work,
10 and I pledged allegiance to the mujahid shaykh, the shaykh of
11 the mujahidin, the great mujahid Usama Bin Laden, may God
12 protect him, to give submission and obedience in jihad, and to
13 commit jihad with total conviction in religious Shari'ah about
14 the necessity to commit jihad and fight you wherever you are
15 in this world until you leave our holy lands in the land of
16 the two noble holy mosques; and until you stop you siege and
17 killing Muslims in Iraq; and until you stop" ----

18 TC [MR. GROHARING]: Your Honor, I've now called up the
19 next page, it's Bates number 365.

20 Q. Could you please continue reading.

21 A. ---- "until you stop your support to the state of
22 terrorist Zionism that is killing our Muslim brothers in
23 Palestine and Lebanon and is desecrating the Aqsa mosque and

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1 occupying the Arab and Muslim lands. So if you consider my
2 work and jihad against me -- against you on the 11th of
3 September" -- redacted -- "to be terrorism or a crime then I,
4 with much pride, honor and dignity announce it to all people
5 that I am a terrorist and a first-class criminal" -- redacted.
6 "Ubaydah wrote this for me. I don't know where he got this
7 'first-class!'"

8 Ammar again -- and first is redacted -- "And I wish
9 that I would be killed by you so I" -- and there's a blank --
10 "you would be in hell. And I tell you what God ordered me" --
11 redacted -- "to say to you: 'Say that we will not be
12 subjected to -- subjected but to only what God has predestined
13 for us; he is our lord, and on God the believers will go
14 forward.' This announcement comes voluntarily from me,
15 without being forced or pressured or promise" -- redacted --
16 "or an agreement with any side. God is great and may the
17 prophet of the believers be honored." -- redacted. "What?"

18 G's reply is redacted.

19 Ammar then states, "You mean I should say it? You
20 will say it?"

21 G's reply is redacted.

22 Ammar states, "You? I gave" -- redacted --
23 "Ubaydah" -- redacted -- "like small chunks and he expanded

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1 it. And he replied to what they charged us with for
2 September 11th."

3 G replies, "What?"

4 Ammar states, "Do you have nine charges? I told
5 Khallad that Haytham had ten and he went crazy. He said:
6 'Why ten?'"

7 G's reply is redacted.

8 Ammar states, "Zahir says: 'I have eight.' These
9 are" -- redacted -- "the Islamic replies to the nine American
10 charges. Ubaydah made a Shura" -- redacted -- "council for
11 9/11."

12 G's reply is redacted.

13 Ammar states, "A shura council. He says:" --
14 redacted -- "Those charges which you call charges, and you are
15 putting me on trial for -- on trial for are not charges, but
16 for us they are an honor, and a source of pride. We are proud
17 of it, praise be to God, that he chose us for the blessing of
18 jihad for the sake of victory to support our religion and to
19 defend Islam and Muslims; therefore killing you, fighting you,
20 destroying you, terrorizing you and responding to your
21 aggression is considered a great obligation in
22 Shari'ah in our religion. And is a great manner in which we
23 can be closer to God; and it is also a practical necessity

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1 that was compelled by the reality of Muslims in Palestine,
2 Iraq, Lebanon and the land of the two holy mosques; and in the
3 whole world, where Muslims are suffering your terror,
4 violence, killing of innocents and" -- redacted -- "occupation
5 of their" ----

6 Q. I've now pulled up the next page of that document,
7 Bates number ending in 366 and called out text.

8 Could you please continue reading.

9 A. ---- "occupation of their lands and their sacred
10 sites. So if we fight you, even just because of your
11 blasphemy of God and his messenger, God's prayers and peace be
12 upon him, then that would be the greatest type of worship in
13 our religion; but today we are fighting you in defense of
14 Muslims, and their lands, sacred sites and religion. He says
15 'the charge of conspiracy, this charge is hilarious.' And he
16 said: 'Were you expecting that we would'" -- redacted.
17 "'were you expecting us to inform you of our secret plans'" --
18 redacted -- "'for striking you?' You understand? He is
19 saying: 'You want us to tell you beforehand about our secret
20 plans to strike you?' So if your intelligence systems with
21 all of their manpower and resources had failed to uncover the
22 military plans for the attacks of September 11th, and hence in
23 stopping them, then why are you blaming us, holding us

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1 responsible and putting us on trial?' He is saying their
2 intelligence made the mistake, not us. 'Blame yourselves and
3 your failed intelligence systems and hold them responsible,
4 not us. As for us, we have taken all precaution and measures
5 for secrecy in a war against you; and this is a natural thing.
6 We have known" -- redacted -- "God has taught us that, may he
7 be exalted, and said: 'Oh believers, be careful'" --
8 redacted -- "'and all of you. O you who believe, take
9 your'" -- redacted -- "'precaution,' precaution."

10 MJ [Col COHEN]: Mr. Connell, are you okay with not
11 reading the rest of that for now?

12 LDC [MR. CONNELL]: Sir, there's not much left, I think we
13 should finish it, for fairness.

14 MJ [Col COHEN]: Okay. Counsel, will you go back and let
15 him read the last couple of sections there. One more.

16 Sir, would you mind reading from "G" and "yeah."

17 WIT: Yes, Your Honor.

18 MJ [Col COHEN]: Thank you.

19 WIT: G states, "Yeah."

20 Ammar states, "Take your" -- blank -- "precaution and
21 others" -- redacted.

22 G states, "What?"

23 Ammar replies -- redacted -- "and other" --

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1 redacted -- "Take your precaution and either go forth on
2 expedition in parties or go forth together." -- redacted.
3 "This is a translation."

4 The next line is redacted. Then it states in
5 summary, "Ammar talks about the World Almanac, which he
6 brought to read. They talk about the DSMP, games, movies,
7 newspapers, TV programs, US political news, Hindu people
8 praying in front of a computer, the Peter Pan movie and the
9 Tinker Bell fairy animated character." The next line is
10 redacted.

11 MJ [Col COHEN]: Thank you.

12 TC [MR. GROHARING]: Your Honor, the next document I'm
13 pulling up is also part of Attachment K. The date is
14 9 December 2008 and MEA -- the last three digits are 874.

15 MJ [Col COHEN]: One second, Counsel. Mine -- okay. I
16 have mine as 367, but I do recognize the document that's being
17 displayed.

18 Q. Special Agent Fitzgerald, what is the date of this
19 document?

20 A. December 9th, 2008.

21 Q. I've called up the page 2 of the document ending in
22 Bates number 875. Could you please read that text?

23 A. It's attributed to Ammar. It states, "Thank God, for

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1 me" -- redacted -- "well the brothers" -- "God be
2 exalted" -- "they wrote it in Arabic and I said we should
3 write it in English; they all were: 'No, there was no need
4 for that!' I said: 'You don't know how they will translate
5 it.' So thank God I wrote it in English. If I hadn't" ----

6 TC [MR. GROHARING]: I've moved -- Your Honor, I've moved
7 to the next page ending in Bates 876.

8 Q. Could you please continue reading the text?

9 A. "If I hadn't written it in English I don't know how
10 they would have translated it, you see how? You write it in
11 English, and when the judge receives it he opened it and read
12 it right away. When he got it, he opened it and read it, you
13 see how? So he read the letter, then made copies; there were
14 five of us, with the prosecution, that is six copies. It
15 was" -- "I think a classified paper, it was distributed to us.
16 Most of the lawyers had not seen it. It was the first time
17 they see it. And the most amazing thing is the prosecution;
18 their eyes were wide open, like this. Plea" -- redacted --
19 "guilty? They were happy! You understand?"

20 TC [MR. GROHARING]: Your Honor, I've now pulled up 628AA,
21 again Attachment K. The Bates numbers for this end in 883.
22 It's dated 11 March 2009.

23 MJ [Col COHEN]: I see that one. Thank you.

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1 Q. Special Agent Fitzgerald, what's the date on this
2 document?

3 A. March 11th, 2009.

4 Q. I've moved to Bates numbers 884, page 2 of the
5 document. Could you please read the text there.

6 A. "Ammar." "They published those charges" -- "the
7 Islamic responses for the charges" -- "nine. You know? They
8 published them. They published them. We gave them to the
9 court, they published them."

10 G responds, redacted. "Yes. Yeah."

11 Ammar states, "I mean public. For public release."

12 TC [MR. GROHARING]: Your Honor, I've called up the next
13 page, Bates number ending in 885, page 3 of the document.

14 Q. Special Agent Fitzgerald, could you please continue
15 reading?

16 A. Ammar states, "To the court. So right away, they
17 were pleased; the government was pleased. They published
18 them, hurriedly. Six pages; they said: 'Immediate public
19 release.' I mean to be published. So they published it.
20 Immediate, meaning hurriedly. God be exalted! Now Ubaydah's
21 lawyer will scold us."

22 LDC [MR. CONNELL]: Sir, we need the next line there for
23 completeness.

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1 MJ [Col COHEN]: Okay. Counsel, if you go back, please.
2 One more, please. Can you start with G and blank and then if
3 you will just read the rest, that will be great. Thanks.

4 WIT: Yes, Your Honor.

5 G's reply is redacted.

6 Ammar states, "She will say that we instigated
7 Ubaydah. She doesn't know that it was him that instigated
8 us."

9 G's reply is redacted.

10 Further down ----

11 LDC [MR. CONNELL]: We don't need the rest, Your Honor.

12 MJ [Col COHEN]: Are you good? All right. Thank you,
13 sir. Appreciate it.

14 TC [MR. GROHARING]: Your Honor, again, this is from
15 AE 628AA Attachment K as well, the ending Bates numbers are
16 894, and it's dated 9 December 2009.

17 MJ [Col COHEN]: Thank you.

18 Q. Special Agent Fitzgerald, what's the date on this
19 document?

20 A. December 9th, 2009.

21 TC [MR. GROHARING]: Your Honor, I've moved to the third
22 page of the document and called out text. It should be Bates
23 896.

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1 MJ [Col COHEN]: I see it. Thank you. I see a Bates
2 stamp ending in 896.

3 Q. Could you please read that text.

4 A. Yes.

5 Reading, noting on the left a person identified as F,
6 states, "If you allow him to say things, it might lead to a
7 conviction against you or something; or it might not be. I
8 don't know what your situation is exactly" -- "I mean in the
9 case. Because according to what 'Abd-al-Hadi said, there is
10 no evidence against you. Their evidence against you" --
11 redacted -- "unless you want to confess? That is another
12 matter."

13 Ammar states, "No. Evidence. There is evidence. I
14 mean as far as material evidence, the most they have is from
15 me."

16 F states, "Material evidence?"

17 Ammar replies, "Yes. Myself; Ubaydah; Zahir; but the
18 most is me. Because why? First the money amounts that" --
19 redacted.

20 F replies, "Account numbers and stuff like that?"

21 Ammar replies, "The" -- redacted -- "three-quarters
22 of the money for the operation was sent through me, for
23 example. You understand?"

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1 F's reply is redacted.

2 Ammar states, "And they say that they have evidence
3 about this matter. And there is evidence that the brothers
4 had communications with me."

5 F's reply is redacted.

6 Ammar states, "I know. I know. Yes."

7 F replies, "Okay. Good."

8 Ammar states, "So this evidence that they have, they
9 said: 'We have it.' They" ----

10 TC [MR. GROHARING]: Your Honor, I've called out the page
11 ending in Bates number 897.

12 Q. Could you please continue reading.

13 A. "They have" -- "that there were communications" --
14 redacted -- "and money. This is the evidence. I don't know
15 if there's anything else other than this. But Majid Khan does
16 not know; so even if he testifies" -- "he cannot testify
17 against me about the subject of September 11th. He has no
18 involvement. He actually does not know what my case is for
19 September 11th."

20 LDC [MR. CONNELL]: Two more lines please, Your Honor.

21 MJ [Col COHEN]: Two more? Okay.

22 Counsel, if you could go back, and we'll just read
23 those next two lines. So just the F and then the initial

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1 Ammar response.

2 WIT: Yes, Your Honor.

3 F replies, "Meaning he has nothing to testify against
4 you."

5 Ammar states, "None!"

6 MJ [Col COHEN]: Counsel, is that sufficient? All right.

7 Then, Mr. Groharing, you may continue on with your
8 presentation. Thank you.

9 Q. Special Agent Fitzgerald, this -- there's an F that
10 it attributes some of the statements in this document. Do you
11 know who that F is?

12 A. Yes.

13 Q. Who is the F in that document?

14 A. According to this document, it's Faraj al Libi.

15 Q. Who is Faraj al Libi?

16 A. He's a detainee here at Guantanamo Bay.

17 TC [MR. GROHARING]: Just one moment, Your Honor.

18 MJ [Col COHEN]: You may.

19 Counsel, for planning purposes, once again, we'll
20 take as much time as we need to, but it's approximately 1147.
21 Well, just turned 1147. We're going to take a break at 1230,
22 so that gives you approximately 43 minutes to get to whatever
23 point you need to, and then -- but at some point, let me know

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1 if that's a good break.

2 TC [MR. GROHARING]: I just need 15 minutes, Your Honor,
3 and that may conclude the government's presentation.

4 MJ [Col COHEN]: Okay. Excellent. Thank you. Then we
5 may take an early lunch and then just come back a little bit
6 earlier to start cross-examination rather than start and take
7 a quick break.

8 TC [MR. GROHARING]: Your Honor, could I just clear the
9 screen for a moment?

10 MJ [Col COHEN]: You may.

11 TC [MR. GROHARING]: Could I have the feed again, please?

12 MJ [Col COHEN]: You may.

13 Q. Special Agent Fitzgerald ----

14 TC [MR. GROHARING]: Your Honor, I've called up AE 628AA
15 Attachment N. It should end in Bates number 373.

16 MJ [Col COHEN]: I have that, Counsel. Thank you.

17 Q. Special Agent Fitzgerald, what's the date on this
18 document?

19 A. April 2nd, 2010.

20 TC [MR. GROHARING]: Your Honor, I've called up page 3,
21 which ends in Bates number 375.

22 MJ [Col COHEN]: I have that. Thank you.

23 Q. Could you please read that text?

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1 A. Yes.

2 F states, "God bless, God bless, God bless. The job
3 you had in the Emirates" -- redaction.

4 Ammar replies, "Yeah."

5 F states, "How much salary did they give you?"

6 Ammar replies, "About 1,000 dollars or a little
7 less."

8 F states, "Huh?"

9 Ammar replies, "About 1,000 dollars or a little
10 less."

11 F replies, "I mean they" -- redacted -- "God help us.
12 If you were an Emirati citizen" -- redacted.

13 Ammar replies, "If I were an Emirates citizen, it
14 would be 3,000 dollars."

15 F replies, "Huh."

16 Ammar states, "At least 3,000 dollars. Three
17 thousand."

18 F replies, "Dollars? If you are a citizen of the
19 Emirate?"

20 Ammar states -- redacted. "Yeah" -- redacted --
21 "Yeah." And again redacted. "I could have" -- redacted -- "I
22 mean look for other opportunities, in the same location, with
23 higher salaries."

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1 F replies, "Oh."

2 Ammar states, "But I didn't want to. I mean, I
3 wanted to dedicate all my time for the brothers. And the work
4 I used to do helped me with that, meaning it had ways out. I
5 mean, I would travel about once or twice a month, go to
6 Pakistan."

7 TC [MR. GROHARING]: Your Honor, I've moved to the next --
8 it's Bates number that ends in 376. I believe it's page 4 of
9 5 of the document.

10 MJ [Col COHEN]: I see that. Thank you.

11 Q. Could you please read that text?

12 A. F states, "On their expense?"

13 Ammar replies, "No, no, on my own expense, but the
14 other work did not allow much time for that."

15 F replies, "You could do that?"

16 Ammar states -- redacted -- "If I had the time, my
17 passport was with me and I would travel. In other jobs they
18 might keep your passport. I mean there are a lot of issues."

19 F replies, "Hmmm."

20 Ammar states, "I mean they would ask you, 'Where are
21 you traveling,' etc. because the price of the ticket is high,
22 you know. It was not cheap."

23 F's reply is redacted. Then states, "Yeah."

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1 Ammar states, "I mean, Glory be to God. I had wanted
2 to go inside."

3 F replies, "Huh?"

4 Ammar states, "To go inside. But it didn't work out.
5 Every time I tried, it didn't happen. Even" -- redacted --
6 "for training, I could not. And I saw that, for me, God had
7 prepared me for another matter. Do the same work but in
8 another location."

9 F replies, "Yeah."

10 Ammar states, "God's will."

11 F replies, "That is the way it is" -- redacted. "And
12 what you desire, God desires better. You see, Ammar?"

13 Ammar states, "Glory to God. Yes. But you see,
14 nonetheless, my situation was the same like the brothers. I
15 was not different. The brothers go through rough times, and
16 at the same time, I would go through the same thing. There
17 was a time when the brothers went through" -- redacted -- "was
18 financially hard for them in terms of food and stuff like
19 that. Believe me Abu Al-Faraj; it was the same for me. I was
20 living and I had bags full. You understand?"

21 F replies, "Yeah."

22 Ammar states, "But I was not -- redacted. "I felt
23 something holding me right there" -- or correction, "right

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25703

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1 here, preventing me from eating. I was hungry during that
2 time. I was puzzled. Then I found out that there was
3 something. Glory to God, he will do what he desires; when
4 one's heart is with other people, even what he drinks and eats
5 it is connected to them. Even if a living -- even if living
6 in a country that has food and everything."

7 F replies, "You are telling the truth."

8 Ammar states, "I didn't mean I didn't have" --
9 redacted. "I could go out -- I could go into any restaurant
10 and eat but there was something" -- redacted -- "every day I
11 had something bad happen to prevent me from eating. Every
12 day!"

13 F replies, "Yeah. Yeah."

14 Ammar states, "Something bad would come up and
15 prevent me from eating."

16 TC [MR. GROHARING]: Your Honor, I've now called up --
17 again, it's part of AE 628AA Attachment K. This document is
18 dated on 16 June 2010. The Bates number, I believe in your
19 packet -- this is like the first one we discussed in
20 Attachment K. There were two sets of Bates numbers for the
21 same document. I believe yours is 903.

22 MJ [Col COHEN]: I do have it as 903, and the one in the
23 official record is 378; is that correct?

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25704

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1 TC [MR. GROHARING]: Yes, Your Honor.

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

3 Q. Special Agent Fitzgerald, what's the date on this
4 document?

5 A. June 16th, 2010.

6 Q. Now on page 4 of that document, it's Bates 381.

7 TC [MR. GROHARING]: Do you have it, Your Honor?

8 MJ [Col COHEN]: I do. I see it. Thank you.

9 Q. Could you please read that text?

10 LDC [MR. CONNELL]: I'm sorry. I'm not caught up. In
11 ours it's 907; is that right?

12 MJ [Col COHEN]: 906 is what I'm tracking, Counsel, bottom
13 third of the page. Do you see that?

14 Counsel are conferring.

15 Mr. Connell, do you have the document?

16 LDC [MR. CONNELL]: Yes, sir, I do. Thank you.

17 MJ [Col COHEN]: Okay. Thank you. I'll note that the --
18 while Mr. Connell and I are looking at a different -- it's the
19 same document, but just with a different Bates stamp. We are
20 looking at 906, but the record reflects 381 on the document
21 being displayed.

22 LDC [MR. CONNELL]: Sir, so I do have an objection.

23 MJ [Col COHEN]: You do? Okay. Basis?

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1 LDC [MR. CONNELL]: My objection is that the segment that
2 the government is proposing to read is completely out of
3 context and that it says the opposite of what the first part
4 of the statement says.

5 The first part is Mr. al Baluchi explaining that he
6 had to leave Dubai because his company was closing, and he
7 talks about what a remarkable coincidence it is. And then he
8 talks about, on that same page, having to tell the story to
9 the CIA and how they sort of changed his story around, and the
10 changed story is the part that counsel is proposing to read.

11 I don't have an objection to the full document, but
12 just reading those few lines would be the exact opposite of
13 the meaning of the full document.

14 MJ [Col COHEN]: Okay. All right. Counsel, let's just
15 have the witness read the full excerpt and not the pullout.
16 I'll make the final determination as to what context there is,
17 but for purposes of completeness, let's just go ahead and have
18 him read the document.

19 Sir, are you able to read that document?

20 WIT: Yes, Your Honor.

21 MJ [Col COHEN]: All right. Please start at the
22 beginning.

23 WIT: G states, "Oh."

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1 Ammar replies, "You see how?"

2 G states, "Yes."

3 Ammar states, "So there are things" -- redacted --
4 "that are done inside" -- "I mean the government -- the things
5 that are inside the city, the government finalizes it for
6 them. So trade will be easy; so that they do not
7 complicate" ----

8 LDC [MR. CONNELL]: I'm sorry, Your Honor?

9 A. ---- "the procedures, you see how?"

10 MJ [Col COHEN]: Mr. Connell.

11 LDC [MR. CONNELL]: Can I talk to counsel for a second?
12 This is not the document that he and I were just looking at.

13 MJ [Col COHEN]: Okay. Thank you. You guys would just
14 please have that conversation away from a microphone. Thank
15 you.

16 TC [MR. GROHARING]: Your Honor, I need to -- if I could
17 just cut the feed while we figure this out, Mr. Connell and I?

18 MJ [Col COHEN]: That would be fine. Thank you.

19 [Counsel conferred.]

20 MJ [Col COHEN]: Mr. Groharing, have you and Mr. Connell
21 been able to work out a resolution?

22 TC [MR. GROHARING]: Yes. Mr. Connell would like him to
23 just read the whole document, to keep -- to put it in proper

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1 context, so ----

2 MJ [Col COHEN]: Okay. Is this something that your --
3 that the electrons are prepared to do, is to read the whole
4 document?

5 TC [MR. GROHARING]: I think so, but let me confirm before
6 we get into it.

7 MJ [Col COHEN]: All right. That's fine. If not, we can
8 hand him a paper copy.

9 TC [MR. GROHARING]: Your Honor.

10 MJ [Col COHEN]: Yes, Mr. Groharing.

11 TC [MR. GROHARING]: We don't have the entire document
12 loaded up in the Trial Director presentation. With a little
13 bit of time, we could find it. But if there is a paper copy
14 available ----

15 MJ [Col COHEN]: Yeah, I'll ----

16 TC [MR. GROHARING]: ---- he could just read it just as
17 well.

18 MJ [Col COHEN]: Mr. Connell, I'm going to hand this to
19 the court reporter. I'm going to let you come take a look at
20 this. This appears to be the document that all of you are
21 looking at. I have no problem, because I'll have that for my
22 reference later. If you don't mind, I can just hand that to
23 the witness.

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1 Any objection, Mr. Connell? I'll let you get to a
2 microphone.

3 LDC [MR. CONNELL]: No objection, sir.

4 MJ [Col COHEN]: Okay. Then I am handing the witness what
5 is part of Attachment K to the exhibit. I will hand him Bates
6 stamp numbers ending from 904 through 908. And then you all
7 can let me know when you need him to stop reading, from both
8 sides.

9 All right. Sir, I'm handing you that.

10 WIT: Yes, Your Honor.

11 MJ [Col COHEN]: Are you able to read that? Is it legible
12 for you?

13 WIT: Yes.

14 MJ [Col COHEN]: All right. And, sir, if you would start
15 reading at the first entry there, and then at some point the
16 counsel will tell me when they've got the evidence that they
17 would like to be presented in open forum.

18 WIT: Yes, Your Honor.

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

20 WIT: It starts off no attribution on the left side,
21 states, "They exercise" -- redacted -- "G talks about a dream
22 he had. They talk about food and fasting. G asks Ammar about
23 the time he spent in the United Arab Emirates."

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1 Next part is redacted.

2 G states, "So how many years was your residency?"

3 Ammar states, "What?"

4 G asks, "Did you have a residency permit?"

5 Ammar states, "Three years."

6 G replies, "Aha."

7 Ammar states, "My residency ended, and God be

8 exalted, my work was finished."

9 G states, "Really?"

10 Ammar replies, "The residency ended before

11 September 11th by 10 days."

12 G's reply is redacted.

13 Ammar states, "Yes. My residency was expired, and

14 they gave me a period of a month to leave. I left

15 September 10th."

16 G replies, "You could not" -- redacted.

17 Ammar states, "No, the company shut down. It is fate

18 by God, fate, fate."

19 G replies, "You mean even the company shut down?"

20 Ammar states, "Even the company shut down before

21 September 11th by" -- redacted -- "five days."

22 G replies, "Fate!"

23 Ammar states, "Canadian company; and it was not

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1 involved in anything. But they have suspicion" -- redacted --

2 "saying: 'Why would the company shut down?'"

3 G replies, "You mean the company finished its
4 business?"

5 Ammar replies, "They had opened a big branch in Saudi
6 Arabia and they moved over there."

7 G's reply is initially redacted, then he states,
8 "Oh!."

9 Ammar says, "They told me: 'Come over.' I didn't
10 want to. So everything is" -- redacted.

11 G replies, "Fate. God be exalted."

12 Ammar states, "Everything. Everything. Fate.
13 Amazing fate! Even the company's money was withdrawn on
14 September 10th; it withdrew all of its money and sent it."

15 G replies, "Oh!"

16 Ammar states, "You see? It was the same date that
17 the brothers were sending money from over there, what was left
18 over. So these guys are bewildered; why is this and why is
19 that? They thought it is related, they went and did an
20 investigation" -- redacted -- "it is not related. There are
21 matters of fate, purely." Redacted -- "he is Canadian,
22 but" -- redacted -- "I mean an Arab."

23 G replies, "Canadians but Arabs."

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1 Ammar states, "Yes. He is one of the brothers" --

2 blank.

3 G replies, "Oh!"

4 Ammar says, "You understand?"

5 G replies, "Yes. What is its specialty?"

6 Ammar states, "Computer. Electronics."

7 The next amount is redacted out.

8 Then Ammar states, "My residency was formally
9 cancelled by the government" -- "I worked for a company but my
10 residence was through the government. Over there, the
11 residency permits are through companies but mine was through
12 the government" -- "as though I was an official employee with
13 the government. My company was in the free zone."

14 G replies, "Oh."

15 Ammar states, "The free zone, you see how? In a
16 port, as if it is outside the" -- redacted -- "not inside the
17 Emirates. So the companies can do everything and the
18 government are their sponsor."

19 G states, "Oh."

20 Ammar replies, "You see how?"

21 G states, "Yes."

22 Ammar says, "So there are things" -- redacted --

23 "that are done inside" -- redacted. "I mean the

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1 government" -- "the things that are inside the city, the
2 government finalizes it for them. So trade will be easy; so
3 that they do not complicate the procedures, you see how?"

4 G says, "Correct. So the residency" ----

5 Ammar states, "The government gives
6 it" -- "everything is from the government, lodging" --
7 redacted -- "you see how? So the government cancelled my
8 residency, they did on September 10th. And now, they do not
9 believe it" -- redacted -- "it is because of
10 September 11th" -- redacted. "You see how?"

11 G states, "Oh!"

12 Ammar says, "It was cancelled on September 10th and I
13 left."

14 G says, "So you left before the operation by a
15 little" -- redaction.

16 Ammar says, "One day, one day."

17 G says, "One day."

18 Ammar states, "Yes. You see? So when I told the
19 story to the CIA, in detail, all the steps, he told me" -- "he
20 said, 'I, believe you, what you are saying is correct.'
21 Because he did an investigation, he went and visited, etc. So
22 he said: 'Your words are very true, the way you left, etc.;
23 but I can tell you that the whole US 300 million

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1 people" -- "will not believe you. You see?"

2 G says, "Oh!"

3 Ammar states, "He said all of the US will not believe
4 your words because he said it was" -- redacted. "So it told
5 him: 'No, it was cancelled because the company was shut
6 down.' He said, 'I believe you. I know everything, but the
7 American people will not.' He said, 'I just want you to know
8 this thing.'"

9 G replies, "So everything was like" -- redacted.

10 Ammar says, "Fate!"

11 G replies, "Fate."

12 The next line is redacted.

13 Ammar states, "It was as if I was there was something
14 and God sent me out for another thing. Something ended and
15 God sent me out. I mean, God be exalted, sometimes things
16 like this" -- redacted.

17 G states, "There is a purpose."

18 Ammar replies, "One should purify his intent and
19 everything is" -- redacted -- "my family did not want me to go
20 to the inside, you see?" -- redacted -- "So they" -- redacted
21 -- "outside. So by God's will, I did more outside than I
22 could have inside."

23 G replies, "Ah!"

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1 LDC [MR. CONNELL]: Your Honor. If that's where counsel
2 was going to stop, that's fine with me.

3 MJ [Col COHEN]: All right. Mr. Groharing, do you have
4 what you needed?

5 TC [MR. GROHARING]: We do have a call-out from the
6 following page.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. CONNELL]: Just keep going.

9 MJ [Col COHEN]: Please continue, sir.

10 WIT: Yes, Your Honor.

11 Ammar replies, "You understand?"

12 G says, "Yeah. Meaning" -- redacted -- "go there and
13 you might do some work."

14 Ammar replies -- redacted -- "I would say: 'I am
15 ready for anything.'"

16 G replies -- redacted -- "send you away."

17 Ammar replies, "Yes." -- redacted -- "Then this one
18 would prepare for that, you understand?"

19 G says, "Oh."

20 Ammar stated, "So God intended, a place, a time, and
21 everything came together."

22 G's reply is redacted.

23 Ammar says, "So I am telling you: Reprieve, etc.,

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1 there are things that are destined, they happen when it is
2 time." -- redacted -- "Even the way I was captured."

3 G states, "What?"

4 Ammar says, "I was captured" -- redacted -- "after
5 this by exactly two months."

6 G says, "You and your friend, this one?"

7 Ammar states, "Yes."

8 G says, "Together?"

9 Ammar states, "Yes. We were looking for a house" --
10 redacted -- "was captured" -- "change his location. Looking
11 for a house" -- redacted.

12 G's reply is redacted, then says, "Did they know your
13 picture" -- redacted.

14 Ammar says, "What?"

15 G states, "Did they know your picture?"

16 Ammar says, "Yes. So we were looking for a house,
17 you see? So in my heart, I knew something was going to
18 happen; I was not comfortable going and renting a hour."

19 G's reply is redacted.

20 Ammar states -- redacted -- "I felt something was
21 going to happen. I was not comfortable going and renting a
22 hour. As if I was not going to settle down, settling down was
23 not good because it was going to" -- redacted -- "me."

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1 G states, "Oh. And you and him got captured at the
2 same place, right?"

3 Ammar states, "We were together, together. In the
4 car."

5 G says, "Were you driving the car or him?"

6 Ammar states, "He was driving, I think."

7 G says, "Boom, they got him."

8 Ammar says, "Yeah. They had a gun to my head" --
9 redacted.

10 G states, "It was over. Whatever God wills."

11 Ammar replies, "I mean even when one gets captured,
12 sometimes captures are" -- redacted -- "you get captured in a
13 manner that you would also put other people in trouble; but we
14 were alone, no one with us, not in a house or anything."

15 G says, "Aha, good."

16 Ammar states, "I mean if you think" -- "it was
17 destined for you to get captured, what is the best way? You
18 are alone, you understand?"

19 G replies, "Yes."

20 Ammar says, "There are people captured in houses,
21 with children, etc., etc."

22 G says, "Yes."

23 Ammar replies, "So, praise be to God. So" --

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1 redacted -- "but I said: On the contrary, the way I was
2 captured was the best way."

3 The next line was redacted.

4 LDC [MR. CONNELL]: Your Honor, unless counsel wants it,
5 we don't need the summaries at the bottom.

6 MJ [Col COHEN]: Counsel, do you need the summaries on the
7 remainder of the page?

8 TC [MR. GROHARING]: No, Your Honor. That's sufficient.

9 MJ [Col COHEN]: Okay. Then I will take the pages back.
10 Thank you, sir.

11 If the parties have what they need, then I don't need
12 him to read the rest, either. So all right. Thank you.

13 Mr. Groharing, he continues to be your witness.

14 TC [MR. GROHARING]: Your Honor, if I could just -- I want
15 to go back to a portion that I had intended to call out ----

16 MJ [Col COHEN]: That will be fine.

17 TC [MR. GROHARING]: ---- and ask him just to frame the
18 question.

19 MJ [Col COHEN]: That will be fine.

20 TC [MR. GROHARING]: So if I could have the feed, please?

21 MJ [Col COHEN]: You may.

22 **DIRECT EXAMINATION CONTINUED**

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

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1 Q. Special Agent Fitzgerald, from those statements you
2 just read, Ammar uses the terms "inside" and "outside."

3 A. Yes.

4 Q. Did Mr. Ali use the terms "inside" and "outside"
5 during your interview?

6 A. Yes.

7 Q. What did he say about those terms?

8 A. I don't know if I asked him to clarify those terms
9 during the course of the interview. I understand and
10 understood from previous experience that inside referred to
11 being ----

12 LDC [MR. CONNELL]: Objection, Your Honor. If he's saying
13 what Mr. Ali said, it's one thing, but ----

14 MJ [Col COHEN]: Counsel, it sounds like -- it sounds like
15 speculation at this point. I'm going to sustain it.

16 TC [MR. GROHARING]: Yeah, I'll -- I was expecting a
17 different ----

18 MJ [Col COHEN]: That's fine.

19 TC [MR. GROHARING]: ---- response, Your Honor.

20 MJ [Col COHEN]: That's all right.

21 Q. So notwithstanding what Mr. Ali said, based on your
22 experience as an FBI counterterrorism agent, have you heard
23 the terms "inside" and "outside" used throughout the course of

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1 your career?

2 A. Yes.

3 Q. And how have those terms been used?

4 A. Inside referred to being inside Afghanistan, and
5 outside was everything else.

6 MJ [Col COHEN]: Thank you.

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

8 That's all the questions I have of this witness.
9 We'll tender the witness.

10 MJ [Col COHEN]: Okay. Thank you. All right. It's 1215.
11 We will reconvene at 1330, following lunch.

12 Sir, admonition to you: Grab yourself something to
13 eat. If there -- as long as there's not substantive
14 discussions with counsel -- you're not prohibited from
15 discussing that with them, just please not the contents of
16 your testimony.

17 WIT: I understand, Your Honor.

18 MJ [Col COHEN]: All right. We're in recess.

19 [The R.M.C. 803 session recessed at 1216, 17 September 2019.]

20 [END OF PAGE]

21

22

23

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1 [The R.M.C. 803 session was called to order at 1330,
2 17 September 2019.]

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

4 Mr. Mohammad and Mr. al Hawsawi are both still
5 present. All learned counsel are present.

6 Mr. Ruiz, is that you back on the -- okay. It is.
7 Thank you. That's fine. I just wanted to make sure. I
8 couldn't start if you weren't here, so -- all right. Thank
9 you.

10 I recognize Ms. LeBoeuf has joined us this afternoon
11 as well.

12 Are there any additions that the other parties need
13 to account for on the record? If not, then we'll just
14 proceed.

15 Negative response. Okay.

16 Mr. Connell, your witness. Witness does remain on
17 the stand.

18 **CROSS-EXAMINATION**

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

20 Q. Good afternoon, Special Agent.

21 A. Good afternoon, sir.

22 Q. We have met a couple of times. I'm James Connell. I
23 represent Ammar al Baluchi.

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1 A. Thank you.

2 Q. I liked your slide presentation -- I mean the flash
3 presentation. That was quite good. I may borrow it later.
4 I'd like to begin, sir, with some ground rules.

5 The military judge has laid out some ground rules for
6 us. I'm sure that you've been briefed on those by counsel for
7 the government, but I'd also like to go over some of those
8 things myself, all right?

9 A. Yes.

10 Q. So in my school of cross-examination, before each set
11 of questions, I will explain what the topic area is. My
12 cross-examination is organized into books and chapters. I
13 will explain what the book is, say -- I have to slow down
14 already. I'm not off to a good start, Special Agent.

15 Let's say the USS COLE might be a book, and then a
16 chapter under that might be Rules of Engagement. So at the
17 beginning of each book and chapter, I will explain to you what
18 my questions are about to be about. That's meant to orient
19 you so that if any of my questions are slightly unclear, you
20 can know what I'm talking about.

21 A. I understand.

22 Q. And each -- the questions that I ask you will relate
23 to the chapter topic until I tell you a new chapter topic,

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1 which also gives the military commission an opportunity to
2 know when I'm changing topics, if for some reason it has -- it
3 wants to take a break or whatever. Do you understand?

4 A. Yes.

5 MJ [Col COHEN]: And thank you for that notice as well.

6 LDC [MR. CONNELL]: Thank you.

7 Q. Sir, some of the questions that I have are designed
8 to avoid eliciting classified information. Does that make
9 sense to you?

10 A. Yes.

11 Q. And sometimes, for example, I will ask you if you
12 know a certain thing. Do you understand?

13 A. Yes.

14 Q. And can we agree that do you know a certain thing is
15 a yes or no question?

16 A. Yes.

17 Q. And can we agree that it's an attempt to find out if
18 you know the answer so we might need to follow up on it in a
19 classified session. Does that make sense?

20 A. I understand, yes.

21 Q. Okay. And so what I'll ask you is please don't
22 anticipate the follow-up question; because if I believe that
23 it calls -- would call for classified information, I will not

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1 ask the follow-up question. I'll just stop there, we'll pick
2 it up at another time. Does that make sense, sir?

3 A. Yes.

4 Q. Okay. And I also want to warn you that sometimes I
5 will ask questions to which I think you do not know the
6 answer. Does that make sense?

7 A. Yes.

8 Q. And the reason for that is that the scope of this
9 hearing is, in fact, somewhat larger than the testimony that
10 you have offered over the past two days. It stretches to, for
11 example, whether we need another witness to testify about a
12 certain fact. Do you understand?

13 A. Yes.

14 Q. Okay. And can we agree that in that situation,
15 you'll just simply say "I don't know"?

16 A. Yes.

17 Q. Now, the military judge has ruled that everyone in
18 the courtroom has the authority to raise an issue of
19 classified information. Can you accept that?

20 A. Yes.

21 Q. And if I ask you a question that you personally feel
22 calls for an answer that would be classified, you may simply
23 say "M.C.R.E. 503(i)." Does that make sense to you, sir?

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1 A. I understand.

2 Q. Okay. And there may be a discussion among the
3 parties, and then the military judge will provide you
4 direction as to go from there. Does that make sense?

5 A. Yes.

6 Q. Now, sometimes over the course of this examination
7 I'll refer to a classified document, and sometimes that's
8 because subsequent guidance has told us that certain summary
9 or abstract of the document is unclassified. Does that make
10 sense?

11 A. Yes.

12 Q. And sometimes I will be referring to unclassified
13 paragraphs within a classified document. Does that make
14 sense?

15 A. Yes.

16 Q. Okay. So I don't want you to be scared just because
17 you know the document itself is classified. If I make a
18 mistake, I'm sure you'll catch me, but the goal is to ask only
19 unclassified questions and elicit only unclassified answers.

20 A. I understand.

21 Q. Okay. Now, over the course of this examination,
22 there's a document for pretty much everything that I'm going
23 to ask, but I'm going to -- for judicial economy, I'm going to

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1 try to avoid just showing you every document that I'm
2 referring to. Does that make sense?

3 A. Yes.

4 Q. And if you need to see a document to refresh your
5 recollection, can we agree that you'll just ask?

6 A. Yes.

7 Q. Okay. And although the court reporters and the
8 paralegals from both sides have done their best to organize
9 me, I have an awful lot of documents here, and I will probably
10 not be as smooth as Mr. Groharing. Can we just -- can I just
11 get that out there up front?

12 A. Understood, sir.

13 Q. Yes. Thank you.

14 The last thing that I'll tell you in this preliminary
15 ground rules section is that the general structure of the
16 cross-examination is chronological through the investigation,
17 but at times I will follow threads of information, even if
18 it's not strictly chronological. Does that make sense?

19 A. Yes.

20 Q. In much the same way that you did in your direct
21 testimony, where in general there was a superstructure of
22 chronology to your -- to your discussion, but sometimes you
23 would follow specific threads. Does that make sense?

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1 A. Yes.

2 Q. All right. And if for some reason my question is not
3 clear, can we agree that you'll just ask me to clarify it?

4 A. Yes.

5 Q. Thank you.

6 Sir, as the second example of a chapter, I'd like now
7 to ask you about your background.

8 A. Yes.

9 Q. You told us on direct examination that you have a
10 bachelor's degree from Norwich University; is that correct?

11 A. That's correct.

12 Q. Graduated in 1987?

13 A. Yes.

14 Q. What major?

15 A. My major was government.

16 Q. And you spent three years as a state trooper in
17 Massachusetts; is that correct?

18 A. Correct.

19 Q. Okay. What were your duties as state trooper?

20 A. Routine patrol. I was assigned at a barracks in
21 Boston, Massachusetts, and conducted routine patrol in and
22 around that area.

23 Q. All right. You became an FBI Special Agent in 1996;

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1 is that right?

2 A. Correct.

3 Q. Okay. Attended the FBI Academy?

4 A. Yes.

5 Q. In Quantico, Virginia?

6 A. Yes.

7 Q. How long of a training was that?

8 A. I think it was about roughly four or five months.

9 Q. Where were you assigned after Quantico?

10 A. To the FBI New York Field Office.

11 Q. And the first four years you were in the criminal
12 division of that field office; is that correct?

13 A. About five years. When I first arrived at the
14 office, there was a specific training rotation at the time
15 that agents went through, including experience on a
16 surveillance squad and applicant squad. So in general terms,
17 that first year -- most of the first year was -- took up by
18 the academy and by rotation through some of those
19 responsibilities.

20 Beginning in around, I would estimate mid, maybe,
21 April-ish 1997, I was assigned to the Criminal Division on a
22 criminal squad.

23 Q. Right. And as I understand it, you worked organized

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1 crime cases; is that right?

2 A. Yes.

3 Q. Now, that could have multiple meanings. What in your
4 particular case did "organized crime" mean?

5 A. At that time I was working at La Cosa Nostra,
6 specifically the Genovese crime family. So it would be cases
7 involving, especially at that time, labor racketeering,
8 racketeering in general, things involving investigations of
9 the mafia and, in my case, specifically the Genovese crime
10 family.

11 Q. Sir, it happens to the best of us. You just got a
12 "slow down" signal. Can you see that from where you're
13 sitting?

14 A. I cannot, sir. If you could tell me, sir, where to
15 look for it, I will ----

16 Q. I don't know. I've never sat in the witness chair.
17 This is a new -- first one for me.

18 MJ [Col COHEN]: Counsel, I just looked myself. I don't
19 think he has one. We'll use the court reporters to assist us
20 with the green "slow down" sign.

21 LDC [MR. CONNELL]: It really should be a red "slow down"
22 sign, but you know ----

23 MJ [Col COHEN]: Good point.

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1 Q. And we'll come back to this in more detail, but I
2 understand that after a time, you were assigned to -- after
3 9/11, you were assigned to the Counterterrorism Division; is
4 that correct?

5 A. That's correct.

6 Q. And what is the Counterterrorism Division? How is
7 the FBI organized into divisions?

8 A. So I'll try to explain it in two ways. One is within
9 field offices -- and I'll speak in general terms, and right
10 now, I'm talking specifically about the New York Office, when
11 I was there.

12 It was broken up between, on one side,
13 national security squads, which would be counterintelligence
14 and counterterrorism cases, squads. And on the Criminal
15 Division, it was broken down between white collar crime,
16 violent crime, organized crime, drug squads, things of that
17 nature.

18 When you talk about the Counterterrorism Division of
19 the FBI, that's a specific division within FBI Headquarters.
20 So field offices have both, counterterrorism squads,
21 counterintelligence squads, criminal squads, and at FBI
22 Headquarters there is a specific Counterterrorism Division.

23 Q. And is it further broken down into squads or are

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1 those just two different uses of the word "division"?

2 A. No, the division has -- at headquarters specifically
3 has many different units -- and, again, I'll speak in general
4 terms because of potential sensitivity -- regarding both
5 domestic and international terrorism investigations. And so
6 there are definitely sub-units within the FBI Counterterrorism
7 Division.

8 Q. And at some point, you became one of the case agents
9 for the 9/11 investigation; is that right?

10 A. That is correct. My caveat is this, sir: It's --
11 initially I became one of the case agents on the PENTTBOM team
12 specifically for the prosecution of Zacarias Moussaoui. In
13 some sense, that may be equivalent to a 9/11 case agent, but
14 there is -- there could be some distinction.

15 Q. Sure. We'll come back to that in some more detail
16 later. I understand -- I accept that distinction for now.

17 But, more or less, you worked the 9/11 case from 2001
18 to 2009; is that right?

19 A. Correct.

20 Q. And it's fair to say that the primary focus of your
21 career has been the 9/11 investigation?

22 A. Yes, it has been.

23 Q. All right. And on Monday, I think you testified you

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1 spent 15 or 16 years of your career on the 9/11 investigation;
2 is that right?

3 A. As an estimate, sir. That's correct. There were
4 some breaks in between, but in general terms, I would estimate
5 that would be accurate.

6 Q. All right. The next chapter is I'd like to talk
7 about your prior testimony under oath.

8 A. Yes.

9 Q. I want to make sure that I understand the universe of
10 the times that you have testified under oath regarding the
11 events around 9/11.

12 The first one of those was in the 9/11 Commission; is
13 that correct?

14 A. I testified prior to that during Moussaoui for the --
15 the Moussaoui grand jury in 2001.

16 Q. Okay. And that was in 2001?

17 A. Yes, that's correct. If I recall correctly,
18 December, 2001.

19 Q. All right, sir. And the -- when you testified in the
20 grand jury in the Eastern District of Virginia, you identified
21 yourself as one of the case agents, is that correct, for the
22 Moussaoui case?

23 A. I will accept your representation of that. That

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1 would be fair.

2 Q. Okay. If you need to look at it, it's at page 262 in
3 your binder there.

4 A. Thank you.

5 Q. The -- who were the other case agents for the
6 Moussaoui case?

7 A. Going from recollection right now, for a time Abigail
8 Perkins, Brian Getson, Janelle ----

9 Q. Sir, how do you spell Getson?

10 A. G-E-T-S-O-N.

11 Janelle Miller, last name M-I-L-L-E-R. I know early
12 on Adam Drucker was involved. I know at some point he
13 accepted additional responsibilities, but not exactly certain
14 when that was.

15 Also, Aaron Zebley, last name Z-E-B-L-E-Y.

16 Give me a moment to pause, sir. In the beginning,
17 certainly, there were more agents on the case, and that
18 changed over time. So I may recall additional names or if you
19 have names to refresh my memory, I would consider them.

20 Q. Thank you. What is the definition of case agent in
21 your mind?

22 A. In general terms, in my mind, case agent is the
23 person responsible for the successful resolution of a case.

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1 I'll caveat that somewhat. In the case of major cases, which
2 I would term like the USS COLE case, 9/11 case, some other --
3 the case involving the anthrax investigation, very large
4 investigations, there are people who are assigned as case
5 agents, such as myself; but due to the size of the case, I
6 don't have that same authority.

7 So I'm a case agent on the case. I'm -- I am
8 responsible, at least in part, for the proper or successful
9 resolution of the case. But as a GS-13 case agent, I don't
10 have complete control over the case like I would a much
11 smaller case. So what I'm saying regarding that is things
12 change as cases become very large and other management becomes
13 involved.

14 Q. Is that because multiple people are sort of co-case
15 agents, or is that because another higher ranking person
16 within the FBI is brought in?

17 A. It's sometimes both, sir. So there might be multiple
18 case agents. On the system of records at the time under ACS,
19 administratively I think they could only list one case agent.
20 Obviously, one case agent would not work the 9/11
21 investigation.

22 So they might list one person, and they were the case
23 agent of record, but there would, in practice, be many case --

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1 many -- I'll call them case agents assigned, a core team who
2 would work that specific case. But they would have a
3 supervisor and likely an assistant special agent in charge who
4 were also very involved in the case.

5 Q. Okay. So after testifying in front of the grand jury
6 in the Eastern District of Virginia in the Moussaoui case, was
7 your next testimony under oath before the 9/11 Commission?

8 A. That's the next testimony that I recall at this time.

9 Q. And what was the purpose of that testimony?

10 A. We were -- to the best of my knowledge, the
11 9/11 Commission had requested the FBI provide agents to
12 testify.

13 Q. And did -- how many agents testified?

14 A. Myself, Adam Drucker, Jacqueline Maguire, her last
15 name is M-A-G-U-I-R-E. Those are the only three that I recall
16 right now. There may have been one more.

17 Q. And did you divide up the areas to talk to the
18 9/11 Commission about?

19 A. We may have. I suspect we did. I don't recall
20 precisely, but we may have.

21 Q. At some point, you've described your focus as
22 hijacker activity in the United States; would that be fair to
23 say. One of your focuses?

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1 A. In the beginning, certainly, a good deal of time was
2 focused on the actions of the hijackers.

3 Q. And at various -- around that time in 2004, Special
4 Agent Drucker had a specialty in the financial aspects of the
5 case; would that be fair to say?

6 A. I believe in 2004, he had already left and was
7 working in a different responsibility in Headquarters.

8 Q. Okay. Was the next time after the -- testimony after
9 the 9/11 Commission at the Moussaoui trial itself?

10 A. I believe that's correct. Yes, sir.

11 Q. And after that, you testified in front of the grand
12 jury at Southern District of New York; is that right?

13 A. Yes.

14 Q. And in 2009?

15 A. Yes.

16 Q. As part of an effort to bring charges in the Southern
17 District of New York against these same defendants; is that
18 right?

19 A. Yes.

20 Q. Now, was Mr. Qahtani a putative defendant in that
21 case in your testimony before the grand jury?

22 A. He may have been. It's been quite some time, and
23 there was -- I'm sort of confusing Qahtani and whether or not

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1 we were indicting him as part of the federal case, because I
2 know with military commissions things were different. So I --
3 he may well have been one of the co-defendants.

4 Q. At that time in 2009, who were the case agents for
5 the 9/11 case?

6 A. I'll start by naming the folks that I know.
7 Certainly myself, Jacqueline Maguire. If I hadn't mentioned
8 her name before as one of the case agents, it would be fair to
9 consider Jacqueline Maguire, even previous to that, as one of
10 the case agents.

11 Myself, Jacqueline Maguire. I know Francis
12 Pellegrino testified before the grand jury. I don't know if I
13 would consider him a 9/11 case agent. Certainly, he had
14 knowledge of the case. I don't know if I would consider him a
15 case agent.

16 Q. And is that because he was not primarily responsible
17 for the successful resolution of the case; he had other
18 duties?

19 A. He had other duties, I think that's fair to say.
20 Like there are some probably that overlapped with the 9/11
21 case, but he had other duties as well.

22 Q. Okay. So yourself, Special Agent Maguire, and
23 Special Agent Pellegrino.

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1 A. So at that time when it was contemplated that the
2 case would be prosecuted out of New York and worked in
3 New York, there was a -- I'll call it a squad or a team that
4 was put together under a supervisory special agent with a
5 great deal many more people.

6 So I would estimate -- for each of the defendants in
7 that case, probably I would estimate two agents and maybe
8 other additional personnel. So it was a much larger team that
9 was contemplated at that time. So that was just getting stood
10 up. They certainly would be considered at some point case
11 agents, but things changed, so that stopped. But certainly
12 there were other people involved at that time; I don't recall
13 all of their names, but there were other people.

14 Q. Were you assigned a specific defendant?

15 A. I may have been. I don't recall.

16 Q. And, sir, you testified in a hearing in this
17 courtroom on a hearing on Mr. Hawsawi's language ability.
18 Does that sound right?

19 A. Yes.

20 Q. And then later in December of 2017 in a personal
21 jurisdiction hearing related to Mr. al Hawsawi in this
22 courtroom. Do you recall that?

23 A. Yes.

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1 Q. Is there any time that you have testified under oath
2 about terrorism issues that we didn't just talk about?

3 A. There was one time for Sulaiman Abu Ghaith, as I
4 recall. I had -- I testified regarding -- in general terms
5 regarding al Qaeda at that time.

6 Q. Do you recall what year that was, sir?

7 A. It would have been several years ago. I do not
8 recall.

9 Q. Was it in a pretrial hearing or was that the trial?

10 A. It was at trial.

11 Q. The next topic of my questions will be your
12 preparation for this testimony.

13 I'm sure it's fair to say that, as part of the
14 investigation into the September 11th attacks, you have -- the
15 FBI has gathered many, many different kinds of documents?

16 A. Yes.

17 Q. And, for example, before your grand jury testimony in
18 2001, you testified that you had reviewed the written work of
19 many other agents in the case; is that fair to say?

20 A. Yes.

21 Q. And before your second grand jury testimony in 2009,
22 you again said you'd reviewed many, many different types of
23 evidence; is that fair to say?

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1 A. Yes.

2 Q. And that's part of your responsibilities?

3 A. Yes.

4 Q. And the -- one of the responsibilities that comes
5 with being the person responsible for the successful
6 resolution of a case is that you have to know other people's
7 work as well; is that fair to say?

8 A. Yes.

9 Q. When did you learn that you would be expected to
10 testify in September of 2019?

11 A. Excuse me, September of ----

12 Q. At this hearing, in September of 2019.

13 A. It was some time ago. The preparation has begun
14 certainly in earnest the last two weeks. I can't recall off
15 the top of my head when I learned, but ----

16 Q. Could you -- it wasn't two weeks ago, was it, right?
17 You had advance notice past that?

18 A. Yes.

19 Q. Was it two months ago? Was it that long?

20 A. I don't know, sir.

21 Q. Okay. Well, let me ask you a different question,
22 then. When did you begin preparing for this testimony?

23 A. Approximately two weeks ago.

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1 Q. And in general terms, what was the -- what did you do
2 to prepare?

3 A. Initially, I reviewed the letterhead memorandum that
4 I had prepared and reviewed the notes from the letterhead
5 memorandum.

6 Q. Special Agent Perkins' notes?

7 A. Yes. The notes that she took, correct.

8 Q. You can read her handwriting, sir?

9 A. At times.

10 Q. Okay. All right. Carry on.

11 A. I also started to review some of my prior testimony,
12 testimony in the New York grand jury, also my prior testimony
13 with Mr. Ruiz. I also started to review documents or other
14 things that I thought would be relevant.

15 Q. Okay. When did you make the request to the Special
16 Projects Unit to produce the flash presentation?

17 A. I actually was not the one who requested that flash
18 presentation to be made. So that -- that has -- to the best
19 of my knowledge, it's been around for some time, but I was not
20 the one who -- who requested that.

21 Q. I see.

22 The last week of your preparation has been here at
23 Guantanamo; is that fair to say?

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1 A. Yes.

2 Q. And two weeks ago, the second week ago, was your
3 preparation in the United States or at Guantanamo?

4 A. It was in the United States.

5 Q. Okay. When is the first time you met with one of the
6 prosecutors in this case to prepare for your testimony?

7 A. That week. I believe it was the Tuesday of -- not
8 this past week, but -- I -- I'm sure if I had a calendar, I
9 could pick it out, but I think I traveled on a Monday and met
10 either Tuesday or Wednesday with one of the prosecutors.

11 Q. Okay. Which prosecutor?

12 A. Mr. Groharing.

13 Q. Okay. And over the course of that week, how many
14 hours did you spend meeting with Mr. Groharing?

15 A. Maybe four or five hours.

16 Q. Total or per day?

17 A. It was -- I'm trying to add it up right. It was
18 certainly not as much as I wanted but there -- we had travel
19 considerations. So, yeah, I would estimate maybe four or five
20 hours.

21 Q. Okay. And then did you travel on the OMC flight down
22 here last Saturday or a different flight?

23 A. I did not. I traveled on a different flight.

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1 Q. And when did that flight arrive?

2 A. That flight arrived in Guantanamo the Friday before.

3 So I would have -- not talking about this last week, but the

4 week before. To the best of my recollection, I arrived in

5 D.C. on the Tuesday, and then I traveled down to

6 Fort Lauderdale on Thursday and then traveled to Guantanamo on

7 Friday.

8 Q. I see.

9 So if I could help you out with some dates, today is

10 17 September 2019. Two weeks ago -- and today is Tuesday.

11 Two weeks ago would have been 3 September 2019, and so that

12 would be when you traveled initially; is that right?

13 A. The Tuesday after Labor Day.

14 Q. Okay. And then on 6 -- Friday, 6 September 2019, you

15 arrived in Guantanamo; is that fair to say?

16 A. Yes.

17 Q. And was -- were any of the prosecutors here at that

18 time?

19 A. Not on Friday.

20 Q. Okay. They arrived on Saturday?

21 A. Yes, to the best of my knowledge.

22 Q. And since that -- so in the past week ----

23 A. Yes.

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1 Q. ---- and let's say from Saturday to Saturday,
2 Saturday the 7th to Saturday the 14th of September 2019, how
3 much time did you spend meeting with prosecutors?

4 A. I would estimate on the order of 40 hours.

5 Q. All right. Did you meet with anyone else over the
6 course of the -- I'm backing out of this one week now and I'm
7 talking about over the course of your preparation. Did you
8 meet with anyone else to prepare for your testimony?

9 A. No.

10 Q. Okay. You told us on direct examination that
11 sometime within the last two weeks you had spoken to someone
12 at the CIA to determine when you had had access to a certain
13 closed network. Do you recall that testimony?

14 A. Yes.

15 Q. Okay. Can you tell us the circumstances of that?

16 A. Yes.

17 In my previous testimony in 2017, my testimony in
18 general terms, as I recall it, the direct testimony was on
19 actions of the hijackers, and it was, my understanding, for
20 the specific purpose regarding an enemy combatant definition,
21 related to that.

22 Mr. Ruiz at that time requested to cross-examine me
23 on the preparation for the interview of Mr. Hawsawi, and the

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1 judge -- the judge granted that. And I was cross-examined on
2 my preparation, not only for the interview of Mr. Hawsawi, but
3 also my preparation for the interview of Mr. Ali was also
4 included in that simply by circumstance.

5 I did not expect or prepare for that previous
6 testimony, and when I reviewed that testimony, I could see
7 that I had made errors. So when I got down here, I contacted
8 a person from the CIA to find out when exactly I had access to
9 this closed network.

10 Q. How was that contact made?

11 TC [MR. GROHARING]: Objection, Your Honor. It calls for
12 a classified response.

13 LDC [MR. CONNELL]: I didn't know that. I'll move on.

14 MJ [Col COHEN]: Okay. Thank you. We'll just table that
15 question until later.

16 LDC [MR. CONNELL]: Yes. Let me just make a note.

17 Q. I'm going to put some definitions around this because
18 I'm trying to avoid the classified information but still let
19 us move forward and get to the information that we need.

20 The -- did you have some kind of a conversation with
21 an actual person? And I don't -- without regard to
22 electronic, in-person, by -- but some sort of a voice
23 conversation with someone?

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1 A. Yes. Yes, I did.

2 Q. Okay. And what did you ask that person?

3 A. I said, "When did I have access to the closed
4 network," although I used a different term. I also asked
5 them, "Can you find anything that I may have authored on that
6 system?" Because I was interested in trying to refresh my
7 recollection as to exactly what my level of access was back at
8 that time.

9 And again, this was something that when I -- during
10 the course of this past week, when I reviewed my prior
11 testimony, I saw that it was in error.

12 Q. Okay. So when you say that you used a different
13 term, do you mean that you used a code name for the system
14 that you were discussing?

15 A. Yes.

16 Q. Okay. And some code names are classified and some
17 code names are not classified?

18 A. Yes.

19 Q. Do you know the answer as to whether this code name
20 is classified?

21 A. I don't know.

22 Q. Okay.

23 A. I suspect it is, but I don't know.

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1 LDC [MR. CONNELL]: May I have just a moment?

2 MJ [Col COHEN]: You may.

3 [Counsel conferred.]

4 LDC [MR. CONNELL]: The -- I'm informed by the government
5 that the code name itself is classified.

6 MJ [Col COHEN]: I saw that confirmation. We can also
7 take that up at a later time.

8 LDC [MR. CONNELL]: Yes.

9 Q. The code name, is it for the closed network that we
10 were -- that was the subject of your previous testimony?

11 A. Yes.

12 Q. Okay. Now, you -- one of the questions that you had
13 was whether you had authored anything?

14 A. Yes.

15 Q. I take it that the closed network is of such a --
16 it's not so closed that one cannot read or write data to it;
17 is that fair to say?

18 A. That's fair to say.

19 Q. Okay. And so there's some way -- whether, you know,
20 Microsoft Word or some other -- there's some other way to
21 author documents on this network; is that fair to say?

22 A. It would be more accurate for me to describe -- and I
23 believe I can do so in an unclassified manner -- what I was

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1 referring to.

2 Q. Yes, sir.

3 A. I would call it a request. So regarding this closed
4 network, I was not authoring a document per se. In other
5 words, in my -- to me, what that -- what that implies is I'm
6 writing either an intelligence document, an assessment, a
7 cable, something of that nature. What I was referring to are
8 requests. I was asking the CIA if they had any requests that
9 I made for review of material for intelligence equities.

10 So the document that I was authoring was a request to
11 the CIA saying, CIA, this is who I am. This is who I work
12 for. Can I -- can this material that I'm referring to -- can
13 it be declassified and can I show it to somebody?

14 Q. I see. Let me see if I can -- if I can summarize
15 that in an unclassified way.

16 By accessing the network, you have access to certain
17 documents, and we're going to talk later about what those
18 documents are exactly. And a request would be, not a request
19 for access to a document, but a request for some sort of
20 classification review with respect to the document: Can it be
21 declassified? Is it still at the same classification level?
22 That kind of thing.

23 A. That's correct.

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1 Q. Okay. So it is not a request for access in the first
2 place, it is -- like to a walled garden kind of thing. It is
3 an access -- it is a request for action on behalf of the
4 agency?

5 A. In that context, yes, that's correct.

6 Q. Is there another context? Is there a way that I've
7 misunderstood it?

8 A. No. I'm wondering in my head. I'm like, is there
9 anything else that I'm not recalling? So I'm making my answer
10 general because I'm wondering -- I'm thinking in my head, was
11 there anything else that I authored? I'm trying my very best
12 to answer honestly and forthrightly. And when you say
13 something definitively, especially as a witness, you're stuck
14 with it.

15 And so in my head right now, I'm wondering, is there
16 anything that I possibly could have authored that would
17 qualify; and if so, I need to explain it. So the reason why I
18 qualified my answer is the only thing that I'm thinking right
19 now is -- are those requests that I authored. But that's
20 specifically why I qualified the answer.

21 Q. Okay. Do you need a moment for that reflection that
22 you just described?

23 A. No.

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1 Q. So is there any other form of document that you might
2 have authored?

3 A. Not to my recollection.

4 Q. And what was the answer to that question? Did you
5 author any documents?

6 A. I -- I know that I did author -- I know that I did
7 write documents. I know that I did submit requests. They
8 couldn't tell me when those requests were submitted. In fact,
9 they -- they couldn't locate them.

10 Q. When you submitted those requests, is that request
11 made within the closed system or is it made on an outside
12 system with reference to the closed system?

13 A. It -- my understanding, it was; it was only within
14 the closed system.

15 Q. Okay. So the -- is there a form that you fill out,
16 or you send an e-mail?

17 A. There was a form. My -- it's also -- this system is
18 now no longer operating. It has not been operating for years.
19 But at the time, there was a form electronically that you
20 would pull up or request to declassify and apply for use
21 authority for a specific document.

22 Q. And when you say "use authority," did you have to
23 have permission to use it in any way or to use it at a

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1 different classification level than it was marked?

2 A. I'm referring to -- the goal, at least at first, was
3 to present everything unclassified. So I'll step back for a
4 moment.

5 So I would request declassification if something was
6 classified, and then use authority so that I could present
7 this item to the -- to Mr. -- in this case, Mr. Ali for him to
8 review it. So that's what I was looking for.

9 So I'm not sure if that has answered your question,
10 but that was the goal of the request.

11 Q. All right. Because ----

12 A. I think what you were asking is -- I was looking to
13 see -- essentially, I was asking the agency, "Do you have any
14 intelligence equities in this document that would prevent me
15 from showing it to Mr. Ali?"

16 Q. Right. Okay. And whether that -- whatever change to
17 markings occurred or didn't occur, there might be a -- that's
18 what you wanted to do, was, can I show this to al Baluchi?

19 A. Essentially, yes.

20 Q. Okay. And so you feel confident that you submitted
21 requests. How many did you submit, do you think?

22 A. I would estimate somewhere between six and twelve; it
23 may have been more. I don't think it was less than that.

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1 Q. Okay. And how would you learn the answer to your
2 request?

3 A. I don't know that I did. At some point, I believe
4 for some of the documents that I showed, I received the answer
5 verbally. But I don't -- I don't -- more specifically to the
6 point of the form, I don't recall in most cases -- or really
7 in any case, I don't recall getting something back saying this
8 has been approved.

9 Q. Was it ----

10 A. I may have received it in e-mail; that's possible.
11 Or I may have been told verbally. I don't recall how I was
12 actually informed if I could display a document or not.

13 Q. Sure. Was the form itself on a platform where you
14 could both send and receive? Like was it an e-mail-style form
15 where you sent off something?

16 A. No, not to my knowledge. It's possible. I didn't --
17 if I received an answer, the closed network that I'm talking
18 about had a separate e-mail system. So someone may have
19 e-mailed me back saying, yes, you can, or no, you cannot, you
20 know, use a document.

21 Q. So the closed network had its own sort of embedded,
22 closed e-mail system; is that right?

23 A. Yes. That's my -- they definitely had an e-mail

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1 system there. My understanding, it was closed as well.

2 Q. Okay. And did you ever send any e-mails using that
3 e-mail system?

4 A. Yes.

5 Q. How many e-mails would you estimate that you sent
6 using that e-mail system?

7 A. Over time?

8 Q. Yes, sir.

9 A. Certainly more than ----

10 Q. In total over your life.

11 A. 200? I'm estimating. I don't know.

12 Q. Okay. And so since we're talking about time, in
13 estimating those approximately 200 e-mails, what time frame
14 are you referring to? What would be the earliest time you
15 could -- let's do it a different way.

16 What would be the earliest time that you could have
17 sent an e-mail on the closed system?

18 A. So I'll go back to the information that I found out,
19 which was, I was granted access on or about 17 October 2006.
20 I haven't used that system in, I would estimate, two years.
21 In roughly September of 2017, I transferred up to Boston, and
22 I don't -- I certainly do not have access now, and I don't
23 believe I've had access since that time.

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1 Q. Okay. So your 200 e-mails would fall between
2 October 2006 and September 2017?

3 A. Yes. And again, the 200, that's ----

4 Q. I know it's a rough -- it's an estimate.

5 A. It's a wild guess. I don't ----

6 Q. I understand.

7 Is the system hosted on JWICS?

8 TC [MR. GROHARING]: Objection, Your Honor.

9 MJ [Col COHEN]: Counsel?

10 TC [MR. GROHARING]: Calls for classified information and
11 relevance.

12 MJ [Col COHEN]: Okay. For sure the classified
13 information. I -- we'll move on from there. I'll sustain on
14 those grounds for now and we can determine if this is
15 something we can take up in closed session or not.

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

17 Q. So you testified a little earlier that the closed
18 system is no longer in operation. Did I misunderstand your
19 testimony?

20 A. I believe you misunderstood what I was trying to say.
21 The request system that was hosted on the closed network; in
22 other words, that request -- I'll call it a system, even
23 though that may not be a fair description -- that request

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1 system that was in effect back circa 2006-2007, to the best of
2 my knowledge, is no longer functional and no longer used.

3 Q. Got it.

4 The -- and just so I'm clear, those six to twelve
5 requests over the -- what you're describing as the request
6 system, are a different platform than the approximately 200
7 e-mails?

8 A. Correct.

9 Q. Okay. So having had a moment to reflect on it, and
10 understanding that you did not receive answers to your
11 requests via that request system, do you think that you made
12 any requests that were ignored, that were not answered at all?

13 A. I think that's possible, yes.

14 Q. Do you recall -- and this is one of those "do you
15 know" questions, right?

16 So do you recall any examples of a document for which
17 you made a request?

18 A. I have no specific recollection. So if that's
19 your -- if your question is regarding a specific item, I don't
20 have a specific item in mind.

21 Q. But you have a general recollection of the type of
22 information you were interested in?

23 A. Yes.

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1 Q. One of the things that I forgot to go over on my
2 ground rules, for which I apologize, is the format that we
3 have adopted for avoiding questions which would call for a
4 classified answer. And so I'm about to give you an example of
5 one of those questions. It's still a yes or no question, you
6 can agree with it or disagree with it; you are free to. But
7 if the question itself sounds a little odd, it's formulaic
8 that we have adopted.

9 If I were to ask you who -- to whom your e-mails were
10 sent, would you be prohibited by national security privilege
11 from answering?

12 A. I may be.

13 Q. Okay.

14 A. I don't know for certain, but I may be.

15 [Counsel conferred.]

16 MJ [Col COHEN]: Counsel, I'll just state it in case
17 anyone's wondering. Due to the sensitive nature of the
18 issues, you will all have leave of court to just ask for a
19 moment and confer.

20 LDC [MR. CONNELL]: I understand.

21 MJ [Col COHEN]: I understand. And I think that's
22 probably the smartest thing for just a general practice. So
23 please continue to do so as you need to ----

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

2 MJ [Col COHEN]: ---- to see kind of where questions can
3 potentially go.

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

5 MJ [Col COHEN]: So thank you for doing it then, and I
6 just want to let the parties know that I will never take issue
7 with that.

8 Normally, we wouldn't do that, but then in most cases
9 we aren't dealing with this issue of -- inter -- in delaying
10 classification, et cetera.

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

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

13 Q. So I have a better distinction now, perhaps a sharper
14 question. The persons to whom your e-mails were addressed
15 were members of the CIA; is that correct?

16 A. Yes.

17 Q. And if I were to ask you the identity of the persons
18 to whom your e-mails were addressed, you would not be able to
19 answer me because of an invocation of national security
20 privilege; is that correct?

21 A. It would be that, and in some cases, I wasn't exactly
22 sure who would be reviewing that. So one would be ignorance
23 of it, and the second one would be, if I did know the names or

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1 speculated the names, I could not say them.

2 Q. Okay. Did you know -- of the approximately 200
3 e-mails, did you know any of the names?

4 A. Okay. I thought we were talking about the ----

5 Q. I'm sorry. Request system. You're exactly right.

6 A. Okay.

7 Q. Of the six to twelve requests, did you know any of
8 the people who you expected to review them?

9 A. Yes.

10 Q. Okay. Now, let's talk about e-mail.

11 With respect to the approximately 200 e-mails, all of
12 those -- if I were to ask you -- well, let me just ask it a
13 different way.

14 Of the approximately 200 e-mails, did you know any of
15 the recipients?

16 A. Yes.

17 Q. Okay. And if I were to ask you their identities, you
18 would not be able to answer me; is that correct?

19 A. Yes. And I also want to emphasize, I'm talking about
20 e-mails that I have sent.

21 Q. Yes, sir.

22 A. Not e-mails that I authored. Then that's -- I wanted
23 to make sure that I was answering your question precisely.

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1 Q. Okay. You'll need to explain to me the -- what is
2 the difference in your mind between e-mails you sent and
3 e-mails you authored?

4 A. Nothing. I -- I simply want to make -- there's many
5 more e-mails are incoming than I sent.

6 Q. I see. So you -- the distinction you're making is
7 between e-mails you sent versus e-mails you received?

8 A. Correct.

9 Q. Okay. And approximately -- on that closed system,
10 approximately how many e-mails did you receive, lifetime?

11 A. Many, many hundreds. Thousands, potentially. I
12 don't -- I have no idea.

13 Q. One more platform you have to check, huh?

14 A. Yes.

15 Q. Before I move on to my last topic -- my last question
16 for you, is: Why did you -- having spent 45 hours with the
17 prosecutor preparing for this testimony, why did you decline
18 my request for a meeting?

19 A. Remembering all of the facts and circumstances of all
20 of these things, of 19 hijackers and a number of
21 co-conspirators, having testified many times, as you have
22 noted, it's very difficult to keep facts straight. So for me,
23 the easiest thing to do was, if you have a question, then you

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1 ask it in court, and I answer to the best of my ability.

2 Q. The next book, the next large section, will be about
3 the organization of the FBI and its recordkeeping. Do you
4 understand?

5 A. Yes.

6 Q. The first chapter under that book is about the
7 organization of the FBI. Do you understand?

8 A. Yes.

9 Q. Now, you, yourself, have been in the FBI for 23 and a
10 half years or so; is that correct?

11 A. Yes.

12 Q. And I'm sure that it's changed over time.

13 A. Yes.

14 Q. Feel free to draw distinctions by chronology, but the
15 time in which I'm most interested is the period between 2001
16 and 2007. Do you understand?

17 A. Yes. Yes.

18 Q. The -- at that time the FBI was headed by a director?

19 A. Yes.

20 Q. Director Robert Mueller?

21 A. Yes.

22 Q. It had a headquarters, you've testified?

23 A. Yes.

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1 Q. And some major cases are worked, as you say, out of
2 Headquarters; is that fair to say?

3 A. Typically not. The only case -- the only major case
4 that I know that was worked out of Headquarters is the 9/11
5 case.

6 Q. Okay. So there's at least one ----

7 A. Yes.

8 Q. ---- this one.

9 And there -- then under that, the FBI is divided into
10 field offices, correct?

11 A. Yes.

12 Q. And field offices are located in 56 major cities; is
13 that fair to say?

14 A. Yes.

15 Q. The field offices themselves are supported by
16 resident agencies, correct?

17 A. Yes, that's a ----

18 Q. And the resident agencies -- I'm sorry.

19 A. I said that's -- that's a fair way to term it, yes.

20 Q. Okay. And the resident agencies are often in smaller
21 cities and towns?

22 A. Yes.

23 Q. Okay. And there are over 700 resident agencies; is

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1 that right?

2 A. I actually don't know.

3 Q. Okay. There are also -- the FBI maintains offices in
4 other countries, correct?

5 A. Yes.

6 Q. Known as legats, correct?

7 A. Yes.

8 Q. Short for legal attaché?

9 A. Correct.

10 Q. And the -- in an ordinary case, the office with
11 primary responsibility for a case is called the office of
12 origin, in FBI parlance, correct?

13 A. Yes.

14 Q. And normally, a field office, correct?

15 A. Yes.

16 Q. And sometimes it's a separate entity such as a task
17 force, correct?

18 A. You'd have to provide an example of what you mean by
19 that.

20 Q. Sure. The 1996 bombing in Oklahoma City, the office
21 of origin was the Oklahoma City bombing, which I think was
22 OKBOMB Task Force, as opposed to a specific office of origin
23 out of Oklahoma?

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1 A. Okay. That's -- I understand that example. I was
2 not aware that's how they worked that case, but I understand
3 that example.

4 Q. All right, sir. And for this case, at times, the
5 office of origin was FBI Headquarters, correct?

6 A. To the best of my knowledge, for the 9/11 case, I'm
7 talking about between 2001 and 2007, the office of origin
8 remained in New York ----

9 Q. Remained New York.

10 A. ---- even though investigatively it was essentially
11 worked out of headquarters.

12 Q. All right. And typically, the office of origin is
13 reflected in the case number of a case, correct?

14 A. Yes.

15 Q. Now, I'd like to talk to you about FBI records
16 generally, and I know that FBI recordkeeping has changed over
17 the years. I'm most interested in the years between 2001 and
18 2007. Do you understand?

19 A. Yes.

20 Q. The FBI has a particular structure to its case
21 numbers, correct?

22 A. Yes.

23 Q. And the first three numbers in a case number

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1 typically identify the type of case, correct?

2 A. Yes.

3 Q. 174, for example, means bombing?

4 A. I'm not familiar with that, sir.

5 Q. Okay. Sometimes the case number is followed by an A
6 to signal priority; is that correct?

7 A. My knowledge of that is it's not to signal priority.
8 I can talk about some case designations, although -- for some
9 counterterrorism case numbers, it's probably things I should
10 not address in open court. But the letter designator at the
11 end of those three digits typically indicated not priority,
12 but something else.

13 Q. Oh, okay.

14 And then after the case type, whether it's three
15 digits or four digits, there's a dash, correct?

16 A. Yes.

17 Q. And then typically the office of origin?

18 A. Yes.

19 Q. Like NY for New York?

20 A. Yes. Correct.

21 Q. And then another dash?

22 A. Yes.

23 Q. And then a case number?

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1 A. Yes.

2 Q. And whether it was in ACS or whether it's in a newer
3 system, each case was assigned a case number to act as an
4 aggregator for data around that case; is that fair to say?

5 A. That's fair.

6 Q. Sometimes a case will get a major case number as
7 well, correct?

8 A. Yes.

9 Q. Okay. How -- what is the process by which major case
10 numbers are assigned?

11 A. I have no idea.

12 Q. Okay. When did this case acquire -- stop being an NY
13 case and acquire a major case number, if ever?

14 A. It's not that it stopped -- well, I'll say something
15 differently.

16 Between roughly 2001 and I'll say -- instead of 2007,
17 I'll say 2006, through the prosecution of Zacarias Moussaoui,
18 the case file that was used for that prosecution and that case
19 was the New York case, the NY-280350, and that has been
20 mentioned a number of times, I know, in the 9/11 Commission
21 report.

22 After the Moussaoui case in -- beginning sometime in
23 2006, there was a separate Headquarters case file, again, a

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1 Headquarters case file, that was opened up regarding the
2 high-value detainees. So something a bit -- even though the
3 9/11 case file, the New York case file was still open, there
4 was a separate case file that was opened with a Headquarters
5 designator.

6 Q. I see. And is that what's referred to as "Major
7 Case 182"?

8 A. The New York case, NY-280350, is Major Case 182.

9 Q. Okay.

10 A. And again, I'm talking about, so -- my -- in my
11 practice, in my use of that case file from 2001 to, at least
12 through roughly 2006, especially concerning the prosecution of
13 Zacarias Moussaoui, all of the documents went into that
14 New York case file.

15 Beginning roughly in -- I'll estimate late 2006, a
16 separate case file was opened, a Headquarters case file was
17 opened, for the -- I'll call it the investigation and
18 prosecution of the high-value detainees.

19 Q. And just so I understand the scope, was that all
20 persons referred to as high-value detainees or was that these
21 five men and Mr. al Qahtani?

22 A. I don't know if Mr. -- well, maybe Mr. al Qahtani was
23 included in there, but it was -- at that time it was all of

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1 the high-value detainees, not just the five accused.

2 Q. Okay.

3 A. And again, I'm not certain if Mr. al Qahtani was
4 included in there administratively. He may have been.

5 Q. Now, in general, a case number should appear on every
6 record in an FBI case file, correct?

7 A. There may be exceptions, but yes.

8 Q. Okay. And the FBI has standardized forms that it
9 uses for recordkeeping; is that fair to say?

10 A. Yes.

11 Q. So let's start with the most familiar of those, which
12 is an FBI 302. I'm referring to what is, excuse me, AE 628S
13 Attachment FF.

14 LDC [MR. CONNELL]: And if I may have access to the
15 document camera?

16 MJ [Col COHEN]: You may.

17 LDC [MR. CONNELL]: Sir, these have already been reviewed
18 for display even though they're not marked. They're actually
19 from an Office of Inspector General report.

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

21 Q. So it's a little difficult to read ----

22 MJ [Col COHEN]: Let me just ask the general question.

23 Trial Counsel, do you -- have you had the opportunity

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1 to review what you anticipate he's going to be showing here?

2 TC [MR. GROHARING]: I have no objection to him showing
3 the document.

4 MJ [Col COHEN]: All right. Great. Thank you. Yeah,
5 have you -- did you all, I'm sure -- they gave you some
6 copies. Did you also receive copies of what he intends to
7 display?

8 LDC [MR. CONNELL]: Sir, these were filed like two weeks
9 ago. This is not the last-minute stuff.

10 MJ [Col COHEN]: No, no, no. I was just wanting to avoid
11 needing to ask if there were any objections or anything like
12 that stuff to move forward, so.

13 Have you had the opportunity, Trial Counsel?

14 TC [MR. GROHARING]: I have, Your Honor.

15 MJ [Col COHEN]: And any objections that you're aware of
16 at this time?

17 TC [MR. GROHARING]: No objections.

18 MJ [Col COHEN]: Then I will not continue to interrupt
19 you, Counsel. Go ahead.

20 LDC [MR. CONNELL]: Thank you so much.

21 Q. So I'll just lead you through this, if you don't
22 mind, just to move it more quickly.

23 In the upper left-hand corner, it's a little bit

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1 difficult to read there, but there's a notation that this is
2 an FD-302; is that right?

3 A. Yes.

4 Q. And then in the sort of the Federal Bureau of
5 Investigation letterhead; is that right?

6 A. Yes.

7 Q. And then over to the right at the upper right corner
8 is the date of transcription ----

9 A. Yes.

10 Q. ---- right? And is that because FBI agents typically
11 record or is transcription just meaning when they type up
12 their notes?

13 A. When they type up their notes.

14 Q. Yes, sir. And then down at the bottom of the page,
15 it typically -- it has a notation, "Investigation on," blank,
16 which would typically be the date on which the investigation
17 recorded took place; is that right?

18 A. Yes.

19 Q. And then "At," it has the location of the
20 investigation; is that correct?

21 A. Yes.

22 Q. And then a place for a file number?

23 A. Yes.

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25769

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1 Q. And that's the same as the case number that we were
2 just discussing?

3 A. Yes.

4 Q. The -- if it were dictated, I don't actually see this
5 one used very much, but there's a "Date dictated," probably a
6 holdover from an earlier time ----

7 MJ [Col COHEN]: The court reporters have asked me, no one
8 has asked: Do you want this published to the gallery as well?

9 LDC [MR. CONNELL]: Oh, I'm sorry, sir. Yes, please. I
10 apologize.

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

12 LDC [MR. CONNELL]: It's my fault for not asking. I know
13 it's a little technical here, but it's going to make our work
14 a lot easier later.

15 MJ [Col COHEN]: No, that's fine. Like I said, same thing
16 I told the government, I'm not in a rush.

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

18 MJ [Col COHEN]: I mean, at the end of the day, these are
19 important decisions that I need to make and I'll let you guys
20 present your cases and then I'll put the facts to the law.

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

22 MJ [Col COHEN]: Thank you.

23 Q. And then at the very bottom of a blank, or of any --

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1 the FD-302 is a notation for "By," which refers to the agent
2 or agents who conducted the investigation; is that fair to
3 say?

4 A. Yes.

5 Q. Now, in your view as an experienced FBI agent, what
6 gets recorded on a 302?

7 A. In the case of an interview, you know, everything
8 that the agent deems important and is able to record.

9 Q. Okay. 302s are -- once they're produced, they go
10 into the case file, correct?

11 A. Yes.

12 Q. Where frequently they're relied on by agents within
13 the same field office or a different office?

14 A. Yes.

15 Q. Because -- we're going to talk about ACS in a little
16 more detail, but roughly, all special agents have access to a
17 common -- had at that time access to a common core of
18 information, even if it's not always easily accessible; is
19 that fair to say?

20 A. There may -- in that system at that time, there were
21 documents that could be made not accessible to people. But in
22 general terms, they would be accessible.

23 Q. Yes, sir.

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1 Now, one specific question I have about guidance on
2 the 302 is, if an FBI agent uses a ruse or makes a false
3 statement in the course of a -- of an investigation -- and I
4 don't mean undercover, but I mean in an ordinary interview --
5 is there a way that they're supposed to notate that on the
6 302?

7 A. There may be a specific way. I don't know that
8 there's a way that I'm aware of that you're referring to.

9 Q. Okay. Because typically other agents who were
10 reviewing a 302 would rely on it to be truthful, correct?

11 A. Yes.

12 Q. And so if -- if an FBI agent decided to be untruthful
13 for some way -- in some way, they would probably need to
14 notate that so -- or otherwise other agents would falsely rely
15 on their information; is that right?

16 A. That's reasonable.

17 Q. Okay. The second type of document that I want to --
18 actually, before I move on to that, I have read about the FBI
19 document called inserts. Are inserts -- were inserts in use
20 in the period 2001 to 2007?

21 A. They -- I know that they were in use at that time --
22 at that time. They were on their way out. I don't know that
23 they officially were eliminated at that time, but there was

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1 some use of inserts at that time.

2 Q. Okay. And so can you explain to us what an insert
3 is?

4 A. The best way I can do it is by giving an example. If
5 someone took an investigative action and they wanted to note
6 it for the record -- let's say, for example, I had my driver's
7 license information run and I wanted to send that information
8 to the file, I would say, "On this date and time, Special
9 Agent James Fitzgerald had the Massachusetts driver's license
10 record of James M. Fitzgerald run." And I would put down the
11 name, the address, the driver's license number, and I would
12 send it to the file.

13 Q. And understanding that it might be a little fuzzy,
14 what in general is the distinction between that and an
15 investigative action that's recorded on a 302?

16 A. In general, I would consider it like an interview,
17 something like that, to be 302, something that's likely to be
18 testimonial; as opposed to a record that you're simply sending
19 to the file, although there may be some overlap.

20 Q. All right. Now, there are a number of documents
21 that -- or envelopes, really even, that can be attached to a
22 302; is that correct?

23 A. Yes.

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1 Q. All right. So most prominently -- and I think you
2 testified about one of these on -- briefly on direct
3 examination, is a 1A envelope; is that correct?

4 A. Yes.

5 Q. All right. Sir, I'm going to show you for purposes
6 of example what is AE 628S Attachment EE, and this is a blank
7 cover to a 1A. Do you see that?

8 A. Yes.

9 Q. And you would agree that's a sort of -- that's the
10 blank form for the 1A, correct?

11 A. Yes.

12 Q. And what goes in a 1A?

13 A. Typically, notes from an interview, although there
14 could be other things that are contained in the 1A.

15 Q. In general, a 1A is for small -- relatively small
16 items that do not require chain of custody; is that fair to
17 say?

18 A. That would have been fair to say in the past, I know
19 at some time in the time frame, if we're still talking about
20 between 2001 and 2007. It used to be that a 1A was for
21 smaller items like, let's say, notes or if I -- let's say I
22 obtained two bank statements for a particular individual and
23 put them in a 1A, something not requiring a chain of custody.

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1 The 1B was the evidence chain of custody that I
2 referred to.

3 Q. Uh-huh.

4 A. And a 1C was for bulky items. So if -- instead of
5 obtaining two bank statements, let's say I obtained a
6 thousand, and certainly they're not going to fit, then they
7 would put those in a 1C.

8 At some time, the practice of using 1Cs went away.
9 It happened in New York. There were items that I tried to
10 send to the file in a 1C, bulky items, and was unable to do
11 so.

12 So a 1A -- because of that -- I say that, because of
13 that, sometimes there are 1As that are actually relatively
14 large.

15 Q. Understood. And so I'll lead you through this, if
16 you don't mind, just to move through it.

17 The top line of the 1A is for -- it says here
18 "Universal Case File Number," but it's that same case number
19 that we've been talking about, right?

20 A. Yes.

21 Q. And then a notation of the field office acquiring the
22 evidence?

23 A. Yes.

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1 Q. And then there's a notation for the serial number of
2 the originating document. What does that refer to?

3 A. That refers to, if I -- I'll use the example of the
4 bank statement.

5 If I wrote in an FD-302 saying on such and such a
6 date and time I obtained two bank statements for John Doe, and
7 that 302 was serialized, I would put the serial number of that
8 document there.

9 Q. Okay. And when you say when the 302 was serialized,
10 you mean that the Automatic Case Support system would
11 basically stamp a document as it was loaded into it with a
12 serial number to make sure there were no duplicates of the
13 number; is that fair to say?

14 A. That's -- maybe not stamped, but electronically ----

15 Q. Electronically stamped.

16 A. ---- assigned number, yes.

17 Q. Yes. All right. Then there's information for the
18 date, the person from whom the item was acquired, and the name
19 of the special agent; is that right?

20 A. Yes.

21 Q. And at the bottom, there's a place for a
22 description ----

23 A. Yes.

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1 Q. ---- of what the item is?

2 And since handwritten notes are quite common for 1As,
3 there's even a checkbox for that, correct?

4 A. Yes.

5 Q. Is it the practice of the -- was it the practice of
6 the FBI between 2001 and 2007, whenever an agent took
7 handwritten notes, to place them in a 1A envelope?

8 A. Yes.

9 Q. Did you follow that practice yourself, sir?

10 A. Yes.

11 Q. You talked on direct examination about a 1B, which is
12 evidence requiring a chain of custody, correct?

13 A. Yes.

14 Q. And there's also technically a 1D relating to
15 electronic surveillance information, correct?

16 A. Correct.

17 Q. There are two other forms of FBI document that come
18 into play in this case. One of them is an electronic
19 communication.

20 A. Yes.

21 LDC [MR. CONNELL]: I will refer counsel and the court to
22 AE 628S Attachment KK, which is a sample electronic
23 communication. I will place that on the screen. I'm sorry,

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1 that's a sample. I really want a blank one. Just one second.

2 Blank EC -- yeah, the blank EC is GG. All right.

3 Q. So this is an electronic communication, or an EC; is
4 that right?

5 A. Yes.

6 Q. Okay. The -- it has a place for "to" and "from"?

7 A. Yes.

8 Q. And what does "Contact" mean?

9 A. A place to provide contact information.

10 Q. Okay. Does EC require an approval by another -- by
11 someone else in your chain?

12 A. Yes.

13 Q. Okay. Is that true for 302s as well?

14 A. Yes.

15 Q. It has a place for "Drafted by," which is the author?

16 A. Yes.

17 Q. "Case Id #," which is the case number?

18 A. Yes.

19 Q. "Title," "Synopsis" and "Detail," pretty
20 self-explanatory.

21 Under what circumstances does one use an EC?

22 A. For administrative things. So if I got into a car
23 accident and had to document it administratively, I might use

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1 an EC.

2 Back in the 2001 to 2007 time frame, because in the
3 system of records an EC was able to be classified, there came
4 to be a time when interviews were documented on ECs as opposed
5 to FD-302s, because the contents of the interview was
6 classified.

7 Q. I see.

8 And a 302 was not permitted to be classified; is that
9 correct?

10 A. At that time, correct.

11 Q. At that time.

12 The -- are electronic communications used for
13 requests to open a case file?

14 A. Yes.

15 Q. Are ECs used for summarizing the state of
16 investigation at some times?

17 A. They could be, yes.

18 Q. The -- I don't have a sample for you, but I also want
19 to ask you about the FD-192, the so-called green sheet.

20 A. Yes.

21 Q. On direct examination you testified on a few
22 occasions about chain of custody documents?

23 A. Yes.

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1 Q. And those are often called green sheets ----

2 A. Yes.

3 Q. ---- correct?

4 The last example that I want to talk to you about, or
5 document, is the Organizational Message Form. What is an
6 Organizational Message Form?

7 A. I have no idea.

8 Q. Okay. We'll come back to that.

9 Moving on from that chapter, the next chapter I
10 wanted to talk to you about is about FBI information
11 management.

12 A. Okay.

13 Q. And, once again, I'm primarily interested in the 2001
14 to 2007 time period.

15 MJ [Col COHEN]: Counsel, how long do you anticipate this
16 chapter being?

17 LDC [MR. CONNELL]: Five to ten minutes.

18 MJ [Col COHEN]: Okay. Carry on, then. Thank you.

19 Q. Ideally, all information is available -- about a case
20 is available in the case file; is that correct?

21 A. Yes.

22 Q. And between 2001 and at least 2007, the case file did
23 not mean necessarily a filing cabinet; it meant the Automated

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1 Case Support system, correct?

2 A. Yes.

3 Q. Often abbreviated ACS?

4 A. Yes.

5 Q. And without going too deep into this, fairly old
6 clunky technology, correct? A lot of complaints about it?

7 A. I -- I never minded it. It was intuitive to me,
8 but ----

9 Q. Great. Well, then, good. That's better.

10 The ACS did not support electronic signatures,
11 correct?

12 A. That's my -- yes, that's -- I had no electronic
13 signatures there, so that's right.

14 Q. So at that time an agent would sign a printed copy of
15 a document and then submit it via scanning, et cetera, to ACS;
16 is that right?

17 A. Well, they would submit it electronically, and then a
18 signed copy would typically go to the case file, like a ----

19 Q. Like to a parallel paper file?

20 A. Yes.

21 Q. Okay. Was that your practice in between 2001 and
22 2007?

23 A. Yes.

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1 Q. The -- how was that paper file -- and at this time
2 I'm really specifically referring to you and your immediate
3 colleagues. How is that paper file maintained?

4 A. Are you talking about, for instance, like during the
5 Moussaoui prosecution?

6 Q. Yes. Sure.

7 A. So I would generate documents electronically through
8 either an FD-302 or an EC, and I would provide those, the hard
9 copies of the documents, to the OST, or the support
10 technician, who would take those documents and then later, I
11 assume, transmit them to New York.

12 Q. Okay. And when you say a paper file, there was
13 literally a, you know, a giant rotary file cabinet or
14 something that -- where paper copies were kept?

15 A. Yes. In the case of September 11th, because the
16 files were so voluminous, the originating office or -- at this
17 time, New York, was unable to accept all of the paper files
18 from around the country. There was just too much paper.

19 Q. Too much.

20 A. So each field office was instructed to maintain its
21 own paper case files of the 9/11 investigation. So the
22 document would be uploaded electronically into the system of
23 records, and then the parallel case file would be maintained

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1 at whichever field office authored that document.

2 Q. I see.

3 And so that is why, for example, in some of the early
4 discovery -- I'll just represent to you, sir, that some of the
5 early discovery we received in this case was essentially
6 lifted from the Moussaoui case, and at those times you would
7 see case numbers that had a designation other than New York.

8 And that's because they were maintaining a file in
9 Oklahoma or Arizona or wherever?

10 A. That -- without seeing that document, I can say
11 that's likely the case.

12 Q. Okay. And ACS, with perhaps modifications, was in
13 use through 2007; is that fair?

14 A. That's correct.

15 LDC [MR. CONNELL]: Okay. Sir, that's the end of that
16 chapter.

17 MJ [Col COHEN]: Let's go ahead, then, and take a
18 15-minute comfort break. We'll resume at 1500 hours. Same
19 instructions to the witness.

20 [The R.M.C. 803 session recessed at 1443, 17 September 2019.]

21 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1500,
2 17 September 2019.]

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

5 Your witness, Mr. Connell.

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

7 **CROSS-EXAMINATION CONTINUED**

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

9 Q. Sir, over the break I realized that I neglected to
10 ask one question for which I apologize. I need to go back to
11 the six to twelve requests in the closed system.

12 A. Okay.

13 Q. Of those six to twelve requests, how many were made
14 in the -- approximately, I know we're dealing with approximate
15 numbers to begin with -- approximately how many were made
16 during the period between your access to the system and, say,
17 January of 2017?

18 A. I have no idea.

19 Q. Okay. Thank you. All right. Moving to my next
20 chapter, which is the information workflow or the document
21 workflow from the ACS system.

22 In the Moussaoui case, as one of the persons
23 responsible for the successful resolution of the case, did you

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1 have any role in making sure that the defense or anyone else
2 who needed it had access to documents in the ACS system?

3 A. I may have had some role in assisting in discovery,
4 if that's what you're asking about.

5 Q. Yes, sir.

6 A. Yes. So I may have been asked to facilitate
7 discovery in some way, shape or form. I can't think of what I
8 specifically did right now, but I may have had some role in
9 that.

10 Q. Okay. We're going to come later to your role in the
11 High-Value Detainee Prosecution Task Force, but in your time
12 working with the Office of the Chief Prosecutor, did you have
13 any similar role?

14 A. As far as identifying things that I thought might be
15 discoverable?

16 Q. Yes, sir.

17 A. Yes.

18 Q. Okay. In the 9/11 investigation, is it -- is it fair
19 to say that the FBI compiled millions of pages of total
20 documents?

21 A. I would -- I would estimate that. Obviously, it's
22 impossible for me to count, but I would -- it's a lot of
23 documents.

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1 Q. Yes, sir. And does it sound right that as of
2 June 2004, over 165,000 interviews had been conducted by the
3 FBI?

4 A. Yes.

5 Q. And by November of 2009, with your grand jury
6 testimony, that on the order of several hundred thousand
7 interviews had been conducted over the course of the
8 investigation?

9 A. Yes, I -- again, I don't know a precise number, but I
10 would agree with that.

11 Q. Okay. And that well over 100,000 FD-302s had been
12 generated?

13 A. Yes.

14 Q. Sir, I'll represent to you that on 17 October 2002,
15 Director Mueller testified to Congress that over 165,000
16 FD-302s had been generated in the 9/11 investigation. Does
17 that sound possible?

18 A. Yes.

19 Q. Sir, in the Moussaoui case, do you have any sense of
20 how many FD-302s were withheld from the defense as
21 nondiscoverable?

22 A. I have no idea.

23 Q. Okay. Do you know approximately how many FD-302s

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1 were produced to the defense as discoverable?

2 A. I believe most of the 165,000, was my understanding.
3 Most of them were produced.

4 Q. Yes. In your work with the Office of the Chief
5 Prosecutor, do you have any sense of how many FD-302s were
6 produced to the defense as discoverable?

7 A. I do not.

8 TC [MR. GROHARING]: Objection.

9 MJ [Col COHEN]: Counsel?

10 TC [MR. GROHARING]: Relevance.

11 LDC [MR. CONNELL]: Sir, one of the focuses of this
12 hearing is under 524, whether the discovery produced from the
13 prosecution to the defense, among other things, is an adequate
14 alternative to the investigation which is prohibited by 524.
15 That's the point that I'm going to.

16 MJ [Col COHEN]: Counsel?

17 TC [MR. GROHARING]: Judge, I believe that's with respect
18 to RDI information. What Mr. Connell is getting at would be
19 FBI investigation information, which is a different thing.

20 MJ [Col COHEN]: I understand the scope potentially to be
21 more of the -- why I show the summaries and substitutions and
22 the way the evidence has been provided. So I will allow some
23 leeway to ask some additional questions. Overruled.

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1 LDC [MR. CONNELL]: And I'm not going far.

2 MJ [Col COHEN]: No, I understand.

3 Q. Yes, sir.

4 Should I repeat the question, sir?

5 A. No. I understand you were asking me how many FD-302s
6 were produced in the case for the accused in this specific
7 case. My answer is I do not know how many FD-302s were found
8 to be discoverable for this particular case.

9 Q. Would it surprise you to learn that, instead of most
10 of 165,000, less than 15,000 FD-302s were produced to the
11 defense?

12 A. That actually would not surprise me.

13 Q. Would not surprise you?

14 A. No.

15 Q. All right. All right. Sir, the next chapter that
16 I'd like to cover is about the changes between pre- and
17 post-9/11 information sharing among agencies. Do you
18 understand?

19 A. Yes.

20 Q. Okay. Prior to 9/11, there was at least a concept
21 which was referred to as "the wall" between criminal and
22 intelligence investigations. Are you familiar with that
23 concept?

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1 A. I'm familiar with that concept; however, I did not
2 become aware of it, I believe, until after September 11th.
3 But I am familiar with it.

4 Q. Okay. So let's stick with pre-September for just a
5 second, pre-September 11th. What I understand you to be
6 saying is it was not a problem that you, yourself, had ever
7 run into?

8 A. Not given my current duties at that time, correct.

9 Q. And your duties at that time were working organized
10 crime?

11 A. Yes.

12 Q. Which does have some -- you know, traditionally have
13 some electronic surveillance aspects to it, but you had never
14 run into any problems with an intelligence side?

15 A. Correct.

16 Q. Yes. Okay.

17 And -- but after September 11th, the idea of the wall
18 became a significant point of discussion, let's say; is that
19 fair to say?

20 A. Yes.

21 Q. And the political -- there were political changes
22 that were made in the ability to share information between
23 agencies of the United States Government?

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1 A. There may have been political ones. Obviously, I
2 don't -- I can't comment on that. There were certainly
3 changes in the way information was shared.

4 Q. You just said that much more eloquently than I did.
5 So could you just give us a general sense of the changes, the
6 way that changes were made in the way the information was
7 shared?

8 A. So from my position at that time, as I would consider
9 a relatively junior person -- the change was an emphasis. It
10 was an emphasis on the -- on sharing information to prevent
11 another attack. And I say "emphasis" because it's not like
12 I'm referring to a specific policy, although later on I know
13 Director Comey sent out a specific communication regarding
14 information sharing, but at that time, the emphasis was on
15 information sharing to prevent another attack.

16 Q. Okay. And what did that mean to you in your role at
17 that time, information sharing?

18 A. What it meant to me in broad terms were if I came
19 across information that could possibly have an impact on
20 stopping the next attack, I should share when and where
21 appropriate.

22 Q. Okay. And ----

23 A. And that would be guided by, certainly, need to know

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1 and a proper security clearance. But certainly, the emphasis
2 was on, we've just had an attack, we need to share information
3 where possible, where appropriate.

4 Q. So you just mentioned security clearance and need to
5 know. The information sharing that we're talking about is in
6 the realm of classified information; is that fair to say?

7 A. There may be unclassified information as well.

8 Q. Sure. But it certainly includes classified
9 information?

10 A. Yes.

11 Q. Because classified information is the only
12 information for which you need a security clearance. There
13 could be need to know considerations otherwise, but for a
14 security clearance, correct?

15 A. Yes.

16 Q. And at that time, in the time period between 2001 and
17 2007, what security clearance did you hold?

18 A. I held a Top Secret security clearance.

19 Q. And did you have an SCI on top of your Top Secret?

20 A. Yes.

21 Q. And on some occasions, were there additional
22 compartments?

23 A. Yes.

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1 Q. The -- in very late 2001 and then more early 2002,
2 the -- there were changes in the way that the FBI intelligence
3 analyst function is structured. Would you agree with that?

4 A. I have heard that. I really have very little
5 familiarity with that. But I know that changes occurred, I'm
6 not familiar with what they are.

7 Q. Okay. Are you familiar that Congress passed a law,
8 the Homeland Security Act of 2002, which mandated information
9 sharing between FBI and CIA?

10 A. I'm aware of the Homeland Security Act, yes, in broad
11 terms, yes.

12 Q. Okay. And aware of its -- even if not the precise
13 policy details, the increased, both emphasis, as you say, but
14 also structure for sharing information between CIA and FBI; is
15 that right?

16 A. I'm, in general terms, aware of that, yes.

17 Q. And that's in part because there was criticism of the
18 distribution of the Phoenix Memo, distribution of the
19 Minneapolis FISA request, you know, things which -- events
20 which had preceded 9/11 which became a sort of political focus
21 afterward; is that fair to say?

22 A. I'll describe it differently, if I may, sir.

23 Q. Please.

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1 A. It's, as I understood it, the wall specifically is --
2 the issue was what could be shared with whom, and that changed
3 significantly after 9/11.

4 Q. Okay. And so let's just drill down into that in an
5 unclassified way, which is that prior to 9/11, although you
6 may not have experienced it personally, there was a
7 restriction, largely as Department of Justice policy, that
8 information which was gathered on the intelligence side should
9 not be shared with the criminal side so as not to pollute a
10 criminal investigation. Is that a fair description?

11 A. I may not use the word "pollute," but I understand
12 how you're categorizing it.

13 Q. Okay. I didn't mean it in a pejorative way. I meant
14 in such a way that it would -- let's talk about what the
15 disadvantages might be, right?

16 The intelligence information might become
17 discoverable in a criminal case, correct?

18 A. It could be, yes.

19 Q. Right. There are restrictions on intelligence
20 gathering regarding U.S. persons that might come into play,
21 correct?

22 A. Yes.

23 Q. Okay. And so -- and there's just the traditional

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1 reticence of the intelligence portion of our -- of our
2 government to share information with the nonintelligence
3 portion of the community -- of the government, would you agree
4 with that, prior to 9/11?

5 A. That may have occurred. I -- I don't really have an
6 opinion on that, because I think, in general terms, it's
7 always a very difficult thing to share information. I
8 understand what you're saying. There may have been reluctance
9 from the intelligence community. It's really hard for me to
10 say.

11 Q. Yes, sir. All right.

12 Whatever the situation was before 9/11, after 9/11
13 there was a shift in emphasis, as you said, correct?

14 A. Yes.

15 Q. And the emphasis was really more on the intelligence
16 side sharing with the criminal side, correct?

17 A. Yes.

18 Q. How did you see that emphasis come into play?

19 A. I don't know if I could describe a specific example.
20 If you had one, certainly that's helpful. But going back to
21 the description of the wall, I think the concern was always,
22 if someone would use intelligence information, say, you know,
23 to -- as a way of skirting either a subpoena or a search

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1 warrant.

2 So I think people were very careful about that from
3 what I saw after 9/11. I understand, quote, the wall went
4 down, but I don't know that I have a specific example of what
5 you're asking.

6 Q. Yes, sir. I do have some specific examples.

7 In -- on 17 October 2002, Director Mueller testified
8 in front of Congress about the wall coming down. And I'll
9 represent some of those examples to you, and you can tell me
10 if they are reflected in your experience. Does that work?

11 A. Yes.

12 LDC [MR. CONNELL]: Okay. And for counsel and the court,
13 I'm at AE 628CC Attachment H, and then the Bates number within
14 that is FBI-22654, statement of Director Mueller before
15 Congress on 17 October 2002.

16 Q. So at that time Director Mueller testified that the
17 FBI had created an Office of Intelligence to oversee the FBI
18 analytical function within teams that were working on issues
19 within the FBI. Does that sound familiar to you?

20 A. It is not familiar to me, but certainly I don't doubt
21 what you're representing. It's simply not something that I
22 had involvement with.

23 Q. Okay. The -- Director Mueller represented that the

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1 CIA detailed experienced CIA managers from the Directorate of
2 Intelligence of the CIA to the FBI. Was that reflected in
3 your experience?

4 A. Yes.

5 Q. Okay. And the FBI, according to Director Mueller,
6 expanded the staffing of the intelligence operations
7 specialist function, the IOS. Are you familiar with that?

8 A. Yes.

9 Q. Could you explain to us what an IOS is?

10 A. My understanding at the time essentially was an
11 analyst, someone who would perform analytical functions on a
12 case. That may not be a perfectly accurate description but
13 that was my understanding.

14 Q. All right. Another example that Director Mueller
15 gave was that as of that time, 17 October 2002, 11 FBI
16 employees had been assigned to the FBI Counterterrorism
17 Center. Does that sound accurate to you?

18 A. I would have no way of knowing.

19 Q. Okay. The -- he testified that eight CIA managers
20 had been assigned to the FBI counterterrorism division. Is
21 that consistent with your experience?

22 A. Again, I know that there were officers assigned. I
23 have no idea as to the number.

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1 Q. Okay. And when you say "officers assigned," do you
2 mean CIA officers?

3 A. For instance, I'm thinking, I knew at least one in my
4 head. So like how many there were, I don't know.

5 Q. Okay. And when you knew at least one, you mean one
6 CIA officer?

7 A. Yes.

8 Q. Yes. Okay.

9 The -- if Director Mueller testified that dozens of
10 CIA analysts had been assigned to the FBI counterterrorism
11 division as of that date, would that be consistent with your
12 experience?

13 A. I don't recall working with any CIA analysts. I may
14 have met them, I may have spoken with them; but as far as them
15 working in FBI spaces, I cannot recall that.

16 Q. Okay. Director Mueller testified that each of these
17 employees has unfettered access to the computer databases and
18 communications systems of the other agency. Is that your
19 understanding of how it worked for the IOSs, at least?

20 A. I have no idea.

21 Q. So if you needed information and it was not available
22 to you in ACS, but you suspected that it was available in
23 another agency, let's say CIA, because that's what we're

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1 talking about here, in the CIA database, would you go to one
2 of the IOSs and ask them to see if they could run a query?

3 A. I don't recall doing that. I don't have a specific
4 recollection of doing that, because it -- access for me at
5 that time was simply not that easy.

6 Q. Okay. And let's talk about what that time is. I'm
7 talking about all the way from 2001 to 2007. So I know
8 around -- at least according to Director Mueller, things
9 changed around 2004, and there was more access. Would you say
10 that there was a change over that six-year period?

11 A. There may have been. And again, it's something that
12 may have been occurring around me as far as in
13 FBI Headquarters. But given my position at the time, that's
14 not something that I -- I will say readily witnessed and had a
15 feel for. It's not something I had knowledge of.

16 Q. Okay. When you started this investigation in 2001, I
17 would assume that you did not have ready access to, for
18 example, a SIPRNet terminal; is that fair?

19 A. By SIPRNet, I did not have access to the military's
20 SIPRNet system. I had access to the FBI's secret system. So
21 I don't know if you are ----

22 Q. I actually ----

23 A. ---- referring specifically to a Secret level ----

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1 Q. That's a valuable -- that's a valuable distinction.
2 Could you explain?

3 A. So the FBI secret system is separate from the DoD
4 SIPR system. I understand they are able to interact, is my
5 understanding. But I did not have ready access -- at some
6 point I may have access to some DoD -- I'm trying to --
7 information. I don't know precisely how that worked. I may
8 be able to discuss it. I don't know if there is any -- if
9 there are any classification issues. But primarily what I had
10 access to at that time on the -- was a Secret level system
11 that accessed primarily FBI documents.

12 And again, I'm thinking of one specific instance
13 where I had access to another system that by my understanding
14 was related to DoD, but in my -- to my knowledge, that doesn't
15 mean and, in practice, I don't believe that I had access to
16 all things on SIPRNet. So it would -- it would take a much
17 more narrow definition for me to describe what I had access to
18 at that time.

19 Q. Okay. The -- now, let's -- so I used the term
20 "walled garden" earlier.

21 A. Yes.

22 Q. Are you familiar with that term ----

23 A. Yes.

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1 Q. ---- in this intelligence community?

2 A. Yes.

3 Q. And would you agree that it means an enclave of
4 information within a larger system that requires additional
5 permissions to enter or to access?

6 A. Yes.

7 Q. Okay. And so when I hear you say that at one point
8 you had access to a DoD system, what you mean is the DoD
9 walled garden within the landscape of the -- of the Secret
10 Internet, if you will?

11 A. That is likely -- again, not knowing precisely how
12 that access worked electronically, I would consider your
13 description of that to be accurate, with the caveat being,
14 like I don't know precisely how the system was set up and how
15 the access occurred or -- and I'll simply leave it at that.

16 Q. Sure.

17 A. But in general terms, I accept your definition of
18 that.

19 Q. Okay. And would it be fair to say that the
20 intelligence analyst, whose job is to analyze intelligence,
21 not to be too simplistic about it, would have had greater
22 access?

23 A. That may be the case. I don't know that to be true.

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1 Q. Okay. So let me ask a question the other way, just
2 so that I'm a hundred percent sure on what you're saying.

3 Are you saying that throughout the period 2001 to
4 2007, you did not have relatively easy access to information
5 pushed out in message traffic by other agencies?

6 A. Can you define the term "message traffic"? Like
7 internal CIA message traffic?

8 Q. No, not internal to the CIA. Okay. Let me back up
9 and I'll do that for you.

10 So intelligence agencies as a general matter address
11 a variety of things, including, as you mentioned earlier,
12 threat reporting?

13 A. Yes.

14 Q. All right. And oftentimes an agency will gather
15 information internally. It might have raw intelligence. It
16 will refine it to some extent, and then it will make it
17 available to other agencies. Would you agree with that
18 description?

19 A. Yes.

20 Q. And the -- that's separate from their internal
21 communications between station and headquarters or similar;
22 would you agree?

23 A. Yes.

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1 Q. All right. They produced documents which are
2 intended for consumption by the larger intelligence community;
3 would you agree with that?

4 A. Yes.

5 Q. If I were to describe that as message traffic, would
6 that be -- would that be something you would be comfortable
7 with, or do you have a different term for that?

8 A. The term makes me uncomfortable ----

9 Q. Okay.

10 A. ---- because message traffic I interpret to be
11 specifically CIA internal traffic.

12 Q. Okay. Then let's let go of that.

13 A. Umm.

14 Q. I am referring to -- what term would you use for that
15 process?

16 A. How about an intelligence product?

17 Q. Intelligence product. Very good.

18 So it's not, as I understand it, now that we've
19 clarified our terms a little bit, your testimony that between
20 2001 and 2007 you did not have access to intelligence products
21 of the CIA and other agencies?

22 A. Can you say -- I want to make sure I understand your
23 question. Could you repeat it, sir?

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1 Q. Sure. I'll take out the double negatives to make it
2 easier for you.

3 Between 2001 and 2007, did you at any time have
4 access to intelligence products produced by other agencies?

5 A. Yes.

6 Q. Okay. And what was the mechanism by which you had
7 that access?

8 A. The mechanism that most readily comes to mind is
9 through the FBI ACS system of records, where there are Secret
10 level, again I'll call them either analytical products or
11 cables that were uploaded into the FBI system of records. So
12 I had access to those.

13 Q. Okay. So you just used the word "cables." "Cables"
14 has a couple of different meanings to it.

15 When you say "cables," you don't necessarily mean --
16 necessarily mean internal traffic, right? You're excluding
17 that. Is that what I understand?

18 A. Yes.

19 Q. You mean cables which are produced by the CIA or
20 other agencies for the wider intelligence community?

21 A. That's what I'm referring to, yes.

22 Q. That's right.

23 And so what I understand is at the Secret level.

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1 We're not talking about the Top Secret level, but at the
2 Secret level, information, those sorts of analytical products
3 produced by the CIA were uploaded into ACS and searchable by
4 you; is that right?

5 A. They may have -- they may have been uploaded in ACS,
6 if they were is, I guess, what I'm saying. As long as they
7 uploaded them into ACS, then I would have had access to them.

8 Q. Okay. So on direct examination, you testified, "I
9 had some access to CIA cables regarding detainee reporting."
10 Do you recall that?

11 A. Yes. Yes.

12 Q. Okay. When you gave that testimony, what did you
13 mean?

14 A. So my first recollection of that was when Ramzi
15 Binalshibh was first captured, debriefings of him were
16 uploaded into ACS in a case file, in a sub-file of a case file
17 that I had access to. So I could go and access that sub-file
18 on a regular basis and see what Ramzi Binalshibh was saying.

19 At some point -- I don't know how long. I'll
20 estimate a month or two. Maybe it was longer, maybe it was
21 shorter -- that changed, and they stopped uploading cables
22 into that particular sub-file, and I no longer had access to
23 them. When I say no longer had access to them, I no longer

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1 had access to them via ACS.

2 Q. Okay. Did you have access to them some other way?

3 A. I may have been able to get access if I asked people.

4 If someone -- I'll use the term pulled a cable, in other

5 words, if someone had access to a -- let's say, a Top Secret

6 enclave and printed off something, it could -- it's

7 conceivable they could have showed me.

8 What I was trying to explain then is my recollection

9 was that early on in the case of Ramzi Binalshibh, I had

10 regular access. That went away. And from my point of view,

11 which might not necessarily be equivalent to everyone else's,

12 it became significantly more difficult for me to get detainee

13 reporting.

14 Q. Okay. So let's talk about that example for a moment.

15 The structure of the platform that you're accessing

16 has sub-files in it sorted by topic; is that right?

17 A. I would say by case file.

18 Q. By case file?

19 A. As opposed to topic.

20 Q. And so case file in this case being the New York

21 case, at that time, Moussaoui, right?

22 A. I -- it may have been in that case file or it may

23 have been this another case file. Like, I'm not aware if it

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1 was in the New York case file or a separate one.

2 Q. Okay. Was there another case file, a parallel case
3 file, dealing with the 9/11 attacks or Moussaoui?

4 A. So there was the case I referred to -- and again,
5 I'll call it by case number, because it has been revealed
6 and ----

7 Q. Yeah, sure.

8 A. ---- many times through the 9/11 Commission Report
9 that NY-280350, which is the primary case file that I used.

10 What I'm stating in the case of the Ramzi Binalshibh
11 cables initially, I don't know if those cables went into that
12 case file or a completely different numbered case file. What
13 I do know is that for a period of time, I would say in late
14 2002, I had access to them -- to it through ACS. Again, so I
15 just don't know which case file it is -- it was in.

16 Q. And I understand that.

17 So my question is: What other case file might
18 have -- would there be that would contain it? Was there
19 another 9/11 case file?

20 A. So what confused me, sir, I would not consider a 9/11
21 case file. If it was a separate case file, it would have been
22 some sort of headquarters file that someone opened up.

23 Q. Okay.

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1 A. And they may have -- again, this is ----

2 Q. Would it assist you, sir, if I represented to you
3 that the Ramzi Binalshibh case file was not opened until late
4 2003?

5 A. It really wouldn't simply because I don't know --
6 someone could have uploaded those cables into -- again, the
7 Ramzi statements, into the 9/11 case file or a separate case
8 file that someone opened up for some reason that I don't know.
9 I'm simply trying to state I don't know which case file I
10 accessed them through. I simply know that I accessed them.

11 Q. All right. And, sir, your testimony a moment ago was
12 that these analytical products involving Mr. Binalshibh were
13 debriefings. What do you mean by that?

14 A. My recollection -- and again, this is going back to
15 roughly 2002. My recollection is that it was like an
16 interview.

17 Q. Okay. And the substance of the interview or
18 interrogation was summarized in a cable, and that was uploaded
19 into ACS, if I'm tracking your testimony?

20 A. That's my recollection, yes.

21 Q. And were you able to download those?

22 A. I could -- I assumed that I -- I know I had the
23 ability to download documents in ACS. Sometimes there are

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25807

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1 restrictions. I presume that I could have downloaded those
2 documents.

3 Q. Right. Now, we'll talk about this more later, but
4 Ramzi Binalshibh was a significant figure in the Moussaoui
5 prosecution; isn't that right?

6 A. Yes.

7 Q. He was alleged to have made two money transfers to
8 Moussaoui?

9 A. Yes.

10 Q. And in your role as a person responsible for the
11 successful resolution of the case, it would be very important
12 to you to have access to information about co-conspirators,
13 correct?

14 A. About co-conspirators, yes.

15 Q. And Ramzi Binalshibh was an unindicted co-conspirator
16 in the Moussaoui indictment, correct?

17 A. Yes.

18 Q. And so, you're not -- you're not telling us that
19 you're like, oh, just -- wow, Ramzi Binalshibh debriefings,
20 that's interesting, and went on about your day. This was
21 important professionally to you, right, sir?

22 A. It was important, yes.

23 Q. And so in the exercise of your professional

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1 responsibilities, you read that information?

2 A. In late 2002, yes, I did.

3 Q. In late 2002. And ordinarily would download it,
4 correct?

5 A. No, sir. I said that I likely could have downloaded
6 it; in other words, I had the ability to. I have no
7 recollection of ever downloading it. I'm saying, you asked
8 me -- you said, could you download it, if I recall correctly.
9 And my answer is: I could download it. I believe I would
10 have had the, I'll call it, electronic digital ability to
11 download it. I do not recall downloading it.

12 Again, could I have downloaded a document? I could
13 have. That's some 17 years ago. I don't recall doing it. I
14 estimate that I would have had the ability to do it.

15 Q. When the -- so you said at some point -- and you
16 gave, you know, plus/minus a month. At some point,
17 debriefings of Mr. Binalshibh were no longer uploaded into
18 that sub-file, correct?

19 A. Correct.

20 Q. And at that time, were the prior cables removed from
21 the sub-file?

22 A. I don't know.

23 Q. Okay. So as far as you know, you still had access to

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1 them at that time?

2 A. I may have.

3 Q. Not fresh ones, I mean the ones that you had already
4 read.

5 A. I may have. I don't know.

6 Q. Okay. The -- going back to examples from Director
7 Mueller, Director Mueller gives as an example that, as a
8 result of U.S. military and intelligence community action in
9 Afghanistan, Pakistan, and other foreign lands, a large volume
10 of paper documents, electronic media, videotapes, audio tapes,
11 and electronic equipment had been seized. Would you agree
12 with that statement?

13 A. Yes.

14 Q. And he further testified that the FBI, CIA, DIA, and
15 NSA have established a coordinated effort to exploit these
16 seized materials. Would you agree with that?

17 A. Yes.

18 Q. And that the Document Exploitation Project identifies
19 and disseminates pieces of intelligence gleaned from its
20 review of these materials. Would you agree with that?

21 A. Again, I am aware of DOCEX, and I would accept that
22 as an accurate definition as far as I know of it.

23 Q. Okay. And in this information flow, what was the

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1 role of the intelligence analyst?

2 A. I don't know. I don't know how they were plugged
3 into there as far as systematically or policy-wise.

4 Q. Before we leave this topic, you testified in
5 December -- on 7 December 2017. And I can point you to the
6 exact -- you have a binder up there with your testimony.
7 If -- if my characterization does not sound right to you,
8 please take me up on that opportunity.

9 You testified at that time that, although you had
10 that access to the Binalshibh materials in late 2002, you did
11 not later have access to information through classified
12 channels about Mr. al Hawsawi or Mr. al Baluchi. Do you
13 recall that testimony?

14 A. That's correct. I testified to that, and that was
15 one of the items that I was attempting to remedy because, in
16 my preparation for this testimony, I determined that was not
17 correct.

18 Q. Okay. So let's bracket for a moment the -- the
19 access to the closed network that you were granted on
20 17 October 2006. Let's bracket that for a moment. Are you
21 with me?

22 A. Yes. Yes.

23 Q. Other than that, do you -- do you stand by that

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1 statement?

2 A. No. And please, if you state -- if you restate that
3 statement, I may be able to provide clarity.

4 Q. Okay. Other than the closed network, and other than
5 the limited period of time where Binalshibh debriefings
6 were -- or detainee reporting was uploaded into ACS, did you
7 have access to classified detainee reporting about
8 Mr. al Hawsawi or Mr. al Baluchi?

9 A. I had access in the respect that there were people
10 who had access to those documents, and may have and likely did
11 share them with me. So I think what I was trying to state in
12 that testimony -- and again, I may refer to it -- but what I
13 was trying to state is, to the best of my recollection then,
14 and again upon review, I did not have immediate access to CIA
15 systems. I did have access to my coworkers, and I know some
16 of my coworkers did have access to some of the CIA reporting.

17 So again, in reviewing my testimony, one of the
18 things I was trying to correct for the record was the fact I
19 had sporadic access. And perhaps I should go and check the
20 record now, because I was -- I know I was certainly trying to
21 explain myself then as now.

22 Q. How do you know that some of your coworkers had
23 access to detainee reporting from the CIA?

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1 A. I'm trying to think of specific instances, but I
2 simply -- I know people did. I'm thinking back to Moussaoui
3 and back to some of the things regarding Ramzi Binalshibh, and
4 clearly I had knowledge of some of those -- of the
5 debriefings. Some of them.

6 Q. Okay. Sir, my next chapter is about your
7 recordkeeping specifically, like individual to you as opposed
8 to the FBI at large.

9 It's fair to say that you have recorded all of your
10 investigative actions on this case; is that correct?

11 A. As much as possible. When I say as much as possible,
12 I'm saying investigative actions; you don't necessarily record
13 every little thing, but significant things, you would.

14 Q. Sure. Every significant thing?

15 A. As much as possible, yes.

16 Q. Okay. And you do that because it's -- you know, even
17 from the beginning, it was obvious it was going to be a very
18 lengthy investigation?

19 A. Yes.

20 Q. And everyone -- or you would agree that memory erodes
21 over time, and it's best to create a bulwark against that?

22 A. Yes.

23 Q. And that you, yourself, wanted to have a clear record

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1 of what you did at any given time?

2 A. Yes.

3 Q. Your specific records are maintained in the case
4 file; is that correct?

5 A. Yes.

6 Q. And that would include your handwritten notes in the
7 1As?

8 A. As far as for interviews or interrogations?

9 Q. Yes, sir.

10 A. Yes.

11 Q. Okay. And in the course of this investigation,
12 you've made handwritten notes, I assume?

13 A. You have to be more specific, sir.

14 Q. All right. Do any of your 1A envelopes contain your
15 handwritten notes?

16 A. In what respect? For an interview?

17 Q. Yes. Or for investigative material and activity
18 documented on a 302.

19 A. Yes.

20 Q. Okay. How -- if you have a rough -- what is a rough
21 estimate of how many 302s you, yourself, have produced in this
22 case?

23 A. I have no idea.

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1 Q. Tens?

2 A. More than tens.

3 Q. Okay. More than hundreds?

4 A. Likely several hundred.

5 Q. Okay. As many as a thousand?

6 A. I wouldn't think so, no.

7 Q. Okay. Somewhere between several hundred and a
8 thousand?

9 A. I would be surprised if it went as high as a
10 thousand, so maybe several hundred.

11 Q. All right. And when those were interviews or
12 interrogations, the -- you put your handwritten notes in the
13 1As; is that right?

14 A. Yes.

15 Q. Okay. Now, are there any other circumstances in
16 which you make handwritten notes in the course of your
17 professional investigations?

18 A. I think you'd have to be specific, when you -- like,
19 when you mean by like a written note, what -- there would have
20 to be some impetus for me to put it in a 1A envelope, just
21 apart from it being a written note. Like it would have to be
22 relevant to an FD-302 or something like that.

23 Q. Sure. The -- but there are circumstances other than

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1 interviews and interrogations where handwritten notes might be
2 relevant to a 302 in your description there?

3 A. Could be potentially.

4 Q. Sure. The last chapter that I want to talk about in
5 this is e-mail.

6 In 2001, what e-mail system did you use
7 professionally?

8 A. I believe it was a system called GroupWise.

9 Q. GroupWise. Okay.

10 And at some point did that change?

11 A. Yes.

12 Q. And at what point was that?

13 A. I would estimate roughly mid 2007.

14 Q. So from -- for most of the period that we're mostly
15 focusing on here today, between 2001 and 2007, you exchanged
16 e-mails over GroupWise?

17 A. Yes.

18 Q. Okay. And although I'm not familiar with that
19 system, it functions much like other e-mail systems, I'm sure.

20 You type -- you have a "to" line?

21 A. Yes.

22 Q. And you're -- automatically it's from you, right?

23 A. Yes.

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1 Q. And you have a "subject" line?

2 A. Yes.

3 Q. And then you have the text of whatever it is that you
4 want to say?

5 A. Yes.

6 Q. Is it possible to send attachments?

7 A. Yes.

8 Q. And during that period of time, understanding it
9 might change over time, between 2001 and 2007, was GroupWise
10 in ordinary use within the FBI?

11 A. Yes.

12 Q. It was a way that you would coordinate with your
13 coworkers?

14 A. Yes, potentially.

15 Q. You might keep your supervisor up to date?

16 A. Yes.

17 Q. And you, yourself, were responsible for drafting
18 whatever e-mail you wanted to send, correct?

19 A. Yes.

20 Q. As opposed to having like a secretary or someone else
21 who drafted it, correct?

22 A. Yes.

23 Q. So you, yourself, were responsible for the content of

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1 it?

2 A. Yes.

3 Q. And was that a purely unclassified system?

4 A. No. It was able to send classified information as
5 well.

6 Q. Okay. From the same network?

7 A. Yes.

8 Q. You had a drop-down box or something where you could
9 designate it as secret or unclassified?

10 A. I don't recall. I mean, it's been ----

11 Q. But there was some way to do that?

12 A. There may not have -- I don't recall how we would
13 mark it back then. It's been a long time. I'm confusing it
14 with our current system.

15 Q. Sure. I can understand.

16 The -- but my point is that you're saying that it was
17 not two different systems. You didn't have to -- if you
18 wanted to send a Secret level e-mail, you didn't have to leave
19 this computer and go to a different -- and go to a different
20 computer in order to send the e-mail; is that right?

21 A. I guess what I'm trying to say is on the GroupWise
22 system, it could handle unclassified and classified. There
23 was a separate unclassified system for only unclassified.

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1 Q. And what system was that?

2 A. I can't even recall what the system was. I don't
3 know when it came into being. I know at some point, the FBI
4 has an unclassified, what I would call, clean side e-mail. So
5 whenever that came into being, I don't know when that was.

6 Q. Okay. And then -- but the GroupWise system you're
7 talking about, you might call that green and red side; is that
8 right?

9 A. Right.

10 Q. Okay. Would it be fair to say -- and I'm not going
11 to make you guess any closer than this, but would it be fair
12 to say over that period, 2001 to 2007, you sent thousands of
13 e-mails in an -- in a professional capacity?

14 A. I would presume so, yes.

15 Q. Yes. Okay.

16 Was there any case that you worked on between 2001
17 and 2007 which was not related in some way to 9/11? I mean
18 post-9/11 in 2001.

19 A. Not that I can think of.

20 Q. Okay. So it's fair to say that essentially all of
21 your X thousands of e-mails during that time would be related
22 to the 9/11 investigation in some way. There might be a few
23 personal ones, I understand, but all the professional ones?

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1 A. Plenty of administrative things, but
2 professionally speaking -- and again, taking away training and
3 all of that sort of administrative stuff, the rest of them
4 would likely concern my work on the 9/11 case.

5 Q. Sure. Did you have -- so when you deployed outside
6 of the -- so at that time, were you in Boston or were you in
7 the National Capital Region?

8 A. Between 2001 and 2007, I was back and forth between
9 New York and Washington, D.C.

10 Q. New York. Okay.

11 And did you have access to that GroupWise system from
12 both locations?

13 A. Yes.

14 Q. Okay. Was it the same account?

15 A. Yes.

16 Q. It was your same account. You just had multiple ways
17 you could access it?

18 A. Yes.

19 Q. Okay. So -- and I just want to make sure I have the
20 universe here.

21 It's fair to say you only had one e-mail account --
22 well, let me -- bracketing the closed system that we talked
23 about earlier, which had an e-mail function associated with

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1 it, is it -- did you only have one e-mail account between 2001
2 and 2007?

3 A. I ----

4 TC [MR. GROHARING]: Objection, Your Honor. Relevance.

5 LDC [MR. CONNELL]: I'm just trying to find out where we
6 have to go look, sir, for purposes of 502ZZZ.

7 MJ [Col COHEN]: Okay. I will allow the question.

8 Overruled.

9 A. So if I understand your question, my professional
10 e-mail system ----

11 Q. Yes, sir.

12 A. ---- was that GroupWise system.

13 Q. Okay.

14 A. As I recall, sir -- and just to sort of -- regarding
15 your other question, there may have been other -- there may
16 have been some other smaller cases, as I think of it, back
17 around that time. But again, I think the majority of them
18 would have been 9/11, but there may have been some other
19 smaller cases.

20 Q. Sure. And those cases would be identifiable in some
21 way. They would have a defendant -- or a -- a suspect's name
22 associated with them or a case number associated with them,
23 something like that?

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1 A. Something like that, yes.

2 LDC [MR. CONNELL]: All right. Your Honor, I'm perfectly
3 willing to move on to my next book. I do have another matter
4 that I need to take up with the military commission related to
5 502ZZZ. I prefaced this in my opening remarks.

6 I'm happy to do that now, or I'm happy to continue
7 with the cross-examination and take it up a little bit later.
8 But I know that yesterday at least the military commission
9 seemed to regard 1645 as a fairly hard deadline.

10 MJ [Col COHEN]: I think it's in the interest of everyone
11 to kind of take a stop around 1645 each day ----

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

13 MJ [Col COHEN]: ---- just for attention to detail,
14 myself, Counsel, everyone, as we get longer in the day. So I
15 do want to stick pretty close to that 1645 each day.

16 How long do you think this matter would take? I was
17 just pulling up 502ZZZ, so I know we're talking about 914
18 issues.

19 LDC [MR. CONNELL]: Yes, sir. I don't know. But I can
20 tell you this, my next -- my next subject is actually fairly
21 short, so maybe I'll do one more subject, and then we'll
22 return to this question.

23 MJ [Col COHEN]: Okay. That will be fine. Then if I need

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1 to temporarily excuse the witness, I can do so to take up a
2 matter with respect to ZZZ.

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

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

5 **CROSS-EXAMINATION CONTINUED**

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

7 Q. Okay. The next -- we're moving off of information
8 management, and we're moving to the investigation of the
9 attack on the USS COLE.

10 A. Yes.

11 Q. Okay. Now, you didn't testify over these last two
12 days about your role in the FBI's work around the USS COLE,
13 but in December of 2007 you did testify to that. Does that
14 sound familiar?

15 A. Yes.

16 Q. Obviously, the USS COLE bombing took place in the
17 year 2000?

18 A. Correct.

19 Q. Right. Okay. October?

20 A. Yes.

21 Q. Okay. And you, yourself, traveled to Aden, Yemen, in
22 support of the larger investigation, correct?

23 A. Yes.

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1 Q. From New York?

2 A. Yes.

3 Q. And on two different occasions; is that correct?

4 A. Correct.

5 Q. The first of those deployments was in the

6 November-December 2000 period; is that right?

7 A. Yes.

8 Q. Okay. And at that time, for your first deployment,
9 what was the total FBI presence in Yemen?

10 A. My estimate is a complete guess, so it's -- if -- I
11 don't know how reliable the guess would be.

12 MJ [Col COHEN]: Counsel, if he's going to completely
13 speculate, that would ----

14 LDC [MR. CONNELL]: Okay.

15 Q. Let me back up one thing, because in your prior
16 testimony you explained that in your role there, which was not
17 an investigative one, you told the prosecution on direct
18 examination that you were in a position to observe the overall
19 FBI investigation and to understand it in a general sense.
20 Have you retreated from that view?

21 A. I have not retreated from that view, no.

22 Q. Okay. Let me just ask my question one more time,
23 then, with that, which was: What do you understand to have

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1 been the total FBI presence in Yemen during that time?

2 A. Again, from my point of view, I thought I was ----

3 MJ [Col COHEN]: How about we ask it this way: How many
4 -- how many FBI agents are you aware of that were in Yemen at
5 that time? As opposed to what the total may have been, but
6 how many are you personally aware of?

7 WIT: I would estimate at least 20.

8 LDC [MR. CONNELL]: At least 20.

9 Q. At least 20, okay, great. Did that number change --
10 so your second deployment was in May-June 2001; is that
11 correct?

12 A. Yes.

13 Q. And did that number change?

14 A. Yes. I recall there were significantly fewer people
15 when I was there in May.

16 Q. Okay. And I'm just going to -- since you've already
17 testified to this, I'm just going to lead you through this.
18 If I get something wrong, feel free to correct me.

19 You went there in a support role, as I understand it?

20 A. Yes.

21 Q. As part of a tactical team?

22 A. Yes.

23 Q. And how large was your unit?

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1 A. We had three individuals.

2 Q. Were you the only tactical team deployed at that
3 time?

4 A. I would not necessarily consider it a tactical team
5 deployment because there were only three of us.

6 Q. Okay.

7 A. But on the -- I'm aware of only those three people,
8 including myself, from the New York Tactical Team that were
9 there at that time. I know when -- there were Hostage Rescue
10 Team members who left when we arrived.

11 Q. Okay. So would it be fair to say that there are
12 three people there in a security role?

13 A. As well as additional military individuals; but yes,
14 three FBI people there specifically from the tactical team.

15 Q. Okay. And at that time were you personally armed?

16 A. Yes.

17 Q. And what -- what was the heaviest weapon that your
18 group of three, your tactical team or sub-team, deployed?

19 A. I had an M4 rifle.

20 Q. And were there additional heavier weapons available
21 to the tactical team?

22 A. Not to us. Again, there were military assets, but
23 they were not under our control.

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1 Q. Okay. What is the heaviest weapon you saw deployed
2 by a military asset?

3 A. I -- I don't know precisely what they had. I saw
4 rifles. They may have had larger weapons. I suspect they may
5 have, but I don't recall seeing them.

6 Q. And your role was to provide physical security to the
7 rest of the FBI detachment; is that fair to say?

8 A. To the ones who were travelling outside of the hotel.

9 Q. Protect convoys?

10 A. Yes.

11 Q. At that time, you observed investigators meeting with
12 their Yemeni counterparts?

13 A. Yes.

14 Q. And your FBI mission included evidence collection?
15 The FBI -- larger FBI mission included evidence collection?

16 A. Yes.

17 Q. So, for example, you went to look at an area where a
18 boat was purchased?

19 A. Yes. Actually, I think specifically from what I was
20 referring to, where a boat may have been put in the water.

21 Q. Okay. Very good.

22 And when you say "military assets," you mean naval
23 assets like the NCIS?

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1 TC [MR. GROHARING]: Objection, Your Honor.

2 MJ [Col COHEN]: Counsel?

3 TC [MR. GROHARING]: Relevance.

4 MJ [Col COHEN]: I'll overrule it. He's going towards the
5 issue of hostilities here. I understand.

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

7 TC [MR. GROHARING]: Your Honor, I ----

8 MJ [Col COHEN]: Counsel?

9 TC [MR. GROHARING]: May I be heard?

10 I believe that issue has already been resolved by the
11 commission. But I would ask that counsel explain what issue
12 with regard to hostilities this testimony would be relevant to
13 that's presently relevant to the military commission?

14 MJ [Col COHEN]: Counsel, response?

15 LDC [MR. CONNELL]: Sure.

16 Your Honor, that issue is very much before the
17 military commission. We argued it last week. I understand
18 that the government's position was I should ask all my
19 questions, and rather than try to call this witness back, I'm
20 asking all my questions.

21 But if you want to wait and I can ask those questions
22 at a later hearing, that's fine with me, too.

23 MJ [Col COHEN]: Okay. How many more questions are there?

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1 LDC [MR. CONNELL]: I'm trying to give you an accurate
2 answer.

3 MJ [Col COHEN]: That's fine.

4 LDC [MR. CONNELL]: Between 20 and 25.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. CONNELL]: But that includes both -- I'm about to
7 close this chapter and move to the next chapter, which is
8 rules of engagement.

9 MJ [Col COHEN]: Do you -- for motions purpose, if I do
10 not reconsider the -- the motions that are -- the current
11 rulings, would these questions be relevant to another motion?

12 LDC [MR. CONNELL]: No, sir, I actually don't think so.

13 MJ [Col COHEN]: Okay. Thank you for your candor.

14 Well, I tell you what, since there is an existing
15 ruling, if we need to hear from the witness again, I'll bring
16 him back.

17 LDC [MR. CONNELL]: Yes, sir. I understand.

18 MJ [Col COHEN]: Thank you. Once -- thank you again for
19 your candor.

20 LDC [MR. CONNELL]: Yes. This topic, Your Honor, just so
21 you know that I'm not disregarding your ruling, goes to the
22 videos -- the video question that we were -- that was
23 testified about earlier and in December ----

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1 MJ [Col COHEN]: Okay. That's fine. I understand.

2 LDC [MR. CONNELL]: ---- the videos and the nature ----

3 MJ [Col COHEN]: No, thank you. Thank you again. Like I
4 said, you have been nothing but candid this afternoon. I
5 appreciate that.

6 LDC [MR. CONNELL]: Thank you.

7 Q. Sir, in December of 2017, you testified about a video
8 produced -- titled, approximately, the attack on the
9 destroyer -- American Destroyer USS COLE. Do you recall that
10 testimony?

11 A. Yes.

12 Q. And you testified about various clips on the Internet
13 regarding al Qaeda claims or alleged claims of responsibility
14 for the attack on the USS COLE. Do you recall what I'm
15 talking about?

16 A. Yes.

17 Q. How did that video come into your personal
18 possession?

19 A. The -- specifically the ----

20 Q. Specifically that one, The Attack on the American
21 Destroyer USS COLE.

22 A. My first recollection of that is it was seized in a
23 raid overseas.

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1 Q. Okay. And what raid was that?

2 A. The -- to the best of my recollection, the Tariq Road
3 raids.

4 Q. We are going to talk about the Tariq Road raids in
5 some detail probably tomorrow; but for now, is it fair to say
6 that, if I were to ask you the -- all of the participants in
7 the Tariq Road raid, you would not be able to answer because
8 of classified information privilege?

9 A. Yes.

10 LDC [MR. CONNELL]: Okay. Your Honor, that's the end of
11 my USS COLE questions, honoring your ruling.

12 MJ [Col COHEN]: No, no, thank you. Like I said -- and if
13 I do reconsider, I understand that that would be -- you would
14 want to present that evidence. And so if I do reconsider or
15 rule against the defense, then you may request the witness,
16 and we'll deal with it at that point.

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

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

19 LDC [MR. CONNELL]: Thank you.

20 MJ [Col COHEN]: Like I said, in particular -- like I say,
21 because you could have said a bunch of different other
22 motions, but thank you again for being candid.

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

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1 Your Honor, that is the end of that book. I can -- I
2 think it might be an appropriate time to take up the other
3 matter, the 914 matter.

4 MJ [Col COHEN]: Okay. Let's do that. I'll temporarily
5 excuse the witness. You may go back and grab a drink,
6 whatever you'd like to do. Give us a few minutes, we'll
7 notify you when we're ready for your testimony again. Thank
8 you.

9 WIT: Yes, Your Honor.

10 [The witness was temporarily excused and withdrew from the
11 courtroom.]

12 MJ [Col COHEN]: Okay. Yeah, just so it's clear, when the
13 witness is not on here, I understand -- I understood where you
14 were going. I understand it was the response questions as to
15 the types of weapons, those kinds of things.

16 The government is correct that the law of the case
17 currently is that that issue has been decided. Although I
18 could take the questions, it's probably best on that specific
19 issue for me to rule on that; and then if we need to call
20 additional witnesses, we will do so.

21 LDC [MR. CONNELL]: Understand, sir.

22 MJ [Col COHEN]: All right. Thank you. All right. So
23 I've got 502 triple ----

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1 LDC [MR. CONNELL]: Z.

2 MJ [Col COHEN]: Yeah. The way it's reading on my screen,
3 I wanted to make sure I didn't have four Zs. I have 502ZZZ,
4 which I see as the trial conduct order. Is that the one
5 you're referring to?

6 LDC [MR. CONNELL]: That's right.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. CONNELL]: The -- sir, the genesis of this issue
9 is that the government has produced one set of handwritten
10 notes of Special Agent Fitzgerald, one set of handwritten
11 notes of Special Agent Perkins, and no, meaning zero, e-mail
12 communications from either witness.

13 Now, when we -- I initially -- you know, this issue
14 started kind of a long time ago, and I expected testimony by
15 Special Agent Perkins and Special Agent Fitzgerald. And so,
16 as part of that process, brought my concerns to the attention
17 of the military commission in AE 502M.

18 And there -- AE 502M, the military commission granted
19 our motion in large part and entered AE 502ZZZ to govern the
20 conduct of the parties with respect to the production of 914
21 statements. And there are really two issues that were -- that
22 the military commission decided there, and it was confined to
23 502, at least largely, I understand that.

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1 The first one was the timing of the production, that
2 the parties should endeavor to produce the 914 material in
3 advance -- 30 days in advance of the hearing; but also the
4 scope. And if I could direct the military commission's
5 attention to paragraph 2, subparagraph a ----

6 MJ [Col COHEN]: That's where I'm at now.

7 LDC [MR. CONNELL]: Yes, sir. It provides that, "The
8 prosecution shall provide the defense all statements by
9 Special Agent Perkins, Special Agent Fitzgerald, and any other
10 witness testifying for the prosecution regarding personal
11 jurisdiction over the accused."

12 And then the next sentence after that was the issue
13 that we argued about scope, that, "Statements include
14 handwritten notes, e-mail communications, cables, telegrams,
15 or other electronically-distributed statements signed or
16 otherwise adopted or approved by the witness that are known to
17 the prosecution, or in the exercise of due diligence may
18 become known to the prosecution regarding any subject matter
19 about which the witness will testify.

20 The -- that is exactly the scope of many of my early
21 questions, which was: "What else is out there, Special
22 Agent?" And the Special Agent was quite candid about talking
23 about his practice of, in the substantial portion of 302s, of

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1 maintaining handwritten notes; but perhaps even more
2 importantly to what we were talking about here, that there's
3 an extensive e-mail communication authored by this witness for
4 the time period 2001 to 2007, the majority of which at least,
5 and maybe vast majority of which, relates to the scope of this
6 investigation.

7 There were only a few carve-outs, you know, training
8 and purely administrative matters on one hand. And there may
9 have been -- somewhat involved in some other small cases. But
10 it has always surprised me that the -- there would be the idea
11 that between 2001 and 2007, professionals would not use any
12 e-mail related to the case whatsoever, nor that they would
13 make almost no handwritten notes.

14 I know the amount of e-mail that I generate and the
15 amount of handwritten notes that I generate, and I'm sure that
16 a professional investigator is even more conscientious than I
17 am about those things. So that's why I initially brought this
18 question to the military commission. The military commission
19 has already established the law of this case in this matter.

20 And so at this point, I ask the military commission
21 to order the government, and sort of the way to do it is the
22 way that -- is up to you, that you've -- the military
23 commission has already ordered the government to do it, and

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1 they didn't do it. I don't know if a show-cause is in order
2 or simply another chance for them to comply. I leave that to
3 the military commission's discretion.

4 But as this cross-examination develops, what you're
5 going to see is that the cross-examination very much targeted
6 on the evolution of the investigation, because I proffer to
7 the military commission that the cross will attempt to -- will
8 endeavor to show, based on extensive documentation, that the
9 witness had a much greater access to detainee reporting than
10 he has spoken about, has been willing to acknowledge so far,
11 and also engaged in an ongoing dialogue with the CIA over the
12 questions which should be asked in order to provide the
13 information which underlies almost every fact about which the
14 witness testified on direct examination.

15 So we're not -- we're not far afield. We're not on a
16 fishing expedition. This is the actual -- you know, our money
17 is where our mouth is on this. This is the actual focus of
18 our substantial efforts. And it's, you know, something that
19 the government could have complied with a substantial amount
20 of time ago, this order being issued, you know, over a year
21 and a half ago.

22 MJ [Col COHEN]: Okay.

23 LDC [MR. CONNELL]: So at this point, that's our request

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1 for relief.

2 MJ [Col COHEN]: Trial Counsel, what did you do to comply
3 with 502ZZZ? Mr. Connell, if you will cede the podium,
4 momentarily.

5 LDC [MR. CONNELL]: I will. I'm just going to pack up a
6 few notes here.

7 MJ [Col COHEN]: That's fine. Thank you.

8 LDC [MR. CONNELL]: It's all yours, Counsel.

9 MTC [MR. TRIVETT]: Good afternoon, Your Honor.

10 MJ [Col COHEN]: Good afternoon, Mr. Trivett.

11 MTC [MR. TRIVETT]: It is clear that the prosecution and
12 Mr. Connell have a very differing view on the obligations
13 under 914. And I note that he sent 914 notice over from a
14 witness that he intended to have testify, that I looked at and
15 said, "Well, thank you, but I don't know why you think that's
16 discoverable under 914."

17 So the scope of the rule is clear. It's the
18 witnesses that we call. Meaning, if we're putting a witness
19 on the stand to testify about certain subject matter which he
20 has made other -- he or she has made other statements about,
21 that we have an obligation to disclose those other statements.

22 So we did disclose the letterhead memoranda involved
23 in the taking of Mr. Ali's statement in January 2007,

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1 including the handwritten notes of Ms. Perkins.

2 Now, in theory, under 914, at least, we're not
3 calling Ms. Perkins as a witness, we wouldn't have an
4 obligation to turn that over. We did anyway because I do
5 think it relates overall under 701. So we're focused really
6 on the 914 aspect of it.

7 We turned over his former testimony in the grand
8 jury. I don't recall if we turned over the Abu Ghaith
9 testimony or not, but I would note it was a different case.
10 I'll have to look at that. I wasn't prepared to argue
11 necessarily on the fly on that one. But just because Special
12 Agent Fitzgerald wrote something down doesn't make it
13 discoverable.

14 Now, with complete candor to the court, I did not
15 review and no one on our team has reviewed every single e-mail
16 ever sent by Special Agent Fitzgerald since September 11th,
17 2001 to date. And I think after his testimony, you'll be in a
18 better position to rule on this motion and whether or not it's
19 necessary, because we did turn over everything that we thought
20 was relevant -- relevant and discoverable under 701 as well.

21 But this concept that Special Agent Fitzgerald would
22 interview a witness, take notes of that witness, and we call
23 Special Agent Fitzgerald and never put any evidence on

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1 regarding his testimony of that witness, that we would somehow
2 be obligated to also turn over the notes is completely
3 contrary to everything that we've learned and been trained on.

4 So, like I said, the scope cannot be what Mr. Connell
5 thinks it is. I think after the testimony, including the
6 redirect, you'll have a better understanding that, in general,
7 the FBI agents are not writing substantive things about the
8 investigation in these e-mails; that they tend to do that
9 historically in the documents that they're supposed to do it
10 in, whether those be 302s, ECs or other documentation that
11 they're required to under protocol to put that in.

12 So we believe that we've satisfied our obligations
13 under 914. If the military judge thinks that scope is wider,
14 we'll certainly abide by any order of the military commission.

15 MJ [Col COHEN]: Okay. Yeah, I'm not ready to rule on the
16 fly either, but I did at least want to hear generally what
17 steps you had taken to attempt to comply.

18 MTC [MR. TRIVETT]: Thank you.

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

20 Mr. Connell, as I indicated when you -- when you
21 agreed to continue down this path, as did the government, that
22 I would not be surprised if witnesses bring up stuff that
23 perhaps we didn't -- we didn't all know at the time. I think

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1 whether the government knew this or not, we'll find out, but
2 clearly there are things that I did not know with respect to
3 the level of this.

4 Rather than impose a sanction exactly at this moment,
5 I think it would probably be prudent to go ahead and let's get
6 the full scope of what might be out there, and then I can
7 address the matter specifically at that time.

8 The language is pretty clear to me, so -- I mean, I
9 can read Judge Pohl's order, and it seems pretty clear to me.
10 You know, what I don't know and probably what needs to be
11 ferreted out a little bit more, and I'll let the parties do
12 that is: Of these e-mails, how many of them were -- for
13 example, what you just talked about, correspondence with the
14 CIA or people who had access to any statements gleaned from
15 the RDI program, how he used those, how he utilized those, if
16 at all, in the questioning of your client in particular, since
17 that's the one we're specifically talking about right at this
18 second, all of which is relevant.

19 And I -- and I agree with you. We're going to find
20 out if there's evidence out there that the government didn't
21 provide. And if they didn't, then you have every right to ask
22 for relief for failure to abide by a court order.

23 LDC [MR. CONNELL]: I'll be -- I'll be, I hope, equally

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1 candid with earlier. This is an important witness to us, and
2 I don't want his testimony struck. That would be as damaging
3 to us as it would be to the government because he was the
4 person who was involved, and the government could just call a
5 different person to testify to things, and we would lose
6 access to the important information from this witness. So --
7 so I brought up the show cause idea only because I didn't know
8 what the military commission's views on a disregard of an
9 order are. And there are different ideas on that.

10 I do agree with Mr. Trivett that we have -- like, I'm
11 sure, born of our experience, have different ideas of what
12 discovery is. And that's why we brought it to the military
13 commission, because we didn't agree.

14 And so earlier, just not long ago, the government
15 pointed out that I had lost a motion and the military
16 commission had sided with them on a point. It had
17 consequences. The same thing is true here. The government
18 lost a motion, the military commission sided with me on a
19 point, and that has consequences, too.

20 MJ [Col COHEN]: You are absolutely correct.

21 LDC [MR. CONNELL]: In my view, the consequence should be
22 production of the material. I am not at this point not asking
23 for some other consequence. I'm also not asking that it be

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1 produced today so I can cross with it tomorrow. We're
2 going -- I have a lot of material to cover tomorrow and intend
3 to do so. But that doesn't make this information any less
4 important.

5 MJ [Col COHEN]: No, you are correct. And that is -- that
6 is definitely a remedy I can impose. I have -- let's just say
7 without -- like I said, in my impartial role, there are
8 numerous instances where it would not surprise me if there was
9 a motion to compel things as we went along. Doesn't mean I'll
10 rule in any particular favor, but I'm not ignorant of -- of
11 these issues as they arise and the potential consequences of
12 how answers come out.

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

14 MJ [Col COHEN]: So if you're ready to proceed, I will
15 allow you to continue to make your case. And to the extent
16 that I just sua sponte issue a show cause or I sua sponte
17 order certain things produced, all of those are available to
18 me.

19 LDC [MR. CONNELL]: Understood, sir. Let me just log in
20 to this machine and then I'm ready to go.

21 MJ [Col COHEN]: Yeah. To include, if the government can
22 demonstrate that they have fully complied with the order, then
23 that's a separate matter as well, too. So I'm making no

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1 ruling. What I will say is this: I'm disinclined to
2 reconsider the ruling in 502ZZZ at this particular point in
3 time.

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

5 MJ [Col COHEN]: So that is the state of the law for the
6 case.

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

8 MJ [Col COHEN]: You're welcome.

9 Would you like to get in a few more questions before
10 we hit 1645?

11 LDC [MR. CONNELL]: [Nods head.]

12 MJ [Col COHEN]: Okay. How many more questions would you
13 like to ask today?

14 LDC [MR. CONNELL]: You tell me, sir. What's my budget?

15 MJ [Col COHEN]: If I took a ten-minute comfort break
16 right now, how many more questions could you get through, do
17 you think?

18 Tell you what, if we ----

19 LDC [MR. CONNELL]: Another ten minutes or ----

20 MJ [Col COHEN]: Yeah, a hard ten-minute comfort break at
21 this point.

22 LDC [MR. CONNELL]: Sure. Whatever you want, sir.

23 MJ [Col COHEN]: I know. I'm trying to help you guys get

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1 through your witnesses as well, too. Let's do that. We'll
2 take a break until 1620, and then if you could look at your
3 questions; and if we need to go an extra five minutes in lieu
4 of this comfort break, that's fine.

5 LDC [MR. CONNELL]: I'll choose appropriately, sir.

6 MJ [Col COHEN]: Okay. Thank you.

7 [The R.M.C. 803 session recessed at 1610, 17 September 2019]

8 [The R.M.C. 803 session was called to order at 1622,
9 17 September 2019.]

10 MJ [Col COHEN]: The commission is called to order. All
11 parties are present.

12 Just for planning purposes, as we call back the
13 witness, it is my intent, as I indicated, to let the parties
14 get through what they had proposed. If we need to take
15 testimony on Saturday, we will do so.

16 All right. Please call the witness.

17 [Witness returned to the witness stand.op

18 [MJ [Col COHEN]: Sir, I recognize you as the same
19 witness. Please be seated. I remind you you are still under
20 oath.

21 WIT: Yes, Your Honor.

22 MJ [Col COHEN]: Thank you.

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

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1 MJ [Col COHEN]: You're welcome.

2 **CROSS-EXAMINATION CONTINUED**

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

4 Q. The next book is the 9/11 investigation
5 generally ----

6 MJ [Col COHEN]: Mr. Connell, one second. Would you
7 please up the volume on the witness and Mr. Connell's mics,
8 please?

9 Carry on. Thank you.

10 LDC [MR. CONNELL]: Thank you.

11 Q. And the first chapter in that book is the
12 mobilization of the FBI that took around -- that took place in
13 the immediate aftermath of 9/11. Do you understand?

14 A. Yes.

15 Q. You testified on direct examination that PENTTBOM is
16 the code name for the 9/11 investigation, correct?

17 A. I -- consider it a case name as opposed to a code
18 name, but yes.

19 Q. Sure.

20 This is merely interest. I've never understood the
21 "BOM" part. Where does the "BOM" part come from?

22 A. I'm not sure that I understand it, either, other than
23 it's precedent. ADENBOM was the USS COLE bombings, so BOM.

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1 Q. And OKBOMB was the Oklahoma City bombing? I get it.

2 A. Correct. So they just sort of generalize it to a
3 terrorist attack.

4 Q. I understand, sir. And it is fair to say as part of
5 the PENTTBOM investigation thousands of FBI agents from every
6 field office were suddenly shifted to counterterrorism,
7 correct?

8 A. At least temporarily, yes, sir.

9 Q. And, in fact, you're one of those people.

10 A. Yes.

11 Q. And it is fair to say that there were -- for a short
12 time there were approximately 10,000 FBI agents who were
13 mobilized?

14 A. I would estimate that, yes, sir.

15 Q. And it has been estimated that at one -- for one, you
16 know, short time, the entire FBI was working the PENTTBOM
17 investigation?

18 A. Yes. That's my understanding, and expectation, yes.

19 Q. Okay. And that period lasted a couple of months, you
20 would say?

21 A. I -- to estimate -- to estimate it, yes, sir. I
22 don't know precisely.

23 Q. Okay. And it's fair to say that PENTTBOM was the

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1 largest investigation ever conducted by the FBI?

2 A. I presume so.

3 Q. Yes. And the FBI is, of course, the main criminal
4 investigative agency for the United States?

5 A. Yes.

6 Q. So it's fair to say that this is the largest
7 investigation in the history of the United States?

8 A. I presume that's the case, sir. I -- I don't know
9 what would be larger.

10 Q. Okay. And I would like to move on now to the
11 importance of investigation.

12 Much of the work of these 10,000 FBI agents is spread
13 over different avenues of investigation; is that fair to say?

14 A. Yes.

15 Q. Some would gather records?

16 A. Yes.

17 Q. Some would gather or process evidence?

18 A. Yes.

19 Q. But many of them do what FBI agents do best, which is
20 conduct interviews?

21 A. Yes.

22 Q. Over the course of your 15 to 16 years on the 9/11
23 case, how many in-person interviews would you say that you

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1 personally have participated in? Even including
2 interrogations, interviews and interrogations.

3 A. I would say dozens.

4 Q. Dozens. And as we're going to see, once we go
5 through in a little more detail, often you have to travel to a
6 witness; is that fair?

7 A. Yes.

8 Q. And the FBI has a travel budget for that purpose?

9 A. Yes.

10 Q. And sometimes you have to travel outside the United
11 States, all over the world?

12 A. Yes.

13 Q. And those are to conduct in-person interviews; is
14 that right?

15 A. Presuming, going along the line you're saying, yes.

16 Q. Yes. So would it be fair to say that in-person
17 interviews are the standard investigative practice for the
18 FBI?

19 A. I would say it depends. I'm not going to travel to
20 interview a witness if -- like travel halfway around the
21 world, unless it's significant enough to merit that travel.

22 Q. Sure. And if a witness is significant like -- well,
23 let me back up.

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1 On direct examination you testified multiple times
2 that a person was of investigative significance?

3 A. Yes.

4 Q. And that's the same standard that you're applying,
5 right?

6 A. Yes.

7 Q. That if -- if it's completely irrelevant, you're not
8 going to do it; but if it's important to the case, it's worth
9 doing in person?

10 A. In general terms, if possible, yes.

11 Q. Yes. And why is it the practice of the FBI to, in
12 general terms, prefer in-person interviews over some other
13 mode of communication?

14 A. Probably the -- it's probably the best way to gather
15 firsthand information from a witness.

16 Q. Okay. And so I'd like to break that apart a little
17 bit and explore how -- what its superiority is.

18 First, an in-person interview, you can present your
19 credentials, correct?

20 A. Yes.

21 Q. And in an in-person interview, you can bring forward
22 your personal credibility as an FBI agent of the United
23 States, correct?

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1 A. Yes. I would assume you could do that remotely as
2 well, but I understand what you're saying.

3 Q. Sure. In person, it's much easier to build rapport?

4 A. I would agree with that.

5 Q. Okay. And that's because of the nonverbal channels
6 of communication that all communication is not just the words
7 that we say, but it's also how we see it, correct?

8 A. Yes.

9 Q. Okay. Is it the -- so for domestic witnesses of
10 investigative significance, is it the practice of the FBI to
11 call them and interview them over the phone, generally?

12 A. If they have -- if they're of investigative
13 significance ----

14 Q. Yes.

15 A. ---- it's probably preferable to speak to them in
16 person.

17 Q. Okay. For the reasons that we've already talked
18 about?

19 A. Yes.

20 Q. And is it the FBI's practice -- and I'm going to
21 bracket -- like target grand jury practice, right?

22 A. Yes.

23 Q. Target practice -- that's not the right word -- grand

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1 jury target procedures.

2 But bracketing that for a moment, is it the FBI's
3 practice to send persons of investigative significance letters
4 rather than approaching them in person?

5 A. I would not say that that's a practice.

6 Q. Okay. Is that something that you've ever done, that
7 you mail a request for an interview to the witness as opposed
8 to just show up and talk to them?

9 A. I don't recall doing that, but ----

10 Q. Okay.

11 A. I just simply don't recall doing it.

12 Q. Right, and why not? What disadvantages would you see
13 in that?

14 A. I think a lot of people might ignore the letter.

15 Q. Sure. The -- do you ever send people a letter in
16 advance telling them that they have the right either to talk
17 to you or not to talk to you?

18 A. Not in my experience.

19 Q. Okay. And that's because when you show up and
20 interview a person, you're not -- and I'm talking about
21 interviews, not interrogations. They're not in custody. They
22 don't have to talk to you, right?

23 A. Correct.

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1 Q. If they choose to close their door and go on about
2 their day, you're not going to break it down. You're just
3 going to leave and go on about your day, right?

4 A. Yes.

5 Q. So it's more or less implied in your consensual
6 conversation with them, that they can either speak to you or
7 not speak to you?

8 A. In general terms, I would say yes.

9 Q. Now, sir, I'd like to talk to you about the
10 organization of the -- we touched a little bit on this
11 earlier, and I told you we'd get back to it -- on the
12 organization of the investigation. And I'm sort of going to
13 need you to walk me through the evolutions over time because I
14 know ----

15 A. Yes.

16 Q. ---- that it has changed over time.

17 So if I fail to recognize a chronological aspect to
18 the changes, please just jump in and correct me.

19 A. Yes.

20 Q. So we just talked about there's a huge stand-up, a
21 huge mobilization right after 9/11 for some short period of
22 months. In that period of time, when there's -- the whole FBI
23 more or less is working on the case, what is the organization

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1 of how the FBI makes sure that everybody's not working on the
2 same thing while leaving other important things undone?

3 A. As I recall it, specifically for the PENTTBOM team
4 in, what I would say, late 2001, I know it was -- there were
5 teams for each flight, so each of the four flights would have
6 a team of individuals assigned to it. I know for Germany,
7 they had individuals assigned to, quote, the German aspect of
8 it. I believe for Spain as well.

9 I know they had other teams. I'm not precisely sure
10 how they were divided up. There was a supervisory
11 special agent over the team at that time, and -- but again, I
12 know there were other teams. I just don't know precisely what
13 they were.

14 Q. Sure. I just want to make sure I understand. There
15 was a supervisory special agent over each of those teams?

16 A. No.

17 Q. Over the whole project?

18 A. Correct.

19 Q. Okay. And then what team were you on, sir?

20 A. The Flight 11 team.

21 Q. And was there a person who was in charge or was
22 everyone coequal on that team?

23 A. I would say over time, I became -- maybe not in

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1 charge, but maybe the lead agent.

2 Q. And could you walk us through how, sort of, the
3 tasking or the division of labor takes place? And just give
4 your own team as an example.

5 A. Very early on, even though Moussaoui was indicted, in
6 I believe, in December of 2001, as we've discussed, many of my
7 questions concerned Flight 11 writ large. So if anything had
8 to do with any of those five hijackers, I would have to answer
9 those questions.

10 Again, we were located in Headquarters, so if a
11 report came in regarding a car that they thought was
12 associated with it or a hotel location or whatever, I might --
13 I might understand those. If something came in regarding
14 Flight 175, that would go to a different team. Same thing for
15 Flight 77.

16 Certainly very early on -- and again, I don't think
17 I'm answering your question directly, but the routing was by,
18 I'll call it, subject matter within 9/11. And a great deal of
19 my work at that time was focused on trying to discern actual
20 hijacker information from reporting that was not accurate or
21 reporting that was -- reports that were done in earnest but
22 were vetted out as being related to the hijackers. So a lot
23 of vetting of information.

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1 Q. And so while we're there, how did that vetting come
2 in? So leads would come in from other offices or from call --
3 you know, members of the public. How was that -- what was
4 that vetting process like?

5 A. I'll take myself for example. Like I would review
6 information as it came in. Again, there was a great deal of
7 actual paperwork at that time that would be routed around.
8 Very early on, I began to recognize there were people of the
9 same name that were not the hijackers; in other words, similar
10 named individuals.

11 So we started to try to establish a timeline to enter
12 in accurate information of what we knew. In other words, I
13 know that this person's date of birth is September 1st, 1968,
14 and I can verify it this way. So if someone else reports on a
15 Mohamed Atta with a different date of birth, I know it's
16 likely not him.

17 But so one of the mechanisms that I specifically used
18 early on was trying to create a timeline.

19 Q. Okay. And of the, I'm sure, overwhelming flow of
20 information that's coming in, how -- within your team, how was
21 the decision made as to Special Agent Jones is going to go
22 there, and Special Agent Smith is going to go there? Are you
23 a person who tasks that out ----

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1 A. No.

2 Q. ---- or does everybody have -- you have a staff
3 meeting and everybody raises their hand? How does it work?

4 A. No. I was not assigning anyone to travel anyplace.
5 It was more at that time where I had, again, along with other
6 individuals, responsibility over Flight 11. So I would
7 bring -- if someone had to travel someplace or if I thought
8 someone had to travel someplace, I would speak with my
9 supervisor.

10 Q. All right. Sir, I feel that I've given you a poor
11 question because you focused on the travel aspect of it when
12 what I'm intending to do was focus on the investigative aspect
13 of it. There are witnesses to be seen, there are records to
14 be gathered, there are investigative activity generally to be
15 done.

16 How was the division of labor among the members of
17 the team as to who's going to do what aspect of it?

18 A. So, in other words, who's -- I think I misunderstand
19 your question, but who's going to do stuff related to
20 Flight 11 or the investigation within Flight 11?

21 Q. Sir, I'm trying to make it easy by just looking at
22 your team. But how do you decide within your team who's going
23 to interview what witness, who's going to gather what record?

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1 A. I -- just it simply didn't really work like that.
2 But in general terms, the investigation early on was happening
3 in the field offices. So even though that I was on the
4 Flight 11 team, and even though I was at Headquarters, and
5 even though the team worked to exert control over the case,
6 because of the very, very large nature of the case, if
7 something needed to be done in Jacksonville, Florida, usually
8 the agents and support staff in Jacksonville, Florida, would
9 recognize that and take that action, because oftentimes it had
10 to be done immediately.

11 So very early on, because of the -- all the different
12 locations that the hijackers were, I wasn't going out and
13 interviewing people, and I wasn't dividing up labor, and I
14 wasn't setting leads. Those things were happening by
15 necessity in the field office.

16 Q. Okay. And is that a decentralized process? Norfolk
17 says to Jacksonville, hey, can you talk to this person; or is
18 that all routed through some central clearinghouse of
19 information?

20 A. It was some of both. Typically, to be most
21 effective, if Norfolk wanted to talk to Jacksonville, they
22 would contact them directly. And certainly there were
23 coordination issues in the beginning, where the Headquarters

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1 element that I was at, because it was an ad hoc task force
2 that was stood up, it was difficult to get information routed
3 through there. And they took steps to try to -- like they
4 required -- in order for leads to be set, to, if at all
5 possible, through the Headquarters element, go through the
6 PENTTBOM team. That proved impractical, there were too many
7 things to follow up. There were too many leads.

8 So to answer your question, if someone from Norfolk
9 needed something from Jacksonville, likely they would contact
10 them directly and try to copy the Headquarters element.

11 Q. Okay. Now, you mentioned the PENTTBOM team. So we
12 have like day one where everybody's doing everything that they
13 can, I'm sure, with maybe more zeal than direction. But very,
14 very quickly, it congeals into, you mentioned, a core team of
15 agents at Headquarters. Is that what you mean when you say
16 the PENTTBOM team?

17 A. Yes.

18 Q. And when did that structural change occur? When did
19 that team -- oh, excuse me. When did that team come together?

20 A. I would say roughly October of 2001.

21 Q. And how many agents were on that team?

22 A. I'll estimate -- I think I've estimated before, 25,
23 30 agents, perhaps.

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1 Q. Okay. And how long does that core PENTTBOM team of
2 approximately 25 stay in that form?

3 A. I think agents rotated in and out fairly often.

4 Q. Uh-huh.

5 A. I would estimate for at least a couple of years, two,
6 three years, with people were rotating in and out. And over
7 time, the team did get smaller, but -- so maybe -- again,
8 it's -- it's very difficult to estimate but, you know, that
9 core team with agents rotating in and out maybe stayed
10 together for a couple of years.

11 Q. Okay. And administratively, that -- when that core
12 team was there, and I understand that people moved in and out,
13 that was still under the auspices of the New York Office. Did
14 I correctly understand your testimony?

15 A. Yes.

16 Q. And so if a person from Minneapolis was going to
17 come rotate in, they would temporarily be detailed to the New
18 York Office; is that the way that works?

19 A. They wouldn't be detailed to the New York Office,
20 they would -- as I understand it, they would go on a temporary
21 duty assignment to Headquarters and be assigned -- when I say
22 assigned, they weren't reassigned. It's a little bit
23 different than military or other organizations operate.

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1 They would go on a temporary duty status to, let's
2 say, FBI Headquarters and perhaps be detailed -- although not
3 necessarily by written order -- they might simply be detailed
4 to the PENTTBOM team.

5 Q. Okay. And did that PENTTBOM team include members of
6 other organizations, like the NYPD or ----

7 A. Yes.

8 Q. ---- Customs?

9 So what other organizations contributed members to
10 that team?

11 A. I recall specifically NYPD and Port Authority Police
12 Department. That's all I recall at the moment. There may
13 have been -- oh, there was an INS agent as well. I don't
14 recall a Customs agent. But in general terms, that's how I --
15 there may have been another task force officer. There was --
16 actually, now that I think of it, a New Jersey State Trooper
17 at some point as well.

18 Q. And was there a -- was there a CIA officer who was
19 part of that team?

20 A. Not in -- not in what I would consider the core team.
21 Like the team that sat essentially in an office, or a larger
22 office in headquarters, there was no CIA officer sitting
23 there.

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1 Q. Okay. Was there a CIA officer assigned to sort of an
2 expanded view of the team?

3 A. I don't know if there was or not. It's -- at that
4 point, I don't know that I would have knowledge if there was a
5 specific CIA person assigned to the team. It's beyond my
6 scope of knowledge.

7 Q. Okay. And what you mean by that is they might not
8 identify themselves as CIA, they might identify themselves in
9 some other capacity; is that what you're saying?

10 A. I don't think so. I don't -- I don't recall seeing
11 or knowing a CIA officer was either tasked to the team. I
12 don't -- I think I would have heard of it if someone was
13 tasked or detailed to the team.

14 There may have been a CIA officer who conducted
15 liaison with someone on the team, I just don't have knowledge
16 of a specific relationship.

17 LDC [MR. CONNELL]: All right, sir. I think that's a good
18 place to stop.

19 MJ [Col COHEN]: Okay.

20 LDC [MR. CONNELL]: It's 4:42 on my clock.

21 MJ [Col COHEN]: I have 1640 on that one, but, yeah, we're
22 all -- that's fine. Like I said, I don't mind taking a break
23 now. Okay.

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1 Special Agent Fitzgerald, we'll temporarily excuse
2 you for this evening.

3 WIT: Yes, Your Honor.

4 MJ [Col COHEN]: We'll recall you tomorrow morning at 0900
5 hours or shortly thereafter. I may have to take up some
6 administrative matters beforehand, but shortly thereafter.

7 WIT: Yes, sir.

8 MJ [Col COHEN]: Are there any other matters that any
9 party needs to bring up to my attention before we recess for
10 the evening?

11 That's a negative response from the parties. We're
12 in recess until 0900 tomorrow.

13 [The R.M.C. 803 session recessed at 1641, 17 September 2019.]

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