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1 [The R.M.C. 803 session was called to order at 0901, 18 April 2024.]

2 MJ [Col McCALL]: The commission's called to order.

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

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

7 Representing the United States today in the courtroom in
8 Guantanamo is myself, Mr. Clay Trivett; Lieutenant Commander
9 Robert Baxter; Mr. Christopher Dykstra. Also present is paralegal
10 Rudolph Gibbs. We're expecting Ms. Karissa Grippando in shortly.

11 Present from the FBI is Supervisory Special Agent Justin
12 Zuccolotto and Ms. Katherine Eisenreich from the FBI OGC.

13 Representing the United States in the courtroom -- in the
14 Remote Hearing Room is Colonel Joshua Bearden. Also present is
15 paralegal Samantha Resendiz -- Staff Sergeant Samantha Resendiz.

16 Your Honor, these proceedings are being broadcast to CCTV
17 sites in the continental United States pursuant to the commission's
18 orders.

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

20 Good morning, Mr. Sowards.

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

22 Present in the courtroom on behalf of Mr. Mohammad, who's
23 not present, Gary Sowards; Kathleen Potter, Lieutenant Colonel,

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1 United States Air Force; Denise LeBoeuf; Lieutenant William Xu,
2 Lieutenant, United States Navy; Elspeth Theis, Major, United States
3 Air Force; and Michael Leahy, Captain, United States Air Force.

4 And we have no one representing Mr. Mohammad from the Remote
5 Hearing Room.

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

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

8 MJ [Col McCALL]: Good morning, Mr. Engle.

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

10 On behalf of Mr. Bin'Attash: Matthew Engle, William
11 Montross, Tasnim Motala, Captain Marian Messing are here in the
12 courtroom. And up in the RHR we have Lieutenant Austin Ridgeway, and
13 I believe that's it.

14 MJ [Col McCALL]: All right.

15 Good morning, Mr. Connell.

16 LDC [MR. CONNELL]: Good morning, sir.

17 On behalf of Mr. al Baluchi are myself, James Connell; Alka
18 Pradhan; Rita Radostitz; and Lieutenant Jennifer Joseph.

19 In the Remote Hearing Room is Defne Ozgediz.

20 Mr. al Baluchi is present today in an adjacent facility.

21 MJ [Col McCALL]: All right.

22 Good morning, Mr. Ruiz.

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

1 I'm here on behalf of Mr. al Hawsawi, along with Captain
2 Patrick Tipton, Captain Kerry Mawn, Mr. Sean Gleason, and in the RHR,
3 Ms. Suzanne Lachelier.

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

5 All right. I note that the accused are absent. I
6 understand what Mr. Connell said, that Mr. Ali is present, but I know
7 it's also typically, if they're in the adjacent facility, they may be
8 doing, like, other meetings or other matters.

9 So anyways, Trial Counsel, do you have a witness to account
10 for the absences?

11 DMTC [MR. DYKSTRA]: Before you have a seat, if you could
12 please stand by the witness box and please raise your right hand.
13 **CAPTAIN, U.S. Air Force, was called as a witness for the prosecution,**
14 **was sworn, and testified as follows:**

15 DMTC [MR. DYKSTRA]: Please have a seat.

16 **DIRECT EXAMINATION**

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

18 Q. For purposes of the record, what is your pseudonym?

19 A. "Doc."

20 Q. And you're currently assigned to the Joint Task
21 Force-Guantanamo as an assistant staff judge advocate, correct?

22 A. Yes.

23 Q. All right. Thank you.

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

3 A. Yes, sir. I did.

4 Q. And did you use any particular form when you did so?

5 A. Yes, sir. I used the Statement of Understanding, Right to
6 Be Present at Commission Proceedings.

7 DMTC [MR. DYKSTRA]: Your Honor, if I may approach the
8 witness, I'm going to hand him what is marked as Appellate
9 Exhibit 943H (KSM), 943I (WBA), 943J (AAA), and 943K (MAH).

10 MJ [Col McCALL]: Go ahead.

11 Q. Now, are these the forms that you used to advise the
12 accused this morning?

13 A. Yes, sir.

14 Q. And at approximately what time did you advise them of
15 their right to be present this morning?

16 A. I advised them at approximately 0650, 0657, 0700, and
17 0704.

18 Q. And in what language did you advise them?

19 A. English.

20 Q. And was there an Arabic interpreter available to them, if
21 needed?

22 A. Yes, sir.

23 Q. All right. And what was their response when you did so?

1 A. Each of the accused declined to be present for commission
2 proceedings today.

3 Q. And are they attending other legal meetings this morning?

4 A. Yes, sir. They are.

5 DMTC [MR. DYKSTRA]: All right. Your Honor, no further
6 questions.

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

8 Any defense questions for this witness?

9 Apparently not.

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

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

12 MJ [Col McCALL]: The commission finds that Mr. Mohammad,
13 Mr. Bin'Attash, Mr. Ali, and Mr. al Hawsawi have knowingly and
14 voluntarily waived their right to be present at today's session;
15 although, again, it sounds like Mr. Ali may join us at some point
16 today.

17 Mr. Sowards?

18 LDC [MR. SOWARDS]: Thank you, Your Honor. I beg your pardon.
19 Just a late-breaking data point. I don't think it affects any of the
20 determinations you made, but actually Mr. Mohammad is not in a legal
21 committee -- sorry -- legal meeting this morning.

22 MJ [Col McCALL]: Okay.

23 LDC [MR. SOWARDS]: But we ----

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1 MJ [Col McCALL]: Understood.

2 LDC [MR. SOWARDS]: ---- anticipate that may happen later this
3 afternoon.

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

5 LDC [MR. SOWARDS]: But it's evolving. Thank you.

6 MJ [Col McCALL]: All right.

7 LDC [MR. ENGLE]: And, Your Honor, actually, the same -- the
8 same is true of Mr. Bin'Attash. I don't know that it matters either,
9 but...

10 MJ [Col McCALL]: No, I don't mind that clarification, though.
11 Mr. Connell?

12 LDC [MR. CONNELL]: Your Honor, recognizing that the beginning
13 of days off and a litany of complaints, I have some good news. Two
14 bits: The first one is I just wanted to note for the record that
15 Mr. al Baluchi is not being shackled in the adjacent facility this
16 morning, as the military commission has ordered.

17 And the second piece is that I want to report that I -- I
18 don't know the chain of events which led to it, but yesterday the
19 transition between the two courtrooms worked as the military
20 commission envisioned when we spoke about it earlier.

21 At the morning break, four members of the public were
22 allowed to move from the other courtroom to this courtroom. And
23 accountability was maintained by a sign-in/sign-out sheet.

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1 So I think that -- we hope that that -- that that procedure
2 sticks and -- because that satisfies our concerns.

3 MJ [Col McCALL]: All right. No, I appreciate you bringing
4 that to my attention. It's good to hear good news on that front.

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

6 MJ [Col McCALL]: All right.

7 All right. So yesterday Mr. Connell wrapped up his
8 unclassified cross-examination of Supervisory Intelligence Analyst
9 Waltz. And then today I anticipate the other defense teams are going
10 to continue on with that open cross-examination.

11 Because we're getting close to Ms. Waltz's classified
12 cross-examination, I know that there are still some Military
13 Commission Rule of Evidence 505 notices that are applicable to her
14 testimony that are still out there. So if the counsel are prepared
15 to discuss it right now, great. If not, I would ask at the first
16 recess that counsel get together and confer and then brief me after
17 the recess on which notices have been agreed upon and if you
18 anticipate that we're going to need an M.C.R.E. 505(h) hearing so
19 that we can try to schedule that.

20 All right. And, then, I understand late-breaking news that
21 there -- sounds like there's a witness issue. So, Mr. Trivett, are
22 you or somebody from the government prepared to discuss that?

23 Mr. Sowards?

1 LDC [MR. SOWARDS]: Yes, sir. I'm sorry, Your Honor. I try
2 to keep pace with your fast-moving events here.

3 I just wanted to say that with all the respect to
4 Mr. Connell, who first brought this question to or concern to our
5 attention, we're very appreciative of that -- excuse me -- I didn't
6 understand the ask as to be limited to movement between the two
7 venues, the two courtrooms to be limited to just breaks in the
8 proceedings, official breaks in the proceedings, as opposed to the
9 freedom of, especially, media observers, based on their professional
10 judgment of what's going on -- excuse me -- to -- to directly cover
11 the two events.

12 And what I would -- and I understand the -- some of the
13 media outlets have their own resources. They don't need me to
14 represent them. But from Mr. Mohammad's perspective, in terms of
15 this being a public trial, I would encourage further negotiation or
16 reflection, particularly in light of what Your Honor placed on the
17 record yesterday, which I believe was the inference that, as we know,
18 that the two courtrooms are very, very closely situated.

19 MJ [Col McCALL]: Right.

20 LDC [MR. SOWARDS]: And that we're talking about, I think this
21 time around, a media presence of four representatives that, without
22 abusing, I guess, the privilege, there should be the opportunity to
23 move during -- while the session's in order, just as sometimes other

1 than learned counsel, who are kind of locked in the proceedings,
2 sometimes our counsel need to get up and excuse themselves while
3 things are in progress.

4 So I would, without being ungrateful to the flexibility of
5 JTF, I would ask that problem to perhaps be worked a little further.

6 MJ [Col McCALL]: I appreciate you raising that issue,
7 Mr. Sowards. I think I was clear the other day that I don't find
8 that for our commission it is at all disruptive for someone in the
9 gallery to move during the session as opposed to waiting for a
10 recess.

11 So, again, the limitation seems to be the fact that we're in
12 a secure facility that requires escorts, and maybe there's some
13 manning issues.

14 And, again, this is -- as with many things with these
15 commissions, you know, we're slowly figuring out some of these
16 processes. This is the first time that we've tried to do two at
17 once. At some point, I can see where, you know, it's -- it even gets
18 a little more convoluted.

19 So I do ask -- hope that the authorities will increase the
20 manning to make sure that there's enough escorts that they can
21 accommodate the media on movement such as that. So I'm glad to put
22 that on the record.

23 All right. Back to the government. And I will give

1 everyone else a chance to -- after we discuss the witnesses a little
2 bit, if there's any other housekeeping matters before we bring
3 Ms. Waltz back in.

4 But, Mr. Trivett, did you or someone from the government
5 wish to address this issue on the witness?

6 MTC [MR. TRIVETT]: Good morning, Your Honor.

7 MJ [Col McCALL]: Good morning.

8 MTC [MR. TRIVETT]: So the government filed AE 937R. We filed
9 it last night. We were -- I'm sorry. We wrote it last night. We
10 were hoping to file it last night. We weren't able to get an
11 appellate exhibit number, so I believe we filed it sometime between
12 0830 and 0900 this morning.

13 It goes into great detail about Special Agent Gaudin's
14 current health situation. I prefer ----

15 MJ [Col McCALL]: And we don't need to put that on the record.

16 MTC [MR. TRIVETT]: We filed it CUI, but we put as much detail
17 in there as I was provided yesterday for him in the event the
18 commission had any questions. But it's certainly my assessment that
19 he could barely talk last night and was in a lot of pain in -- just
20 in the talking piece of it.

21 So to make him travel and then await results of testing I
22 don't think is fair to him, and I don't think it puts him in
23 the -- in the right position to be able to give what I believe is

1 going to be complex testimony at some point.

2 I did talk -- last night I did call learned counsel for
3 Mr. Bin'Attash's team, understanding that he was likely the main
4 attorney who was going to be speaking with him. I'm not going to
5 speak for him, but I did try to communicate it to at least the person
6 I thought it was going to impact the most, bring it to your
7 attention, and then it's obviously Your Honor's call.

8 MJ [Col McCALL]: Okay.

9 MTC [MR. TRIVETT]: Thank you.

10 MJ [Col McCALL]: All right. So here's the way -- what I'd
11 like to do today. So, I mean, I'm a bit frustrated. I know
12 that -- I read the government's notice. It --

13 I'll let the defense counsel certainly state their position,
14 but it does seem like Special Agent Gaudin is not going to be able to
15 testify next week. I don't know that there's any way around that.

16 The frustration is the fact that, you know, multiple times
17 now we've had just one witness lined up, and, you know, it's a single
18 point of failure. When that witness is unavailable, then we're
19 scrambling.

20 On simple straightforward court-martial, if a witness for
21 some reason is unavailable, I typically would look at trial counsel
22 and say, "Next." You know, you have them locked and loaded and ready
23 and in the queue.

1 And I understand that this is a much more complicated case,
2 which means it's much more complicated witness prep, traveling people
3 in, the amount of time that has gone by. So, again, getting the
4 witnesses ready is more involved.

5 But I think we -- going forward, we need to make sure we
6 have extra people in the queue and ready to bring in. Because,
7 again, the expense of bringing everyone down here and ready for
8 testimony and then it gets stalled, it's very frustrating. And
9 especially, again, I -- the public, the media are watching and they
10 see us continue to struggle to make progress in some of these areas.

11 So, again, I just wanted to put that on the record. There's
12 some frustration there.

13 So what I would like, we will go ahead and go into
14 Ms. Waltz's testimony this morning and continue to wrap that up. But
15 I anticipate at some point today -- I don't know how long it's going
16 to take with the remaining open testimony, but I want to have counsel
17 confer and talk about the witnesses that are out there and what we
18 have on the docket for the next four weeks and see what parts can be
19 moved around and if there's possibility of filling in those spaces.

20 I've not decided on Special Agent Jocys or SG1. I'm still
21 considering it. But you can take that into account if you think that
22 those witnesses could fill in those spaces.

23 Maybe this opens up for the former camp commander to slide

1 up. I know there were some medical appointments, and then I also
2 heard some matters on a potential move, but now if he's moving almost
3 a month up, perhaps he's now available to go next week.

4 Again, I'm not at the point where I'm going to start
5 ordering things and saying, hey, this person will testify, because,
6 again, I understand the complications involved. I also understand
7 that counsel then are having to move things around to make sure that
8 the person who was going to question that witness is available, the
9 505s are done, and that we're ready to go.

10 We're not at that point where we need to start moving with
11 that type of haste, but we're getting there. And so I would ask the
12 parties to confer and see what we can do to fill in some of this
13 white space.

14 I'm not adamant that we can't have any white space. Again,
15 we do have oral arguments that we can handle. But because of the
16 posture of the case right now -- and, again, we're starting to see
17 more and more witness health issues that are only going to get worse
18 the longer this drags on. We need to move and preserve this
19 testimony.

20 So that's my position. Please just be ready to discuss that
21 at some point today. I'll give you an extended break to discuss it
22 among the parties.

23 All right. Does anybody need to be heard on this right now?

1 Okay. Any other housekeeping matters before we bring
2 Ms. Waltz in?

3 Apparently not.

4 All right. If we can get the witness in.

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

6 MJ [Col McCALL]: Good morning, Ms. Waltz. Welcome back.

7 WIT: Good morning. Thank you.

8 MJ [Col McCALL]: Please have a seat. I just remind you
9 you're still under oath.

10 WIT: Yes, sir.

11 MJ [Col McCALL]: All right. Lieutenant Xu, over to you.

12 **CROSS-EXAMINATION**

13 **Questions by the Detailed Defense Counsel [LT XU]:**

14 Q. Good morning, Supervisory Intelligence Analyst Waltz.

15 A. Good morning.

16 Q. I'm Lieutenant Xu, counsel for Mr. Mohammad. Do you
17 prefer SIA Waltz or Ms. Waltz?

18 A. Whatever's easiest.

19 Q. Okay. I'm going to do "Ms. Waltz" if that's okay.

20 A. That's fine.

21 Q. And I know we're running into a lot of issues with
22 classification, so -- you've been doing this far longer than I have
23 with the classification, so I'd just ask for your patience as I try

1 to navigate sort of the protective orders. And certainly if -- you
2 know, if you don't think you can answer a question, just let me know.

3 A. Okay.

4 Q. And I'm going to try my best to signpost my questions to
5 avoid confusing sort of the record and you. If you ever need me to
6 repeat a question or if you didn't understand it, just let me know.

7 A. Okay.

8 Q. Okay. Thank you. So I'm going to start with the
9 letterhead memorandums, the LHMs ----

10 A. Yes, sir.

11 Q. ---- which you testified that you observed down here in
12 Guantanamo Bay in 2007, right?

13 A. Yes, sir.

14 Q. When did you first become aware of the effort to obtain
15 these LHM statements?

16 A. At some point in the, I'm going to say, fall of 2006,
17 there was a -- I know there was a group being put together
18 to -- like, a group from the FBI being put together to eventually
19 interview what was being termed the high-value detainees here in
20 Guantanamo.

21 There -- I think there was -- I recall I was in what I'm
22 going to call maybe the second group that was brought in. I think
23 there was -- they were identifying people and need some more type,

1 but I joined up with a group, again, probably late fall 2006.

2 If I'm hesitating at all, it's because I'm trying to think
3 about the timing and the dates. It's been a while.

4 Q. No problem. It has been a while.

5 Was there a name for this group that you were referring to
6 at the FBI?

7 A. We were -- I don't know if there was a name immediately.
8 Eventually we were termed the High-Value Detainee Task Force or
9 Prosecution Task Force.

10 Q. And when you said you were brought in as a second group,
11 who brought you in?

12 A. I -- I can't recall. I was asked to go to a meeting. I
13 went to a meeting.

14 Q. Okay. So you were asked. It's not that, you know, you
15 volunteered for an assignment that you heard of; is that correct?

16 A. Correct. I was probably asked and then said okay or -- we
17 all had other jobs, so...

18 Q. Right.

19 A. It was -- I was in another assignment, so it was taking me
20 away from that assignment, but it was a temporary assignment or
21 as-needed basis.

22 Q. Thank you. You said that you went to -- you were told to
23 go to a meeting and you went to this meeting, right? Can you tell me

1 who was at this meeting that you went to?

2 A. I -- I can't think of off the top of my head the very
3 first -- I can't recall the very first meeting. I just -- I can't
4 recall the -- how that -- you know, who would have exactly been
5 there. It was a decent size group.

6 Q. Of FBI agents?

7 A. Yes, FBI agents. And there were -- I know a couple
8 analysts, a couple of additional analysts ended up working with the
9 task force, also. I can't recall if they were there at that very
10 first meeting or not. I -- it's -- it's difficult to parse exactly
11 who was where when with respect to the groups.

12 Also, keep in mind that people were coming from different
13 offices. So at certain points in time somebody may have been in New
14 York or in a different office, so they may not have been there. So
15 I -- I just can't recall exactly who from the FBI.

16 I recall meeting -- I knew Joan-Marie Turchiano some, so I
17 recall seeing her. And I, at some point, met Grant Mendenhall. I
18 can't -- whether that was at the very first meeting or not, I'm not
19 100 percent sure.

20 Q. So are you saying there were multiple meetings stateside
21 before going down to Guantanamo Bay; is that right?

22 A. Yes.

23 Q. And were there anyone from outside of the FBI at these

1 meetings?

2 A. I recall the Department of Justice being there; FBI,
3 Department of Justice. I -- I don't recall more than that.
4 There -- I just -- I can't remember right now.

5 Q. No problem.

6 A. I'm doing my best.

7 Q. I appreciate it. I know.

8 What did you understand to be the mission of sort of
9 this -- the team that was going down there?

10 A. To conduct interviews.

11 Q. For what purpose?

12 A. We were -- my understanding is that we were doing
13 interviews in Guantanamo to support an eventual prosecution in
14 military commissions. Exactly what that meant to me at that time,
15 I'm not 100 percent sure because it was somewhat new to me, as I
16 suspect it was new to a lot of people.

17 Q. And you knew that, again, these interviews were for HVDs,
18 right?

19 A. I'm sorry. Can you repeat the question?

20 Q. You knew that these interviews were for the HVDs?

21 A. Yes.

22 Q. And at that point did you know that the HVDs -- you knew
23 that the HVDs had been in custody -- had been in U.S. custody for

1 several years, correct?

2 A. Yes.

3 Q. What was your understanding of why these interviews were
4 being conducted now?

5 A. Because there was a -- a need for the FBI to conduct the
6 interviews to -- again, an interview to potentially support the -- a
7 subsequent prosecution.

8 Q. The HVDs, like Mr. Mohammad, had already been interviewed
9 by the United States, correct, at that point?

10 A. They had been interviewed, yes.

11 Q. So why was there a need to interview them again?

12 MTC [MR. TRIVETT]: Objection. Asked and answered.

13 MJ [Col McCALL]: Objection sustained.

14 Q. During these meetings stateside in preparation for the
15 interviews, did you ever hear the term "clean team" being used?

16 A. I've heard the term "clean team." I -- I've heard that
17 over the years, and I -- before -- I don't know if that was a
18 specific term that was used at that time or during those meetings.
19 I -- I can't -- I can't recall, like, a special designation of -- in
20 using that term of "clean team."

21 Q. Understood. Thanks.

22 So during these meetings, what exactly was talked about?

23 What was the purpose of these meetings stateside?

1 A. At some point we -- at some point it was logistics, too.
2 I mean, we were talking about logistics. There was some discussion
3 that we had to get read on to -- you know, the logistics of getting,
4 you know, read in to the -- a special access program. And then
5 our -- our efforts, meaning our -- as we were assigned to work on
6 different -- potentially different interviews, to essentially go get
7 ready for them, start getting -- getting materials together.

8 Q. Get what materials together?

9 A. If you're going to use an image -- if you're going to use
10 a picture or a document, let's say a flight manifest, during the
11 interview, or you want to use it, get a copy of it, put it together.
12 Like, get -- get your -- start getting your stuff lined up and what
13 you may want or need, if there's photos, just anything that would, in
14 my opinion, normally be done in the normal course of business to
15 prepare for an interview.

16 Q. Understood. And who was deciding what documents, what
17 materials were relevant to the interview?

18 A. When -- I think it was -- there was a decision that would
19 be made ultimately by each team and -- and, obviously, the lead agent
20 would ultimately make that decision, whether that individual wanted
21 to use a particular document or photo during an interview.

22 But that was left to our discretion to utilize evidence
23 or -- I say "evidence." We wouldn't bring actual evidence in. We

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1 had lab photos, et cetera, of -- of evidence. But with respect to
2 what would be used, we had the discretion to make those decisions
3 ourselves.

4 Q. I guess what I'm asking is: What were those decisions
5 based on? What evidence is the lead interviewer, lead agent
6 reviewing in preparation of the -- for the interviews?

7 A. I -- I would ask the lead agent that -- I can tell you
8 what I did, you know, and what discussions we had. But ultimately
9 what decision that individual ultimately made to use or not use, I
10 would defer to that individual, depending on which interview it was.

11 Q. Okay. Sure. Could you tell me sort of what you did,
12 then, and what discussions were made -- or were had? Sorry.

13 A. I participated in getting maybe just copies of some
14 financial documents, maybe some photos of individuals, other -- other
15 types of documents or, again, pictures of evidence that were obtained
16 during the course of the time that we were working on that
17 investigation.

18 Q. Did you discuss detainee reporting from the RDI program
19 during these discussions?

20 A. I don't recall discussing it, just because we didn't -- we
21 didn't -- we didn't need to discuss detainee reporting. If we have
22 an image, a photograph of ----

23 [END OF PAGE]

1 [The security classification button was pushed in the courtroom which
2 caused the video feed to terminate at 0932, 18 April 2024.]

3 [END OF PAGE]

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1 **[The Military Commission resumed at 0935, 18 April 2024.]**

2 MJ [Col McCALL]: Mr. Trivett, go ahead.

3 MTC [MR. TRIVETT]: Are we back on the record, sir?

4 MJ [Col McCALL]: We are.

5 MTC [MR. TRIVETT]: All right. So paragraph 40 actually gives
6 the one exemption on the location of a CIA facility, and Lieutenant
7 Xu appropriately followed that. So we'll withdraw that assertion.
8 He can ask the question again in open and the witness can answer.

9 MJ [Col McCALL]: Okay. Understood.

10 All right. Go ahead, Lieutenant Xu. We're back on the
11 record.

12 DDC [LT XU]: Thank you, Your Honor.

13 **CROSS-EXAMINATION CONTINUED**

14 **Questions by the Detailed Defense Counsel [LT XU]:**

15 Q. So, Ms. Waltz, did any of the preparations or meetings
16 that you referred to take place in a CIA facility in the Washington
17 Metropolitan area?

18 A. Yes. I do recall meetings, yes.

19 Q. Would you be able to answer if I asked the question why
20 did those meetings take place in a CIA facility?

21 A. I -- I don't know. I'm saying I don't know if I can
22 answer ----

23 Q. You don't know why or you don't know ----

1 A. I -- I get ----

2 MTC [MR. TRIVETT]: We have no objection to that.

3 MJ [Col McCALL]: All right. Ask your question again,
4 Lieutenant Xu.

5 DDC [LT XU]: Clarifying there's no objection because of the
6 question or because of the ----

7 MJ [Col McCALL]: I think the witness wasn't sure if she was
8 allowed to answer, but it sounds like the government thinks that she
9 can, so ----

10 DDC [LT XU]: Oh, okay.

11 MJ [Col McCALL]: Ask your question again.

12 DDC [LT XU]: Ask my question again, Your Honor?

13 MJ [Col McCALL]: The question you just asked, go ahead and
14 ask it again.

15 Q. The question was: If I -- if I had asked why did those
16 meetings take place in a CIA facility in the Washington Metropolitan
17 area, would you be able to answer?

18 A. Apparently I can.

19 Q. Can, as in ----

20 A. I think I can. I'm assuming that -- I'll attempt to
21 answer the question.

22 Q. Okay, please. Yeah.

23 MJ [Col McCALL]: Go ahead, Ms. Waltz.

1 A. Okay. I believe -- well, so first, we had -- we were a
2 bit of an ad hoc group, so space was being made available to us to
3 work in. And then at -- at some point, because of information that
4 may be at the -- you know, kind of governed by the Special Access
5 Program, I -- that had to dictate our workspace, some of our
6 workspace.

7 And I'm saying "some," because while I know that there
8 were -- there was occasion where I did some work in that office
9 building, I also did some work just at LX1 because the FBI has space
10 there and I was able to work there. So it wasn't exclusive.

11 Q. So just so I understand what you're saying, you needed to
12 work in a CIA facility because that was a facility where you can
13 access SAP information? Is that -- is that what you're saying?

14 A. If I -- if -- if needed, that we could -- it -- we were
15 still trying to learn all of this as well. So we were told that
16 office space was being made available here, we go to the office space
17 that's being made available to us.

18 All of the ins and outs of exactly why that was the case,
19 you know, whatever decisions were made, that -- I was told to go to
20 an office building, I'd go to an office building.

21 Q. Were you able -- did you access information at that
22 particular office that you could not access anywhere else? Is
23 that -- was that your understanding?

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1 A. There -- there was a closed network made available to us
2 to work on if -- like, a computer terminal, if we needed to. I
3 actually found that I could be more productive having access to FBI
4 systems either at my office in LX -- at my office at WFO or in LX1.

5 I actually -- it was -- I found it -- when we -- if we
6 needed to go there, I mean, it was a time when we could sit and talk
7 together because -- because we had workspace.

8 But for me, when I needed to access FBI material, it
9 was -- it was much easier to do in my own office or, again, at space
10 that was made available to me at LX1.

11 Q. Understood, Ms. Waltz. I'm sorry if my question is
12 confusing. My question was: Were you accessing information at the
13 CIA facility that you could not access within your own FBI spaces?

14 A. I don't recall.

15 Q. Do you remember -- do you remember during these
16 preparations consulting with CIA Office of the General Counsel?

17 A. I recall -- I recall meeting people. I don't know that I
18 specifically needed to consult. That wasn't really my role. I was
19 asked to help prepare for the interviews. And having to help prepare
20 for the interviews, that really meant I needed access to FBI
21 information. I didn't need -- in order to access information from
22 the FBI, I didn't need to consult with CIA OGC.

23 Q. So when you said you did meet people, are you saying that

1 you did meet individuals from the CIA? Is that what you're -- is
2 that what you're saying?

3 A. I met -- I met individuals from CIA OGC.

4 Q. And so if you just needed information from the FBI, as you
5 were testifying to prepare for the interviews, why did you meet
6 individuals from the CIA?

7 A. I knew that -- if somebody's there, and I'm not going to
8 be rude and just not say hi. I'm thinking at a basic, like,
9 interaction level. What -- if there was -- I'm looking at exactly
10 what I was doing and what I was supporting. If CIA OGC was in a
11 meeting, they -- or if they were generally there, I -- I didn't ask
12 them: Why are you here? I didn't ask them. That -- that wasn't
13 something that I -- that wasn't something I would do.

14 Q. Sure, I understand that would be rude to ask them why they
15 were here. But did you have an understanding of why they were there?

16 A. In some capacity they were -- they were -- they were doing
17 whatever their job was to do. I don't -- I don't do their job, so I
18 can't tell you exactly the ins and outs of what they were or were not
19 doing.

20 Q. I understand. I'm not asking -- again, I'm sorry if my
21 questions are confusing. I'm not asking for you to describe the ins
22 and outs of what they were doing, just whether you had a basic
23 understanding of what their role was in that particular meeting that

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1 you remember.

2 A. I'm not referring to any specific meeting at this point in
3 time. I'm generally thinking about the time that we spent preparing
4 for the interviews in -- here in Guantanamo. Were CIA OGC personnel
5 around? They were. Exactly what they were doing, I -- I couldn't
6 speak to that.

7 Did I have cordial interaction? I did. Was there a general
8 coordinated effort? I -- I'm sure there was. Was I involved in the
9 particularities of all of that? I was not.

10 Q. So during these meetings in preparation for the LHM
11 interviews, was Miranda warnings discussed at all as a subject
12 matter?

13 A. I do recall discussion regarding Miranda, yes.

14 Q. And what was discussed?

15 A. That we weren't going to use Miranda.

16 Q. Was -- do you remember why you were not going to use
17 Miranda? Was that discussed?

18 A. I recall some discussion at -- at some point at LX1.
19 When -- the discussion was regarding the advisements that were given,
20 I recall learning that Miranda didn't apply and that these
21 advisements were going to be used.

22 Q. Who did you learn from that Miranda did not apply?

23 A. I -- I can't recall. I just recall a general meeting at

1 LX1 where these topics were discussed. There were -- I recall being
2 there with other employees of the FBI, not just the interview teams,
3 but FBI OGC.

4 I believe that the Department of Justice was there. And I'm
5 specifically recalling Thomas Swanton that was there from the
6 Department of Justice.

7 Q. Could you spell that last name? I'm sorry.

8 A. S -- Swanton, S-W-A-N-T-O-N. I'm using my hands because
9 I'm writing it out. I'm sorry.

10 Q. No. I -- you've testified ----

11 A. I ----

12 Q. ---- with no notes today. I believe you. I appreciate
13 it.

14 Did anyone express any concerns about the lack of Miranda
15 warnings? Do you remember if anyone ----

16 A. I think there were some questions, follow-up questions
17 about it.

18 Q. What kind of follow-up questions?

19 A. Why, what's -- you know, kind of what the specifics were.

20 Q. Um-hmm.

21 A. I specifically was not going to be in the room,
22 so from -- I was not going to be in the interview room with -- on any
23 particular interview. So, generally speaking, because of that,

1 I -- that -- that wasn't my focus. I understand that the -- and
2 I -- the people that were going to be in -- doing the interviews and
3 leading the interviews, you know, they wanted -- I felt it
4 appropriate that they -- they should ask the question, whatever
5 questions they needed to ask to get clarification.

6 Q. And did it -- was there any disagreement regarding whether
7 Miranda rights were required?

8 A. I -- I would say there was -- there was general
9 discussion. And specifically who asked what, I -- I couldn't -- I
10 couldn't even begin to tell you that.

11 I was generally there. I recall the larger discussion with
12 several people. And with respect to who asked what, I -- I would
13 simply say, as others testified to -- to the interviews,
14 I -- I -- they would have to answer what they did or what they said.

15 Q. Of course. I just -- again, I'm sorry if my questions are
16 being confusing. My point, just for clarification, was: Do you
17 remember anyone disagreeing with the conclusion that Miranda was not
18 required?

19 A. I don't know that it was disagreement with the conclusion.
20 I think there was just general inquiry, because this was different
21 for us. So I'm -- I'm not going to -- I don't want to state that
22 somebody in particular disagreed with the conclusion.

23 There was general discussion. What's the -- you know, why

1 is this -- you know, why is this different? I mean, basic curiosity,
2 right? I mean, why are we doing this? Okay. We have -- we're
3 giving -- we have this advisement. Discussions about the ins and
4 outs of that.

5 And, you know, it was a -- it was a fluid process. It's not
6 like we walk in, somebody says, "Here you go, ask your questions
7 now," and then you leave, right? There -- it is -- I would say it
8 was an ongoing dialogue.

9 Q. And when you say "this is different," you mean it's
10 different for the FBI?

11 A. It was different than other -- for the FBI, if we're
12 doing -- if there was going to be a subject interview where
13 statements were needed or interview statements were needed for court,
14 the general practice would be to use Miranda.

15 Q. Um-hmm.

16 A. That -- that was different. And the
17 discussions -- because of that, the discussions were had.

18 Q. Up to that point in your career in 2007, had you ever been
19 a part of a custodial interview where Miranda rights were not given?

20 A. Yes.

21 Q. What -- in what -- in what case was that? How ----

22 A. In the case of Ahmed Omar Abu Ali.

23 Q. So outside of the -- outside of the context of these 9/11

1 investigations, had you ever been a part of a custodial interview
2 where Miranda rights were not given?

3 A. I -- I just said yes.

4 DDC [LT XU]: And one moment, Your Honor?

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

6 **[Counsel conferred.]**

7 Q. So during that interview that you were just referring to,
8 were you physically present for that interview?

9 A. The Abu Ali?

10 Q. Yeah.

11 A. Yes, I was.

12 Q. And that was in Yemen?

13 A. No, it was not.

14 Q. Where did that interview take place?

15 A. Saudi Arabia.

16 Q. Okay. So just back to my question: Had you ever been a
17 part of a custodial interview in the United States where Miranda
18 rights were not given?

19 A. No.

20 Q. Thank you. And you had mentioned that it was determined
21 that you would not be in the interview room, right, at that
22 point ----

23 A. Yes, sir.

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1 Q. ---- for the LHM interviews?

2 When was that determined that you wouldn't be an
3 interviewer?

4 A. I -- I -- I don't know exactly when that was determined.
5 The interview teams were kind of -- were designated and -- at some
6 point in time prior to the interviews, and I was there to support
7 that.

8 Q. And how was that determined, who would be an interviewer
9 and who would be observing?

10 A. You'd have to ask the supervisors at that time.

11 Q. Okay. So you were just told that you would be observing
12 instead of interviewing?

13 A. I was asked to help prepare ----

14 Q. Okay.

15 A. ---- for the interviews. That -- and I make that
16 distinction, because I wasn't even sure. At -- at some point I
17 wasn't even sure if I was going to travel to Guantanamo. Again, it's
18 a very fluid -- it was a very fluid situation. Who was going to go
19 and when was -- we didn't -- there wasn't a pretty roadmap.

20 Q. Of course.

21 A. So we were trying to -- it was -- it was very fluid.

22 Q. Was it always the case, though, that there would be
23 observers in addition to interviewers?

1 A. I -- I don't know what the plans were from the very
2 beginning. Again, I just said it was a very fluid process. And
3 exactly how that -- what decisions were made and how that played out
4 and when it was decided that somebody would observe versus not, I
5 can't -- I can't speak to that. I was asked to do a job, and I did
6 the job I was asked to do.

7 Q. And do you remember what the responsibilities of the
8 observer were supposed to be?

9 A. I -- I wasn't given -- I wasn't given, like, a list of
10 responsibilities. I'm there to -- at the -- fast-forward to the
11 point where we're actually doing the interviews. I know when we
12 actually end up traveling to Guantanamo, even up until right -- you
13 know, the days before the interview were still reviewing -- okay, do
14 we have this document? Which document -- are there any more
15 documents that we still need?

16 As it relates to the observing of the interviews, I don't
17 know that I received a specific task of responsibilities. I'm
18 generally there to support what may or may not be needed by the
19 interview team.

20 DDC [LT XU]: Your Honor, permission to use the ELMO?

21 MJ [Col McCALL]: All right.

22 DDC [LT XU]: Your Honor, I would like to show -- and this is
23 for just the parties and the witness ----

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1 MJ [Col McCALL]: All right.

2 DDC [LT XU]: ---- not the gallery. I'd like to show the
3 witness what's been Bates-stamped as MEA-AE779-000010, and that's in
4 the record at AE 779K (KSM) Attachment B.

5 MJ [Col McCALL]: All right. Go ahead. You can use the
6 document camera.

7 This will not be displayed to the gallery.

8 Q. Can you see that, Ms. Waltz? Do you need me to make it
9 bigger?

10 A. I can see it.

11 Q. This is an FBI OGC e-mail chain; is that -- is that
12 accurate?

13 A. I see that at the top, yes.

14 Q. And you can see that this is dated, where my pen is,
15 Friday, October 13th?

16 A. I see that.

17 Q. And you see that it describes a meeting between DoD, OMC,
18 the Department of Justice, and an FBI A team?

19 A. I see that.

20 Q. Is that a meeting you're familiar with?

21 A. There were several meetings. This particular meeting that
22 was on this particular date, I -- I can't tell you with any degree of
23 certainty whether I was there or not.

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1 Q. Do you see where it says "FBI A team" is referenced?

2 A. I see that.

3 Q. Have you ever heard that term before?

4 A. I -- I don't know that that's a general term that we would
5 use. I'd rather be a part of the A team versus the B team ----

6 Q. Yeah.

7 A. ---- but I -- I wouldn't consider that common vernacular
8 in the FBI.

9 Q. Okay. So you don't know who exactly that's referring to?

10 A. No.

11 Q. Okay. Do you also see the reference here to the clean
12 interviewing team?

13 A. I see that.

14 Q. And, again, you said that you were generally familiar with
15 that term, correct?

16 A. I've heard the term, yes.

17 Q. Do you -- would you know what criterias of a clean team
18 would be or a clean agent?

19 MTC [MR. TRIVETT]: Objection. Calls for a legal conclusion.

20 DDC [LT XU]: I don't -- oh, sorry.

21 MJ [Col McCALL]: Hold on while I'm thinking. So ask your
22 question again to me. I want to hear it.

23 Q. Do you know what the criteria -- Ms. Waltz, do you know

1 what the criterias of a clean team or a clean agent would be?

2 MJ [Col McCALL]: Objection overruled.

3 A. If there's -- if there's general -- if there's specific
4 criteria, I can't tell you exactly what that specific criteria would
5 be. And I also -- what this person wrote and what they meant by that
6 may be different than what I -- so I -- I can't tell you exactly what
7 that would be.

8 Q. You're saying it may be different from your understanding?

9 A. I ----

10 Q. What is your understanding, I guess is my -- do you have
11 an understanding of what a clean ----

12 A. Generally speaking, I wouldn't use the term "clean team."
13 I would talk about a law enforcement interview, but that's -- so it
14 is -- we're talking about terms that I -- I generally wouldn't use.

15 Q. You would use law -- law enforcement interview?

16 A. I would -- I would say, you know, a law enforcement
17 interview that -- but ----

18 Q. Um-hmm.

19 A. I've heard the term "clean team." I've heard it, we've
20 all heard it. It's what -- if there's four points or whatever, if
21 there's certain criteria that need to be met to be qualified, I
22 can't -- I couldn't tell you that.

23 Q. Okay. Do you see here where it says: There were concerns

1 as to not to taint a clean agent?

2 A. I see that.

3 Q. Would you have an understanding what that would mean?

4 What does it mean for a clean agent to be tainted?

5 A. Generally a taint would be provide -- somebody being
6 provided access to something maybe they shouldn't have access to.
7 I'm -- but, and again, I don't know specifically what was being
8 discussed here.

9 Q. So in the context of conducting law enforcement interviews
10 in Guantanamo Bay for the HVDs, what would your understanding be of
11 an agent going down being tainted?

12 A. I -- I think I've already said that I -- I don't know -- I
13 don't have the exact criteria, and I don't know what the exact
14 criteria would have been in 2006, when this is being discussed. I
15 know -- the FBI -- a group of people were put together to conduct
16 interviews. I assisted with getting documents and getting images of
17 evidence to be used in those interviews.

18 Q. Okay. Last questions for this document. Do you see here
19 that an FBI agent had raised an ethical concern regarding speaking to
20 his detainee?

21 A. Okay.

22 Q. Do you remember any specific examples where your
23 colleagues on the -- the team raised ethical concerns?

1 A. I recall some concern, but I believe those were addressed
2 in a smaller setting, meaning those individuals addressed those
3 concerns the way they felt appropriate.

4 Q. What were some of the those concerns, if you remember?

5 MTC [MR. TRIVETT]: Objection. Calls for speculation.

6 MJ [Col McCALL]: Objection overruled.

7 A. I -- I don't recall, and I don't want to speak for
8 somebody else. If somebody had concerns, they raised whatever
9 concerns they had.

10 DDC [LT XU]: One moment, Your Honor.

11 I'm done with the ELMO for now, Your Honor. Thank you.

12 MJ [Col McCALL]: All right.

13 Q. So when you were deciding sort of what materials to bring
14 to the LHM interviews, to bring -- to incorporate as part of the
15 interviews, was there ever an instance where you decided to exclude a
16 document because it was tainted?

17 A. I don't recall doing that.

18 Q. So I want to move on to sort of when you arrived on island
19 for these interviews. Do you remember when exactly you arrived on
20 GTMO for the LHM?

21 A. At some -- I believe it was -- I believe it was probably
22 January of 2007. Only -- that just sticks in my mind because I
23 recall wondering if I was going to be spending Christmas in

1 Guantanamo.

2 Q. I'm glad you didn't.

3 A. Me, too.

4 Q. I know -- understanding it was a long time ago, could you
5 say whether it was a few days before the interview started, a
6 few -- like a week before the interview started?

7 A. I -- I'm -- I don't recall.

8 Q. Do you recall how many individuals in total were down
9 there to support the LHM mission?

10 A. I -- I don't recall because there were different teams
11 coming and going at different points in time.

12 Q. Okay. So not everyone arrived together?

13 A. No.

14 Q. Was that your first time down in Guantanamo Bay?

15 A. In January of ----

16 Q. 2007.

17 A. ---- 2007, yes, it was.

18 Q. And was that mission open-ended, or did you have a
19 deadline that you must leave by?

20 A. I -- I don't think there was a specific deadline that we
21 had to -- are you talking me personally or kind of the team?

22 Q. The team.

23 A. I don't recall a specific deadline of -- that everything

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1 had to be completed. I -- I don't -- don't recall.

2 Q. Did every interview have observers?

3 A. I -- I don't know. I can tell you what I did. What
4 happened with respect to interviews that I had nothing to do with, I
5 can't speak to that.

6 Q. And so by that point, when you arrived on island, were the
7 teams already divided, like who was interviewing who and who was
8 observing what?

9 A. Generally speaking, yes. Whether adjustments were made
10 later, you know, that someone was here, but generally yes.

11 Q. And you testified before that there were -- there were
12 multiple interviews happening at the same time, right?

13 A. Yes.

14 Q. Like simultaneously.

15 A. In -- in certain instances, I believe so, yes.

16 Q. So were there [REDACTED]

17 [REDACTED]

18 A. It's really hard to sit back here and think about what may
19 or may not have been happening when I'm focused on something else.
20 If there were other people doing different things or observing a
21 different interview, I ----

22 Q. Sure.

23 A. Possibly. But I can tell you what ----

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1 Q. But you didn't -- I'm sorry. Go ahead.

2 A. But I can tell you what I was doing. If there was
3 somebody else in and out, I -- I can't recall that.

4 Q. So -- but you [REDACTED] is
5 that -- is that accurate?

6 A. Yes.

7 Q. Okay.

8 A. I don't think I could [REDACTED]

9 Q. Understood. Maybe I'm misunderstanding the layout, which
10 we'll get into a little bit.

11 Was anyone supporting the LHM -- the LHM interviews down in
12 Guantanamo Bay -- sorry.

13 Was anyone on the LHM team down in Guantanamo Bay, had any
14 of the team members ever met any of the high-value detainees before?

15 A. You -- you would have to ask those individual people.

16 Q. Were you aware of anyone who had met any of the HVDs
17 before?

18 A. Can you state your question again?

19 Q. Sure. Were you aware of any of the LHM team members who
20 had met any of the HVDs they were interviewing before?

21 A. I recall one situation, yes. So I'm speaking to my
22 knowledge in ----

23 Q. Yeah.

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1 A. ---- at the time of the interviews. So in -- my knowledge
2 in 2006/2007 time frame. I had general awareness of one of the
3 larger team members that may have interacted with one of the HVDs.

4 Q. Could you tell me who that is?

5 A. Steve Gaudin.

6 Q. Had interacted with who?

7 A. With Abu Zubaydah.

8 Q. But that was the only example you recall?

9 A. I'm speaking to my knowledge at that time. And I didn't
10 even really know Steve well at that time, but I had awareness that he
11 had interacted with Abu Zubaydah at some point.

12 Q. Thank you. So on direct you had testified for
13 Mr. Mohammad's interview that you did not observe him to be
14 threatened during the interview, right?

15 A. That's correct.

16 Q. And that you didn't observe any aggression from any of
17 the -- from Mr. Pellegrino or Antol or Mr. Mason, correct?

18 A. That's correct.

19 Q. And that the general demeanor of the interview was
20 friendly?

21 A. Yes, it was.

22 Q. And professional?

23 A. Yes.

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1 Q. So this appeared to you as an ordinary custodial
2 interrogation?

3 A. It appeared to me to be a normal interview. I recall
4 laughter at different points in time.

5 Q. When you say appeared to you like a normal interview, as
6 in a normal interview of a suspect that you've seen before?

7 A. It appeared to be a normal interview.

8 Q. I guess what I'm trying to say is that -- I mean, in this
9 way, this is an interview, correct? I am asking you questions.

10 A. You're asking me questions. I wouldn't categorize it as
11 an interview.

12 Q. Sure. And there's interviews by journalists on
13 television, right? Those are interviews?

14 A. They -- sure, yes.

15 Q. What we're talking here is an interview of someone who is
16 suspected of a crime, correct?

17 A. Yes.

18 Q. And so what it appeared to you to be was an interview
19 similar to the interview of other FBI suspects which you've witnessed
20 or taken part in in your career, right?

21 A. I'm -- I'm simply saying it appeared to be a regular
22 interview. I -- that's -- a regular FBI interview.

23 Q. A regular FBI interview?

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1 A. I ----

2 Q. I'll say that.

3 A. It was a -- what I would categorize as an interview.

4 Frank and Brian -- so Frank Pellegrino and Brian Antol and Elmer
5 Mason were in the room. They were asking questions of Mr. Mohammad.
6 It was an interview.

7 Q. Have you, in your career up to that point, ever received
8 any type of training on assessing the voluntariness of a -- of a
9 statement?

10 A. Received training on ----

11 Q. Assessing the voluntariness of ----

12 A. I didn't receive any particular training.

13 Q. Okay. Have you ever been called to testify as to the
14 voluntariness of someone's statement prior to this?

15 A. I testified previously to the circumstances of an
16 interview, but not -- I previously testified to the circumstances
17 of -- of an interview that was conducted.

18 Q. But not to the voluntariness of someone's statements
19 during an interview?

20 A. That's correct.

21 Q. And in your career with the FBI, how many custodial
22 interrogations have you taken part in? You can give me a ballpark
23 number. You don't have to count them.

1 A. I -- in -- in my -- I told you that I participated in the
2 interview of Abu Ali.

3 Q. Yes.

4 A. That would have been the only other custodial interview
5 that I directly participated in.

6 Q. So one other than -- I mean, you observed Mr. Mohammad's,
7 but you've taken part in one?

8 A. I -- I observed Mr. Mohammad's interview. I did not
9 directly participate in that interview.

10 Q. Um-hmm. And would you agree that, in general, the more
11 time you spent observing an individual, the better you would be at
12 assessing the voluntariness of what they had to say?

13 A. Can you repeat the question, please?

14 Q. Would you agree that the more time you spend observing an
15 individual, the better you would be at assessing the voluntariness of
16 what they have to say? Would you agree with that?

17 A. Possibly.

18 Q. So ----

19 A. Over time that -- you know, it -- I would say it depends.

20 Q. I mean, to put it another way. So you would be
21 better -- would you agree that you would be better at assessing the
22 voluntariness of a statement made by your spouse than a stranger that
23 you just met on the street?

1 A. Well, I would agree to that statement.

2 Q. Okay. And that's because you'd be familiar with how they
3 would react -- you would be familiar with, for example, what they
4 would look like or what -- how -- yeah, what they would look like
5 when they were nervous, correct?

6 A. I also think you -- I mean, if you're talking about a
7 spouse, I think that's a separate -- right?

8 Q. Sure.

9 A. So I think that's a separate scenario.

10 Q. Sure. But you would agree, an example of why it would be
11 easier would be because if you're familiar with someone, you would
12 know, for example, how they look when they're nervous?

13 A. Okay.

14 Q. You would -- would you agree?

15 A. I'm going to agree to the spouse situation, yes.

16 Q. And you would know what they look like when they're
17 comfortable and relaxed?

18 A. And, again, if you're talking about a spouse, yes, of
19 course.

20 Q. And generally what their body language is?

21 A. Yes.

22 Q. Okay. And you had never observed Mr. Mohammad being
23 questioned prior to arriving in January 2007, correct?

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1 A. No, I have not.

2 Q. Okay. And you've never met him in person before?

3 A. No, I did not.

4 Q. Not even from a distance?

5 A. No, sir.

6 Q. Okay. And you don't have to call me "sir." I'm just a

7 lowly lieutenant.

8 A. Okay.

9 Q. Yeah. And, in fact, at that point you still had not met

10 him, because you were [REDACTED] ----

11 A. I was.

12 Q. ---- is that right? Okay.

13 And you don't know how he reacts when he's afraid?

14 A. No.

15 Q. Or when he's nervous?

16 A. No.

17 Q. And you don't know how he reacts to pressure or coercion,

18 right?

19 A. No.

20 Q. Okay. So I want to get to that, you actually observing

21 the interview. And you said -- you testified that you were [REDACTED]

22 [REDACTED] right?

23 A. Yes.

1 Q. So as in [REDACTED] correct?

2 A. Yes.

3 Q. Okay. And the [REDACTED]
4 [REDACTED] correct?

5 A. It was in the same ----

6 Q. Complex, can we say?

7 A. Same complex.

8 Q. Okay. How big is this room that we're talking about, the

9 [REDACTED]
10 [REDACTED]

11 A. I'm really bad with dimensions. So it -- [REDACTED]

12 [REDACTED]

13 Q. Okay. Okay. Like a school -- not talking about an
14 auditorium, like a college classroom, like that?

15 A. Definitely not like an auditorium.

16 Q. Right.

17 A. It was a decent size room.

18 Q. Okay. And I want to talk about the [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 A. There were -- in this [REDACTED]

23 [REDACTED]

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1 Q. Yeah.

2 A. [REDACTED]

3 [REDACTED]

4 Q. Yeah.

5 A. Here we go. I'm not going to -- and then I recall, like,

6 [REDACTED] again,

7 to -- in the event that there was more than one interview occurring

8 at the same time.

9 Q. So what was the [REDACTED]

10 Mr. Mohammad on?

11 A. I recall the [REDACTED]

12 [REDACTED] But I do recall

13 the larger screen.

14 Q. Is the [REDACTED]

15 [REDACTED]

16 A. Yes.

17 Q. [REDACTED]

18 A. [REDACTED]

19 Q. Okay.

20 A. I -- I don't know.

21 Q. So I understand this is two decades ago, but are we

22 talking about flat-screen TV -- televisions here that you were

23 looking at it on, or was it like a tube -- giant tube TV? What are

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1 we talking about here?

2 A. I mean, the console TV wasn't sitting there, right? But

3 I -- I don't know. It was a [REDACTED]

4 [REDACTED] I -- I'm not an AV or an IT ----

5 Q. Yeah.

6 A. ---- expert or person even. I couldn't tell you what size
7 the TV in my -- my living room is. Like, it's ----

8 Q. Sure. I guess what I mean is, is it like a -- was it a
9 flat screen or was it a -- was it a 3-D or a cube?

10 A. I recall it being [REDACTED]

11 Q. Okay. Was it black and white, the picture?

12 A. I don't think -- I think it was -- I think it was color.
13 Like, I don't recall it being black and white. I think it was color.

14 Q. [REDACTED]

15 [REDACTED]

16 A. [REDACTED]

17 Q. [REDACTED]

18 [REDACTED]

19 A. I couldn't do anything. I'm just sitting there.

20 Q. Okay. All right. And for Mr. Mohammad's interview,
21 including Mr. Mohammad, there was four people in the room, correct?

22 A. Including Mr. Mohammad, yes.

23 Q. Yeah. And so, in your view, could you see four -- all

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1 four individuals once they were seated and started the interview?

2 A. I -- I -- I'm -- I can't recall if I -- if every -- if
3 all -- I can't recall exactly. I'm trying. I just -- I can't recall
4 what the exact view was. I recall seeing Frank Pellegrino. I recall
5 seeing Mr. Mohammad. I -- with respect to where Brian Antol
6 or -- and/or Elmer Mason were, I ----

7 Q. Could you see them on the screen?

8 A. I -- I can't -- I can't recall.

9 Q. No problem. And Mr. Pellegrino and Mr. Mohammad were
10 sitting faced to each other?

11 A. Yeah. They were -- yes. They were -- they were facing
12 each other.

13 Q. And there was a table between them?

14 A. There -- there was a table.

15 Q. And so with respect to the -- [REDACTED] whose
16 back was towards you?

17 A. I -- I -- I can't recall. Like, I'm -- like, I'm -- I
18 mean, I don't know if Frank, like, was sitting sideways or I -- the
19 particular body angles of people, I -- is not something I have taken
20 note of.

21 Q. I guess what I mean is, if they're sitting towards, facing
22 each other, there's one person's face you can see and one person's
23 back you can see; is that -- is that accurate?

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1 A. Well, it -- I don't know if they were sitting with one
2 person face and one person back, if it was -- or if it was somewhat
3 on the side -- I -- I'm sorry. I'm really trying.

4 Q. Yeah.

5 A. But I don't recall exactly if I saw back -- somebody's
6 back or a side of somebody or -- I ----

7 Q. Okay.

8 A. I don't recall.

9 Q. Because it was 17 years ago?

10 A. I'm really trying. I just -- it's -- didn't -- it wasn't
11 anything that stuck out in my mind.

12 Q. Could you see Mr. Mohammad's face?

13 A. I do recall seeing Mr. Mohammad, yes.

14 Q. But you do recall his mannerisms?

15 A. I recall -- when you say "mannerisms," I do recall, like I
16 think I already said, different points where there was -- there was
17 laughter. And so I -- I recall that.

18 Q. And you said that -- again, you said that there was a
19 table between Mr. Pellegrino and Mr. Mohammad. So is it fair to say
20 that you can't see Mr. Mohammad's entire body?

21 A. I could not see his entire body.

22 Q. Is it fair to say, as you're just sitting here today, that
23 you do not remember all parts of the interview that you observed?

1 A. I don't -- I couldn't sit here and reiterate everything
2 from start to finish, no. There -- I remember certain -- I remember
3 certain things, but I -- I don't recall all of the interview.

4 Q. You don't remember everything that was said?

5 A. I -- well, I -- no.

6 Q. You don't remember how Mr. Mohammad reacted to every
7 question?

8 A. I -- I don't recall every minute of the interview.

9 Q. And you'd also said that -- testified that you didn't
10 observe the entire interview, correct?

11 A. I believe I -- I believe I had stepped out at some point
12 and came back. Exactly what point that was, I can't recall. But I
13 do -- I believe that I left at some point and came back.

14 Q. Can you say how long you were absent from the interview,
15 from observing the interview? Ballpark.

16 A. We're not talking five hours.

17 Q. Was it an hour?

18 A. May -- possibly.

19 Q. Was there any ever -- was there ever any technical issues
20 that prevented you from observing the interview?

21 A. I don't recall there being any technical issues. It's
22 Guantanamo, so you never know. But there's nothing in particular
23 that stands out.

1 Q. Okay. And when the [REDACTED] did it
2 start already with everyone in place and the interview starting, or
3 did it just start with an empty room? Do you remember?

4 A. I believe I -- I can't recall.

5 Q. Do you recall why you were absent from the room for that
6 roughly an hour?

7 A. At -- at some point I know I -- I left to get a couple of
8 documents for Frank Pellegrino, but that's -- that's my recollection.

9 Q. Did he -- did he request those documents?

10 A. I don't -- I don't recall him requesting -- specifically
11 requesting them. I recall providing them to him.

12 Q. My question is: What prompted you to get those documents
13 in the middle of an interview?

14 A. I -- I don't know that there was any one particular moment
15 where I've felt like, oh, I need to go get some documents. I think
16 it was more of a I'm going to step out right now to go get some
17 additional documents and -- and come back. I don't think that was
18 triggered by anything particular other than an opportunity for me to
19 step out.

20 Q. And what did you do with those documents? Did you hand it
21 to him in the interview room?

22 A. No. I would -- I waited for a break.

23 Q. Okay. And was it -- were those the visa-related documents

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1 that you had testified as to earlier?

2 A. Yes.

3 Q. Okay.

4 DDC [LT XU]: Your Honor, this is a natural break in my
5 examination, if you wanted to take a recess.

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

7 So let's take a little bit of a longer recess so that the
8 parties have a chance both for -- you know, take a comfort break, but
9 also to confer on the 505 process.

10 We'll make it 20 minutes. So that means be back here at
11 1050. If you need more time, please just let my staff know, and I'm
12 happy to give you more time if you need to confer on the 505s.

13 **[The witness withdrew from the courtroom.]**

14 MJ [Col McCALL]: Commission's in recess.

15 **[The R.M.C. 803 session recessed at 1029, 18 April 2024.]**

16 **[The R.M.C. 803 session was called to order at 1053, 18 April 2024.]**

17 MJ [Col McCALL]: The commission is called to order.

18 The parties are present. The accused are absent. Ms. Waltz
19 is not on the witness stand.

20 All right. Where are we at with the pending 505 notices?

21 Mr. Dykstra, you got up before Mr. Connell. I'll give you
22 the podium.

23 DMTC [MR. DYKSTRA]: I actually beat Mr. Connell one time. No

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1 offense. I appreciate his patience.

2 I think it -- for judicial economy, it's just probably best
3 for the government to state its position on these before going any
4 further.

5 MJ [Col McCALL]: That makes sense.

6 DMTC [MR. DYKSTRA]: So out of the -- we're tracking -- so
7 I'll just go in order of the ones that we believe are outstanding at
8 this point in time that we have not otherwise taken a position on.

9 With regards to Appellate Exhibit 942A (AAA), which pertains
10 to SIA Waltz, we object to it just based on some of the language
11 contained within the notice itself that I'm happy to address, Your
12 Honor. And we can do it in unclassified setting, if necessary.

13 MJ [Col McCALL]: Okay.

14 DMTC [MR. DYKSTRA]: Which -- would you like me to address
15 that now or just ----

16 MJ [Col McCALL]: Let's go through them all first, and then
17 we'll figure it out.

18 DMTC [MR. DYKSTRA]: With respect to Appellate Exhibit 631YY
19 (WBA Sup), we continue to maintain our objection on that one. We
20 also note that it contains new documents that were not otherwise
21 contained within our original objection.

22 MJ [Col McCALL]: Okay.

23 DMTC [MR. DYKSTRA]: 631YY.

1 631ZZ (WBA Sup), we do not have an objection to the use of
2 those documents, but we note that it also gives notice of
3 unclassified information contained within -- within the 505(g)
4 notice. We would object to the use of that unclassified information
5 being used in a classified setting. And I reference the commission
6 to footnote 31, 33, and 34 of 631ZZ (WBA Sup).

7 632MMM (MAH Sup), we do not have an objection to those
8 documents being used during closed session conducted pursuant to
9 R.M.C. 806.

10 632P (MAH), we also do not object to those documents being
11 used during closed session conducted pursuant to R.M.C. 806.

12 Now, with respect to when we do not have an objection, I
13 would note, Your Honor, if we had additional time and additional
14 particularity, in some cases we could work with defense counsel to
15 come up with unclassified substitutes. And I think it's beneficial
16 to the public and otherwise our ability to do that, but recognizing
17 the time and so forth, we're not asking any -- for any ability to
18 seek out a substitute.

19 But, Your Honor, if -- going forward, we would like -- with
20 that additional particularity is what we've been asking for, that
21 would help us in the process.

22 MJ [Col McCALL]: Okay. Understood.

23 DMTC [MR. DYKSTRA]: And then Appellate Exhibit 692BB

1 (MAH Sup), we do have an objection to certain -- certain of those
2 documents. It continues to list 4,000 pages of a certain trigram of
3 documents that will need to be addressed in a 505(h).

4 MJ [Col McCALL]: Okay.

5 DMTC [MR. DYKSTRA]: And then just a note: We note that
6 Mr. Mohammad's counsel did not file any 505(g) notice with regards to
7 Ms. Waltz's testimony. Pursuant to that, unless they provide a
8 505(g) notice, the -- really can't ask any questions in a closed
9 session pursuant to the rule. So I just bring up that note just for
10 efficiency purposes, so...

11 MJ [Col McCALL]: Okay. Mr. Trivett?

12 MTC [MR. TRIVETT]: If I can consult with Mr. Dykstra.

13 MJ [Col McCALL]: Sure.

14 **[Counsel conferred.]**

15 DMTC [MR. DYKSTRA]: All right, Your Honor. I apologize.

16 They can ask questions based upon the direct examination and
17 documents that are already in. But anything outside of that, it's
18 our position that they cannot introduce any other classified
19 information.

20 MJ [Col McCALL]: Right. Understood.

21 DMTC [MR. DYKSTRA]: I'd just note, with respect to that,
22 there is -- within the discussion, it says: This requirement -- the
23 505(g) requirement applies to -- both to documentary exhibits and

1 oral testimony. So that's -- that's kind of where we're -- we're
2 trying to get at. Whether or not you use documentation doesn't take
3 away the 505(g) process, so...

4 Now, with respect to 942A (AAA) -- and Mr. Connell and I
5 conferred on it. I think there's just a difference between what we
6 believe the 505(g) process is and should be going forward -- going
7 forward.

8 Within that -- within his 505(g) notice, he, first of all,
9 places additional documents within the, quote/unquote, topic set that
10 we objected to within 936A that I thought that Mr. Connell said that
11 the topic set he no longer needed, which we were kind of confused
12 when we saw that.

13 And then second, within the opening paragraph of a lot of
14 his 505(g) notices, he names off, like, five separate witnesses that
15 this information would be useful for and then says, quote/unquote, or
16 any other future hearing, regarding these five motions or whatever.

17 Our position going forward -- and recognizing Your Honor is
18 trying very much to streamline the process, certainly with these
19 notices of nonobjection, we are fine with doing that going forward.
20 But these kind of blanket notices that are not very witness-specific
21 do not allow us to establish or determine whether or not it's
22 relevant.

23 And so if there's any notices like this going forward, we're

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1 probably going to insist on a 505(h) hearing before every single
2 witness.

3 In addition, it does not allow us to determine whether or
4 not that -- a particular witness has a need to know that classified
5 information. So that's -- that's -- that's our objection to that
6 particular notice.

7 Now, with respect to the underlying classified information,
8 we do not object. But we generally object to the form and substance
9 of that notice.

10 MJ [Col McCALL]: All right. I understand the government's
11 position.

12 Go ahead, Mr. Connell.

13 LDC [MR. CONNELL]: Your Honor, one thing we're seeing with
14 the massive uptick in unjustified red lights and changes of position
15 on previous agreements, including date and drafter of -- of documents
16 which are already in the record as -- in unclassified format, one
17 element of that new regime the government is trying to impose is a
18 kind of vague unhappiness with the 505(g) process, that the statute
19 and the rule require particularity with respect to classified
20 information.

21 What I understand the government's position to be is they
22 want particularity as to witness, which is not a matter that's
23 contained within either the statute or the rule. And I wanted to

1 demonstrate how this 505 notice, like the dozens and dozens and
2 dozens before it satisfies both the spirit and the text of the rule.

3 Now, just -- normally this would be in a 505(h) hearing, but
4 942A itself is completely unclassified, except for its attachment.
5 So I think that's why the government's arguing it here.

6 It contains two main sections. The first is a notice. The
7 rule requires that Mr. al Baluchi give notice that he expects to
8 disclose or cause the disclosure of classified information in
9 connected with an -- in connection with a hearing.

10 Now, the military commission imposed the additional
11 requirement that we identify the motion series -- that's a
12 particularity requirement imposed by the military commission -- the
13 motion series that it's attached with. So this notice provides
14 notice that it will -- the classified information will be disclosed
15 in connection with AE 628, AE 502, and AE 524: The motion to
16 suppress, the personal jurisdiction motion, and the motion regarding
17 Protective Order #4 that this hearing we've been having for the last
18 five years has been going on about.

19 Now, the -- we could stop there, right? That is -- that is
20 what -- we could stop there. But we went on to say: Mr. al Baluchi
21 reasonably expects to disclose, or cause the disclosure of, this
22 information in the April/May 2024 hearing to -- sort of to
23 understand -- and that's where the language "or any future hearings

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1 regarding the above motion series" that counsel just mentioned comes
2 with.

3 Because what we found was, you know, we gave notice
4 regarding former Camp VII commander, who may not be able to testify
5 at this hearing. And so it doesn't make any sense for us to refile
6 the exact same thing clouding the record for -- just because the
7 person got bumped to the -- to the July hearing.

8 So that's where that language comes from is, yes, we
9 explained what hearing we're talking about, but we understand that
10 things change and it could move on to another hearing.

11 We then specify that this information relates to the
12 testimony of Special Agent -- Supervisory Intelligence Analyst
13 Kimberly Waltz, Special Agent Aaron Zebley, Dr. Charles Morgan, WK5I,
14 and former Camp VII commander.

15 So we actually do identify what witnesses that we're talking
16 about. The -- the other thing that I want to say is with respect to
17 the topic sets, what I suggested was the -- as a shortcut to the
18 rule, there's no need for topic sets, but we found it useful to
19 identify -- look, here's the information that we're to -- this is
20 what it's relevant to. This is the -- you know, there are a number
21 of topics that are ongoing, and so we identified which topic it
22 relates to. That's additional particularity.

23 I think it's helpful to the parties. I think it's helpful

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1 to the military commission of what are we talking about here? Is it
2 Camp VII? Is it, you know, Location 5? Is it the raid in
3 Rawalpindi? You know, it's -- it gives that, at least, some
4 orientation to the parties as to what we're talking about here.

5 So with that as -- that's sort of the prefatory material.
6 But then I want to talk about the three documents which are actually
7 noticed here. The first one of those is MEA-WALTZ-00000067B through
8 00000079B.

9 The idea that the government does not know that this relates
10 to Waltz is a little bit odd because they named it Waltz, right?
11 This is Waltz 914 material. And, as I mentioned when I was -- when I
12 brought this to the military commission's attention in the first
13 place, this is the third version of this document which is in the
14 record, because the government has reproduced it three times with
15 different classification markings each time. So to have a complete
16 record, we need to have the best, you know, least classified version
17 of it in the record, and that's what this is.

18 The second document is called MEA-ZEBLEY-00000001 through
19 00000010. The first was a 12-page document. This is a ten-page
20 document named by the government Zebley, you know. It's -- should
21 not come as a surprise to the government that it will relate to the
22 testimony of Special Agent Zebley.

23 And then the third document is in the CP7 series, which that

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1 trigram stands for Camp VII, and so it should not come as any
2 surprise -- and we designated it for the topic set Camp VII, but it
3 shouldn't come as any surprise that that will be used in the
4 testimony of the Camp VII commander.

5 So the idea that this is somehow lacking in particularity,
6 Your Honor, I think is belied by the document itself.

7 The last thing I want to add is: To the extent the
8 government complains about the timing, all three of these documents
9 were produced by the government after the deadline for -- for 505(g)
10 notices. So any timing problems can be traced to the government
11 itself because of the timing in which it chose to disclose material,
12 which in some case is two decades old. But that's when they chose to
13 disclose it, so that's when we have to give 505(g) notice of it.

14 So we stand entirely behind this 505(g) notice. It
15 satisfies the statute, the rule, and all the requirements of the
16 military commission.

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

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

19 MJ [Col McCALL]: Mr. Dykstra, can you address Mr. Connell's
20 position on that?

21 DMTC [MR. DYKSTRA]: Yes, Your Honor. First of all, I didn't
22 complain about the timing of his notice or the particularity of his
23 notice. I actually do appreciate the particularity of his notice, as

1 well as recognizing the reasoning behind the timing, like, no issue
2 right there.

3 The big issue for us right now, and going forward, is while
4 he made a great point that, hey, it's got the Zebley trigram or the
5 Waltz trigram or the CP7 trigram, but he also lists five
6 witnesses -- or four witnesses associated with that. So either we
7 have to try to make relevancy-based determinations based -- and
8 object for this witness and this witness and say, okay, it's fine for
9 that witness. Or it's just going to create a very difficult process
10 for Your Honor. And like I said, if we list out -- if he lists out
11 four witnesses that a --

12 Like, Waltz trigram stuff, I don't know how it's relevant to
13 CP7 commander. So on that basis we would object to his notice,
14 period. And so same with Zebley. I don't know how that relates to
15 the Camp VII commander. So we'd have to object on that.

16 And we'd be going into a 505(h) just simply because he lists
17 out additional witnesses on -- on that notice; whereas, if he focused
18 it on a particular witness and a particular document and tied those
19 witness -- tied that information together, we may -- we may be able
20 to not object and obviate the 505(h) process, as Your Honor
21 has -- has -- like Your Honor has streamlined the process like I was
22 referencing before.

23 So it's not about -- it's not about necessarily us being

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1 able to not figure out what it is, but it is creating a judicial
2 economy issue.

3 And we're trying to -- we're trying to streamline the
4 process, trying to get all these witnesses in like Your Honor spoke
5 about this morning. But if -- if we -- if we don't get -- if we're
6 not able to really design what information is relevant to which
7 witness and we have to start objecting based upon, hey, we do not
8 believe this particular piece of information that you list for five
9 witnesses is relevant to Witness Z, we're going to have to object,
10 and it's going to gum up the process a little bit that Your Honor has
11 dutifully established, so...

12 MJ [Col McCALL]: All right.

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

14 MJ [Col McCALL]: Mr. Connell?

15 Let me finish pulling the thread on this piece, Mr. Engle.

16 LDC [MR. CONNELL]: So a couple of points, Your Honor.

17 The first is that the government's argument here is just
18 empirically untrue. I'd like to point your attention to the fact
19 that we use the same template in all these 505(g) notices. You know,
20 we figured we had found a template that both the government and
21 the -- and the military commission worked with, and so we've done it
22 the same way for years and years.

23 And I'd like to draw your attention to the government's

1 filing in AE 9370 in which they address three 505 notices that we
2 filed, 9 -- excuse me -- 628EEEEEEEEEE, F, and I, all of which were
3 given in this exact same format, all of which the government did not
4 object to.

5 And the -- you know, before this iteration of the military
6 commission, we had routine -- we had -- we had 505(h) hearings
7 routinely ----

8 MJ [Col McCALL]: I'm aware.

9 LDC [MR. CONNELL]: ---- at which we would stand up and say,
10 you know, and read out what needed to be read out. But it -- but it
11 turned into, like, a performance, right? Because there was never any
12 issue. We never needed any additional particularity. Everybody knew
13 what we were talking about. And that's the same situation here.

14 The -- I will note that in the hearings that the military
15 commission -- this iteration has presided over, there's never been an
16 argument in any of the closed sessions that I can recall about, oh,
17 this document wasn't provided 505(h) notice -- (g) notice. Oh, this
18 is the wrong witness. Oh, we were surprised.

19 And there have been several occasions where the government
20 has had a legitimate question and has just sent me an e-mail and
21 said, hey, can you clear us up on this one thing? We're trying to
22 prep the witness on it. And I send them an e-mail back and say, here
23 you go. Here's the information that you need.

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1 So this process works. It complies with the statute. It
2 complies with the rule. It provides additional particularity
3 probably than is required. And if they want me to stop using the
4 word "topic set," I will. I mean -- but it seems useful. It
5 provides additional information, but if they don't want that
6 additional information, then they can hardly be heard to complain
7 about a lack of particularity.

8 MJ [Col McCALL]: All right.

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

10 MJ [Col McCALL]: All right. Mr. Engle?

11 LDC [MR. ENGLE]: Yes. Thank you, Your Honor.

12 So it sounds like following Monday's argument on the 505s,
13 we obviously submitted the supplemental ones consistent with your
14 order. It sounds like the Gaudin notice is acceptable at this point,
15 but that the government is continuing to object to 631, I believe
16 it's YY, which is our notice for Special Agent Zebley.

17 MJ [Col McCALL]: That's right.

18 LDC [MR. ENGLE]: What I will tell Your Honor is that, you
19 know, despite our objection, we -- we undertook a good-faith effort
20 to comply with what we were being told.

21 One of the concerns we heard from the commission was that
22 the -- our submission was too voluminous. We cut more than half of
23 the pages out of that. And we were in part able to do that because

1 our cross-examination of Agent Zebley is progressing. You know, as I
2 indicated, we're working on it, we're refining it.

3 There are things that we originally thought we might need to
4 use that we think we probably won't. So we tried to streamline that
5 as much as possible. And I think at this point we have noticed
6 something in the neighborhood of 400, 450 pages. Not an
7 extraordinarily voluminous number of pages.

8 The second thing we tried to do was to provide more of a
9 brief description in case that was where the problem was. And so you
10 will see in our revised notice that we have given a brief description
11 of everything that we've noticed.

12 I don't see that there is anything more that we can or are
13 required to do under the statute. And so I will just say that, you
14 know, while I'm hearing an objection, I don't understand what the
15 objection is. I don't understand what is allegedly deficient about
16 our notice.

17 And where I think we are in this process is that the
18 government, if it wishes to have a 505(h) hearing, should request
19 one. And the government should say which items it doesn't think are
20 relevant or admissible or should be used, and we can tell you why we
21 think they are and then you can decide.

22 That's where we are. That's the process. And I think our
23 notice is entirely adequate under the -- under the statute.

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1 MJ [Col McCALL]: All right. I understand your position.

2 Mr. Dykstra?

3 DMTC [MR. DYKSTRA]: Your Honor, just for -- as I think Your
4 Honor experienced with the last 505(h) hearing, it's not for us to
5 show -- explain why something isn't relevant or isn't used or
6 admissible. It's ultimately the defense's obligation to do that, to
7 walk through every single document and explain that.

8 We're happy to go through that process ----

9 MJ [Col McCALL]: But the objection is that it's not
10 particularized at this point? I'm just trying to make sure I'm
11 understanding the government's position on this.

12 DMTC [MR. DYKSTRA]: It's -- well, first of all, 631YY
13 (WBA Sup) actually added documents to that -- to a 505(g) notice that
14 was not on 631YY. And so we -- we just got that yesterday. We have
15 to assess these additional documents now. So that's part of it.

16 And Mr. Engle referenced a brief description. They only
17 provided the titles of the documents. They didn't -- there's a
18 categorical difference between 631ZZ (WBA Sup) where they actually
19 did provide great descriptions, which allowed us to go through every
20 single one of the categories and make a determination, or at least
21 not object to the relevance and use and admissibility of that
22 information.

23 With 631YY, there's additional information. There's less

1 demonstration of relevance that Your Honor talked about on Monday as
2 far as you having to go through all these -- all these documents as
3 well.

4 And then -- so, yeah, that would be our general objection to
5 that. And that's why we believe -- and if I wasn't clear, I believe
6 a 505(h) hearing is necessary for the ones that we have objected to.

7 MJ [Col McCALL]: Okay. And, yeah, I don't believe you have
8 to ask for a 505(h). I mean, if the government's objecting, I think
9 we are then having a 505(h) as ----

10 DMTC [MR. DYKSTRA]: Yes, Your Honor.

11 MJ [Col McCALL]: ---- pending notice that the government is
12 objecting to.

13 So understood. All right. I think I understand your
14 position. I'll have to review the notices.

15 So let's do this. I'd like to have a -- an idea on what is
16 remaining with Ms. Waltz, just with some of these issues with the 505
17 notices, with the issues of Agent Gaudin and having to try to look at
18 adjusting the witness schedules. What are we looking at for the rest
19 of -- like, obviously, this is an estimate.

20 But, Lieutenant Xu, like, about how much longer do you have
21 in open?

22 DDC [LT XU]: Your Honor, this is a really rough estimate,
23 just because it's the first time I'm doing this. Maybe -- maybe two,

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1 three hours.

2 MJ [Col McCALL]: Okay. And then, Mr. Ruiz, whoever from your
3 team is going to be questioning Ms. Waltz?

4 LDC [MR. RUIZ]: I -- I don't know that it will be more than
5 two and a half, three hours. That's -- but I'm making that an
6 overestimate for you.

7 MJ [Col McCALL]: Sure. So what I'm hearing is, I mean, it
8 doesn't sound like we're going to wrap up the open testimony today.
9 And then we still have, again, the 505 hearings that we need to take
10 up.

11 Well, let's go ahead and we'll finish -- we'll go ahead and
12 proceed with Ms. Waltz's testimony. And I'm going to consider it
13 over lunch, how I may want to adjust things to -- again, I want to
14 take time to consider these 505 notices, and then I do want to give
15 the parties a chance to consider on witnesses. But let's go ahead
16 for now.

17 Mr. Trivett?

18 MTC [MR. TRIVETT]: Sir, just for the commission and the
19 parties' awareness, Ms. Waltz is planning on staying next week
20 regardless, just for your scheduling purposes.

21 MJ [Col McCALL]: That's what I figured. And, I mean, perhaps
22 I'm being too cavalier with her but because of her position on the
23 prosecution team, I consider her readily available anytime we're in

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1 session.

2 So I know that we have flexibility on having her testify.
3 So I -- yeah, I understand we could -- it could run into next week or
4 even potentially take a pause from her when another witness is
5 available and come back to her near the end of the session, was my
6 inclination. But if I'm making false assumptions, let me know.

7 MTC [MR. TRIVETT]: It would certainly be the government's
8 position that she need to finish her testimony during this session,
9 whether that's Friday or Monday or Tuesday. But we would like to get
10 her complete, because we obviously want to be able to work and
11 continue to work with her on other matters.

12 MJ [Col McCALL]: I understand that.

13 DDC [LT XU]: Your Honor, and this is purely a personal issue,
14 but I had planned to go back to the NCR next week. So if the plan is
15 to continue next week, I'd just ask that the commission let me know
16 as soon as possible so our admin team can make the appropriate change
17 so that I can stay here.

18 MJ [Col McCALL]: Okay. Understood. And, again, I mean, I
19 don't have a problem with you questioning her from the RHR, but I
20 understand the parties may have a preference for questioning her
21 face-to-face.

22 All right. And that's good data to have.

23 All right. Anything else to take up before we call

1 Ms. Waltz back in? We can get another 40 minutes or so of
2 questioning.

3 Go ahead, Mr. Sowards.

4 LDC [MR. SOWARDS]: Thank you, Your Honor. I will -- perhaps
5 it would be beneficial for me to confer with Mr. Dykstra and
6 Mr. Trivett, because I wasn't -- it seemed they had some differences
7 of opinion as to the -- our status in a closed session and what we're
8 allowed to do.

9 I thought I heard them purport to say, though, that
10 Lieutenant Xu wouldn't be allowed to ask any questions other than
11 some narrow band of something triggered by a direct examination
12 because, as of this date, we have not filed 505 notices in the case.

13 MJ [Col McCALL]: Well, I'll just -- let me -- and I don't
14 mean to cut you off ----

15 LDC [MR. SOWARDS]: That's fine.

16 MJ [Col McCALL]: ---- but I will.

17 LDC [MR. SOWARDS]: I'm happy to have you do it.

18 MJ [Col McCALL]: Just because I think maybe it will cut to
19 the ----

20 LDC [MR. SOWARDS]: Please.

21 MJ [Col McCALL]: I mean, Lieutenant Xu should be able to ask
22 matters that were raised on direct and then also issues that are
23 already raised by the other parties in a 505 notice and the

1 government is not objecting to. I mean, I don't understand why that
2 would be off limits for Lieutenant Xu.

3 But I guess I'm open to the government -- I know this issue
4 was raised briefly earlier in the week as far as the idea that 505
5 notices apply to just one team. I mean, when I'm looking at the rule
6 and looking through the record, I mean, I -- I don't see why that
7 needs to be the -- is necessarily the case. And maybe that has
8 caused some overt complications when -- again, it's -- a joint trial
9 like this where Mr. Connell is, let's say, giving notice of
10 classified documents that he wants to ask a witness about, I would
11 think the other counsel would be able to have follow-on questions on
12 that same information.

13 It's -- but I'm open to -- again, if this is wrong,
14 Government, you know, let me know. It seems like we're going to have
15 to delve into some of the left and right on 505 notices and going
16 forward on maybe adjusting this process a bit. But that's my
17 position for now.

18 But go ahead, Mr. Sowards, if you need to be further heard.

19 LDC [MR. SOWARDS]: Yeah, I think with characteristic
20 alacrity, you've kind of cut to the issue. And what I was going to
21 propose also is that, for expediency, that perhaps we can defer these
22 issues to the -- to the closed session and see what develops.

23 And I would just say that without revisiting you with any of

1 my old complaints or grudges, but just -- just to remind the parties
2 that the last time I was here in a closed session, I believe, there
3 was not a little bit of skepticism or critique or something, that I
4 had deigned to reserve for a closed session, discussion of documents
5 that had been marked as classified.

6 And the question was: Well, why couldn't you have, on your
7 feet in open session, done your own sort of editing and slicing and
8 dicing to get to the presumably unclassified portions of that? And
9 then we fast-forward to just a few days ago, and we see the whole
10 thing is reversed.

11 So I think we're moving way away from the purpose of
12 classification to begin with, given that these are documents we
13 received from the government that said -- had already determined they
14 were relevant and -- and material for the case. So if we could maybe
15 do it on a case-by-case basis, I think that would be better than
16 trying to reopen this whole litigation.

17 That's all. Thank you, sir.

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

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

20 MJ [Col McCALL]: All right. Let's bring the witness back in.

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

22 MJ [Col McCALL]: Go ahead, Lieutenant Xu.

23 DDC [LT XU]: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUED

Questions by the Detailed Defense Counsel [LT XU]:

Q. Ms. Waltz. And so just going forward, Ms. Waltz, I just want to make sure you understand that all of my questions are prefaced with "if you remember." So, I mean, I certainly don't want you to -- you know, I understand it's a very long time ago, so...

A. Understood.

Q. Just had a few lingering questions regarding the [REDACTED] and who was in there with you to observe.

Was Mr. Ed Ryan ever in there with you to observe, if you remember?

A. I don't think so. I believe the first time I met Mr. Ryan was after the interviews.

Q. Got it. What about Mr. Clay Trivett?

A. Mr. Trivett was in the general area. Like, not in the -- necessarily in the [REDACTED] but in the general facility. I -- I didn't know him really at that point, so I -- I -- again, I recall him being in the facility, but not necessarily in the [REDACTED]

Q. But he was part of that effort, the LHM effort?

A. I recall seeing him in Guantanamo for the -- I think that's when I actually met him for the first time.

Q. As part of the LHM efforts?

1 A. Yes, sir.

2 Q. Okay. Thank you. Mr. Groharing?

3 A. Mr. Groharing was, again, in the -- in the general
4 facility, in -- in the -- same thing, in the building, but not
5 necessarily in the [REDACTED] There were other parts -- like,
6 there was a kitchen, right? There's other part -- other rooms of
7 that building outside of just the [REDACTED]

8 Q. Got it. Didn't observe, but was part of the effort? Yes?

9 A. Was in the -- in the facility, in the building.

10 Q. But was he part of the LHM effort? Just trying to get the
11 record straight. I'm sorry if I'm being repetitive.

12 A. I -- he was -- he was part of the effort. I recall
13 interacting with and having a few conversations with Mr. Groharing
14 during that time.

15 Q. And Ms. Tate?

16 A. I'm sorry?

17 Q. Ms. Nicole Tate?

18 A. I don't recall seeing her during the time that we were
19 in -- here in Guantanamo for the LHMs.

20 Q. Thank you. And Mr. Swann?

21 A. Mr. Swann was here in Guantanamo during the interviews. I
22 recall him being, again, at the facility. I have a specific
23 recollection of Mr. Swann being in the kitchen.

1 Q. Okay. But not the [REDACTED]?

2 A. I don't recall him being in the [REDACTED]

3 Q. Ms. Joan-Marie Turchiano?

4 A. Ms. Joan-Marie Turchiano was here, yes.

5 Q. In the [REDACTED]

6 A. I believe she was in the [REDACTED] at some point.

7 I ----

8 Q. Okay. Mr. Mendenhall?

9 A. Mr. Mendenhall, same as Joan-Marie. He was here. I
10 believe he may have come into the [REDACTED] at some point.

11 Q. And Agent Zebley?

12 A. Aaron Zebley was here. I don't believe -- I think he had
13 already resigned. I don't know that he was an agent at that time.

14 Q. Was anyone allowed to come into the [REDACTED] that
15 was part of the LHM effort?

16 A. I don't know that it was a "anyone" scenario. I -- I
17 recall having discussions as to who was going to observe.

18 Q. And so if you weren't assigned to observe, you were not
19 allowed in the [REDACTED] is that what I understand?

20 A. I wasn't regulating the -- like, the ins and outs of the
21 [REDACTED] So I recall being in the [REDACTED] because
22 I had a particular interest or a particular need because I was
23 working with that team. What other people did or did not do, I -- I

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1 don't know.

2 Q. I understand you weren't, you know, playing the bouncer,
3 but was it your understanding that only people who were assigned to
4 observe were allowed to observe?

5 A. I'm thinking about this, quote/unquote, assigned to
6 observe. That -- that's the term that I'm -- like, we didn't
7 have -- if I didn't have a need to observe an interview, I didn't
8 observe the interview. If -- if other people observed an interview,
9 I -- that -- I -- I can't speak to that.

10 Q. Were the interviews [REDACTED]
11 [REDACTED]

12 A. [REDACTED]
13 [REDACTED]

14 Q. Okay.

15 A. I know where I was.

16 Q. Yeah.

17 A. I observed the way that I observed.

18 Q. Were you aware of any other rooms which would have been
19 able to [REDACTED]

20 A. I -- I don't know.

21 Q. So you were not aware of any other rooms that were able
22 to -- just whether you were aware. Not that ----

23 A. I -- I can't recall.

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1 Q. Okay. Thank you for that.

2 I also want to clarify another point you made before about
3 the custodial interview that you -- the one custodial interview you
4 participated in. I think I got the names mixed up. You were talking
5 about Ahmed Omar Abu Ali, correct?

6 A. I'm sorry.

7 Q. The one custodial interview you had done, you were talking
8 about Ahmed Omar Abu Ali; is that right?

9 A. Yes, sir.

10 Q. Okay.

11 A. That's the one I participated in, directly participated
12 in.

13 Q. And this is the same Omar Abu Ali whom federal prosecutors
14 expressed doubts about prosecuting because, I quote, he is no good
15 for us here. He has no fingernails left.

16 Is that the same one?

17 A. I -- I don't know where that quote comes from or who it's
18 attributed to.

19 Q. Okay. Were you -- are you aware that he is alleged to
20 have been tortured as well?

21 A. I am aware that there were allegations of torture, yes.

22 Q. Okay. So fair to say that the two people whose interviews
23 you've testified to have participated in were both alleged to have

1 been tortured; is that correct?

2 A. I don't -- I don't think that's a fair categorization,
3 because I never said that I participated in Mr. Mohammad's interview.
4 I observed it. I did not participate in it.

5 Q. Sure. Involved in?

6 A. I observed it.

7 Q. Okay. I want to get into -- back on the interview of
8 Mr. Mohammad, the LHM interviews. The interviews, as you observed,
9 were conducted in English, correct?

10 A. Yes.

11 Q. And when the team -- and when I say "team," I mean
12 Mr. Pellegrino, Antol, and Mason. When the team went into the room,
13 they went in without an interpreter, correct, when they first went
14 into the room?

15 A. That's correct.

16 Q. And they started the conversation in English; is that
17 right?

18 A. That's my recollection.

19 Q. Okay. Was there an interpreter available?

20 A. We had several interpreters available.

21 Q. And were these FBI interpreters? Or who supplied the
22 interpreters?

23 A. I know that there were some FBI linguists with -- like, as

1 a part of our group that traveled.

2 Q. Okay. And were they -- their purpose there for
3 interpretation, or was -- did they also have some other function?

4 A. If we needed them to do interpretation -- if we needed
5 them to do some translating, they did some translating. I couldn't
6 speak to any other assignments they may or may not have.

7 Q. Okay. And just semantics-wise, I understand translating
8 to be documents and interpreting to be verbal. When you say
9 translating, you mean they were translating documents or they were
10 interpreting for the -- for the HVDs?

11 A. I think -- I think we're getting -- I do think it's
12 a -- probably a semantics issue.

13 Q. Okay.

14 A. I -- our linguists translate from one language, you know,
15 into English. Our Arabic linguists translate from Arabic to English.
16 Whether that's a document, whether that's the spoken word, I -- it's
17 translating.

18 Q. And they were translating, in your words, for HVDs? Or
19 were they translating documents?

20 A. If I have a linguist available, general -- if -- if they
21 needed to assist on an interview, they could assist on an interview.
22 If we need to have somebody look at a document, they can look at a
23 document. They're there to work. Whatever the work -- whatever

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1 the -- whatever's dictated by the work that needs to be done.

2 Q. And I understand. I'm sorry if I'm not being clear.

3 From your recollection, were the FBI linguists on island at
4 that time, what were they actually doing? Not what they could do,
5 but were they translating documents or were they -- did they, in
6 fact, interpret for the HVDs?

7 A. I know that there were instances where a linguist
8 was -- an FBI linguist was used during an interview. If they
9 interpreted documents for somebody, I -- I can't really speak to
10 exactly what they were doing. If -- I'm sure if an Arabic document
11 needed to be translated, I'm sure they were there to help.

12 Q. Okay. Did you have any Baloch interpreters available?

13 A. Not ----

14 MTC [MR. TRIVETT]: Objection. Relevance as to Mr. Mohammad's
15 interview.

16 DDC [LT XU]: If I can respond.

17 MJ [Col McCALL]: Objection overruled. I'll allow the
18 question.

19 A. Can you repeat the question, please?

20 Q. Did you have any Baloch interpreters available?

21 A. I don't believe we had a Baloch linguist with us.

22 Q. Do you know if Mr. Mohammad is more comfortable in Baloch
23 or Arabic?

1 A. I don't -- I'm not able to answer that question.

2 Q. Did any of the agents in the room ask?

3 A. I recall the interview portions that I observed were in
4 English.

5 Q. Did they ask whether he was more comfortable -- did they
6 ask what language he was most comfortable in?

7 A. I -- I don't know if the term "most comfortable" was used.

8 Q. Um-hmm.

9 A. If an interpreter -- if a linguist was needed, the agents
10 that were in the room would have gotten a translator -- they would
11 have gotten an FBI linguist.

12 Q. Do you recall whether the agents determined which language
13 Mr. Mohammad was most comfortable speaking in?

14 MTC [MR. TRIVETT]: Objection. Asked and answered.

15 MJ [Col McCALL]: Sustained.

16 Q. Ms. Waltz, do you know what a language -- defense language
17 proficiency test is?

18 A. Can you repeat that, please?

19 Q. Are you familiar with a defense language proficiency test?

20 A. Defense language proficiency test?

21 Q. Yeah.

22 A. I'm not familiar with that.

23 Q. Okay. I can represent to you it's just a Department of

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1 Defense test that assesses your language level in any certain
2 language.

3 Did anyone ever asses, to your knowledge, Mr. Mohammad's
4 English proficiency using any similarly government-approved test?

5 A. I have no knowledge of that.

6 Q. And you've sat in commission hearings before your
7 testimony today -- right? -- to observe?

8 A. I've been in this courtroom during hearings, yes.

9 Q. And you've seen the staff judge advocate come in at the
10 start of the -- some days to testify whether any of the accused
11 are -- are absent, right?

12 A. I have seen that practice, yes.

13 Q. And you've heard them testify as to the reading of the
14 accused's rights advisement?

15 A. I've heard it. Whether I've paid close attention to it is
16 another question, but I have heard it, yes.

17 Q. And you've heard that both Arabic and English forms are
18 made available to them, correct?

19 A. I've heard that, yes.

20 Q. And that an Arab interpreter is made available to them,
21 correct?

22 A. What the exact practices are and exactly the mechanics of
23 how that happens, not known to me. I've heard in the courtroom ----

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1 Q. Yes.

2 A. ---- the SJA or ----

3 Q. That's all I'm asking.

4 A. ---- whomever is sitting here at the witness stand, I've
5 heard them testify to the different advisements. I can't sit here
6 and recite what those are.

7 Q. Not asking you to. That's fine. And you've seen
8 the -- Mr. Mohammad use a live interpretation that's offered in court
9 during commissions?

10 A. What exactly Mr. Mohammad's doing up here at the front
11 table, I -- to be quite honest, I can't always see, depending on
12 where I'm sitting in the courtroom.

13 Q. Understood.

14 DDC [LT XU]: So, Your Honor, may I use the ELMO again?

15 MJ [Col McCALL]: Go ahead.

16 DDC [LT XU]: And I'm displaying to the witness, this is a
17 page of the Senate Select Committee Report, the SSCI Report. It's in
18 the record at AE 25400 (KSM) Attachment E. And this is page 122 of
19 the report.

20 MJ [Col McCALL]: All right.

21 DDC [LT XU]: And I ask that be shown to the gallery as well,
22 because it's unclassified.

23 MJ [Col McCALL]: All right. Go ahead and put it on the

1 document camera. And this can be displayed to the gallery.

2 Q. Can you see that, Ms. Waltz?

3 A. I can see it, yes.

4 Q. Do you see that highlighted portion that says: One
5 interviewee noted that several interrogators with whom he had worked
6 insisted on conducting interrogations in English to demonstrate their
7 dominance over the detainee?

8 A. I see that.

9 Q. Okay. And I can represent to you that is in reference to
10 interrogators -- CIA interrogators during the RDI program.

11 Now, were you aware of this before today?

12 A. I'm looking at this for probably the first time. I'm...

13 Q. Had you been aware of this back in 2007 ----

14 MTC [MR. TRIVETT]: Objection. Relevance, lack of foundation.

15 MJ [Col McCALL]: What's your question? Go ahead, just finish
16 reading your question.

17 Q. Had you been aware of this in 2007, do you think it would
18 have been advisable to conduct Mr. Mohammad's interview in English?

19 MJ [Col McCALL]: Objection sustained. It seems like good
20 argument to me, but not necessarily a good question for this witness.

21 Go ahead.

22 Q. All right. Ms. Waltz, knowing this, does that change your
23 assessment of the voluntariness of Mr. Mohammad's statement?

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1 A. The assessment that ----

2 Q. You testified to on direct.

3 A. The conclusions I made when I sat and observed the
4 interview are the same conclusions that I have.

5 Q. Okay. I want to touch back on the Miranda issue that we
6 already started talking about. But you testified on direct and a
7 little bit on cross about the potential use of the LHMs in federal
8 court in the 2009 time frame. Do you remember that?

9 A. I do recall.

10 Q. Okay. And you testified that it was your understanding
11 that LHM interviews were not going to be admissible in federal court,
12 correct?

13 A. That was my understanding.

14 Q. Because they were not Mirandized?

15 A. Again, that was my understanding.

16 Q. How did you come to that understanding?

17 MTC [MR. TRIVETT]: Objection. Asked and answered.

18 DDC [LT XU]: Your Honor, can I just answer briefly?

19 MJ [Col McCALL]: Go ahead.

20 DDC [LT XU]: I believe when this was asked during cross, the
21 testimony was cut off by the lights. So none of it, I believe, is in
22 the record. If -- if Mr. Trivett is referring to the direct, that
23 was definitely not expanded on. I mean, the testimony was left off

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1 at they were not Mirandized, so they were in use. They were not
2 going to be used.

3 MJ [Col McCALL]: I'll allow this area to be covered briefly,
4 so objection overruled.

5 DDC [LT XU]: Thank you, Your Honor.

6 A. Can you repeat the question, please?

7 Q. So you had testified that it was your understanding that
8 because the LHM statements were not Mirandized, they were not going
9 to be used in federal court.

10 How did you come to that understanding?

11 A. That would have been some type of assessment that was done
12 by the -- the Eastern District of Virginia, Southern District of New
13 York assessment team, what they -- that's -- that's what they
14 were -- that was their operating premise at the time.

15 What would have ultimately happened, I have no idea. But at
16 the time the -- at least the -- we were -- I was assisting in the
17 evaluation of the case, the 9/11 case, and what that evidence
18 would -- what evidence was available to us. And that did not include
19 the LHMs.

20 Q. Now, before you testified that the -- you were told during
21 the preparations of the LHM that Miranda was not necessary. So did
22 that come as a surprise to you to learn that the documents couldn't
23 be introduced, the LHMs couldn't be introduced?

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1 MTC [MR. TRIVETT]: Objection. Relevance.

2 MJ [Col McCALL]: So I believe this area has been covered
3 pretty extensively. Go ahead and move on.

4 DDC [LT XU]: Yes, Your Honor. May I have one moment?

5 MJ [Col McCALL]: Sure.

6 **[Pause.]**

7 DDC [LT XU]: Your Honor, I'm going to move on from her prior
8 testimony regarding what happened at EDNY -- SDNY, but I have a few
9 more questions on the Miranda itself.

10 MJ [Col McCALL]: Okay.

11 Q. Ms. Waltz, you -- as an FBI analyst, you were trained on
12 sort of giving Miranda advisements, correct? You had Miranda
13 training?

14 A. I had -- I had knowledge of the Miranda warnings. What
15 specific training I received, trying to think of the random virtual
16 academy classes or other types of ----

17 Q. You -- have you ever been provided formal FBI training on
18 how and why to give Miranda?

19 MTC [MR. TRIVETT]: Objection. Relevance. The witness was
20 not in the interview.

21 MJ [Col McCALL]: Objection sustained. Let's move on. I
22 think we've had a lot of testimony, even from the other witnesses, on
23 Miranda. I think I have a good idea on that.

1 DDC [LT XU]: Yes, Your Honor.

2 Q. Ms. Waltz, Mr. Mohammad was brought into the LHM meetings
3 every day by guards, correct?

4 A. I -- I don't know that I had firsthand knowledge of
5 exactly how he was brought into the interview room.

6 Q. Sure. And maybe I can clarify again. So as you were
7 watching the room, did you ever see guards bring Mr. Mohammad into
8 the room? Is that something that [REDACTED]

9 A. No, sir.

10 Q. Okay. Did you have any knowledge as to how Mr. Mohammad
11 was brought into the interview?

12 A. There were -- there was a guard force around.

13 Q. Um-hmm.

14 A. Exactly what they did or did not do, I -- I could only
15 speak to my direct observations.

16 Q. You didn't ask how the guards treated the -- treated
17 Mr. Mohammad or brought him in for the interviews?

18 A. Not -- no, I did not.

19 Q. So you have no knowledge of how Mr. Mohammad was treated
20 before or after each day of interviews?

21 A. I -- I don't have awareness of that.

22 Q. Okay. Since you've assessed his voluntariness of his
23 statements in the interviews, don't you think that it would be

1 important to know how he was being treated directly before or after
2 those interviews?

3 A. I can speak to my observations and the interactions that I
4 saw between Mr. Mohammad and the interview team.

5 Q. Absolutely. But you gave an opinion as to your -- his
6 voluntariness. So I'm asking you: To form that opinion, don't you
7 think it would be relevant to ask how he was treated directly before
8 his statements in order for you to assess whether it is voluntary?

9 MTC [MR. TRIVETT]: Objection. Asked and answered.

10 DDC [LT XU]: Your Honor, I don't think that Ms. Waltz
11 answered that question. I am not asking for a direct observation.
12 I'm asking for her opinion, because she is here to testify on her
13 opinion regarding voluntariness.

14 MJ [Col McCALL]: Objection overruled. I'll allow the
15 question.

16 A. Can you repeat the question, please?

17 Q. Since you testified as to your opinion with regard to the
18 voluntariness of Mr. Mohammad's statements, I'm asking you: Don't
19 you think it is important, as part of forming that opinion, to know
20 whether or not -- to know how Mr. Mohammad was treated directly
21 before or after his LHM interviews?

22 A. I can simply tell you what I did. I observed the
23 interview. I did not -- I did not take the opportunity to ask

1 significant questions to the guard force that were present where I
2 was, and I didn't ask what other members of the guard force may or
3 may not be doing.

4 I observed the interview. I saw that the interview was
5 cordial. And that was the basis. I -- I used many adjectives during
6 the course of my testimony of how that -- how I believed that
7 interview appeared to me. That's the basis of my opinion.

8 Q. I understand that you're here to testify on your personal
9 knowledge and what you saw and what you did. But you also testified
10 as to your opinion. And so now I'm asking about your opinion, just
11 on your opinion.

12 Don't you think it would have been important to know whether
13 or not Mr. Mohammad's statement was voluntary if, say, for example, a
14 guard threatened him right before he entered the interview room and
15 said: If you say anything bad about us, watch what happens.

16 Don't you think that would have been a relevant part of
17 determining voluntariness, your opinion?

18 MTC [MR. TRIVETT]: Objection. Assuming facts not in
19 evidence.

20 MJ [Col McCALL]: Well, I think it's basically a hypothetical,
21 so objection overruled.

22 Go ahead.

23 A. Can you -- can you repeat the question again, please?

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1 Q. In your opinion, do you think what happens to Mr. Mohammad
2 directly before he makes the LHM statements would be relevant to your
3 determination as to their voluntariness? For example, if the guard
4 was to threaten him right before bringing him into the room.

5 A. If there's a hypothetical scenario of a guard
6 hypothetically threatening Mr. Mohammad just prior to the interview,
7 hypothetically, I think that would have been information that would
8 have been helpful to the FBI -- right? -- to the interview team.

9 I -- again, that was -- I've said now several times, my
10 conclusions were based upon my observations.

11 Q. Moving on, Ms. Waltz. You testified on direct that
12 Mr. Mohammad consented to being part of the interview, right? Is
13 that your testimony?

14 A. My testimony, I believe, was that he agreed to the
15 interview.

16 Q. Okay. I just want to clarify. We can assume that he
17 didn't consent to being in the custody of the United States, right?

18 A. What he consented to with respect to his exact custody, I
19 can't -- I can't ----

20 Q. Were you aware that he consented to be in Guantanamo Bay
21 at that time?

22 A. If Mr. Mohammad expressed some discontent about not
23 wanting to be in Guantanamo at a certain point in time, how would I

1 know that?

2 Q. Is your understanding that he could not speak to a lawyer
3 then if he wanted to; is that right?

4 A. My understanding at the time was that -- again, I'm
5 representing my understanding at the time, was that attorneys were
6 available to detainees, so to -- here in Guantanamo after they were
7 charged.

8 Q. At that time did Mr. Mohammad have an access to an
9 attorney, if he -- had he wanted one?

10 MTC [MR. TRIVETT]: Objection. Asked and answered.

11 MJ [Col McCALL]: Objection overruled.

12 A. I -- I don't know if Mr. Mohammad had specific access to
13 an attorney. And I say that because I know that other detainees had,
14 I believe, habeas attorneys. So if there was -- I don't know at that
15 time Mr. Mohammad's very specific circumstances.

16 I do know that I was -- I was, as well as other people, were
17 advised that in -- and I'm using generic words because I don't have
18 the specific terminology, but that in the military process, that
19 detainees were not afforded attorneys until after they were charged.

20 If there's different kind of nuances to that, I'm not
21 familiar with the specific nuances. But that is my -- and my general
22 understanding.

23 Q. Do you remember Mr. Mohammad during the LHM interviews

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1 specifically asking Mr. Pellegrino about an attorney?

2 A. I don't -- I recall the admonish -- like, the
3 admonishments. I don't recall if there was a continued specific
4 discussion regarding the possibility of an attorney at some point in
5 time.

6 DDC [LT XU]: Your Honor, may I have one moment?

7 MJ [Col McCALL]: You may.

8 **[Pause.]**

9 DDC [LT XU]: Your Honor, can I use the ELMO, please?

10 MJ [Col McCALL]: All right.

11 DDC [LT XU]: And I want to show the witness what's
12 Bates-stamped as MEA-LHM-00000002. And it's in the record at AE 630C
13 (Gov) Attachment F.

14 This is the LHM statements. This is marked LES, so would
15 just be to the parties and the witness.

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

17 Q. Do you see the portion where my pen is at, Ms. Waltz?

18 A. I do.

19 Q. Where it says that Mr. Mohammad asked the interviewers if
20 he had an attorney.

21 A. Okay.

22 Q. And do you remember -- do you remember, from your personal
23 memory, whether Mr. Mohammad said that?

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1 A. I don't have specific recollection of that particular
2 question. Again, I know that Mr. -- or Special Agent Pellegrino went
3 through the advisements, and he did that during the -- the
4 conversation. But I don't have specific recollection of Mr. Mohammad
5 asking if he had an attorney.

6 Q. But he was not provided an attorney on that date, to your
7 knowledge, right?

8 A. To the best of my knowledge, he was not -- when I was
9 there, my observations were that he did not have an attorney in the
10 room.

11 Q. Understood.

12 DDC [LT XU]: One moment, Your Honor?

13 MJ [Col McCALL]: Sure.

14 **[Counsel conferred.]**

15 Q. And, Ms. Waltz, were you aware at that time that
16 Mr. Mohammad was already charged, indicted, in the Southern District
17 of New York?

18 A. I am aware of the indictment in the Southern District of
19 New York, yes.

20 Q. And so you were testifying that they wouldn't have an
21 attorney until they were charged, if he was charged; is that right?

22 A. My testimony, I believe, was caveated under the,
23 quote -- like what I said was the military process and that my -- I

1 was saying my understanding of specifically the military process.

2 I don't know -- I didn't know the nuances of this military
3 process that was occurring during -- like, at that time. So, again,
4 the statement I made just a little bit ago was under the caveat of
5 the military process.

6 Q. And are you aware that under the -- the military judicial
7 process, under Article 31, that suspects would still be afforded an
8 attorney if they're suspected of a -- were you aware of that?

9 MTC [MR. TRIVETT]: Objection. Relevance.

10 MJ [Col McCALL]: Objection sustained.

11 Q. Ms. Waltz, did you observe Mr. Mohammad to be shackled
12 while he was in the interview room?

13 A. I -- I saw his -- oh, sorry.

14 I did not see -- I didn't see shackles.

15 Q. You didn't see if he was shackled to the floor?

16 A. I -- I couldn't -- I didn't see his feet.

17 Q. Okay.

18 DDC [LT XU]: Your Honor, this would be a natural breaking
19 point in my questioning, if you wanted to take the lunch break.

20 MJ [Col McCALL]: All right. That's fine.

21 LDC [MR. RUIZ]: Judge?

22 MJ [Col McCALL]: Mr. Ruiz?

23 LDC [MR. RUIZ]: Before you break, I understand that the

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1 monitors in the very back table have been disabled, I think, and
2 we're not able to turn them on.

3 I do have team personnel who are at that table who need to
4 have access and be able to view the documents as well during the
5 proceedings. So I'm asking that that be turned back on.

6 MJ [Col McCALL]: All right. I wasn't aware that they were
7 turned off. So we'll get with the AV people and confirm that they're
8 working properly before we come back on the record.

9 LDC [MR. RUIZ]: Thank you.

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

11 MJ [Col McCALL]: All right. We will go ahead and recess. Be
12 back at 1330.

13 Commission's in recess.

14 **[The R.M.C. 803 session recessed at 1201, 18 April 2024.]**

15 **[The R.M.C. 803 session was called to order at 1332, 18 April 2024.]**

16 MJ [Col McCALL]: The commission is called to order.

17 The parties are present. The accused are absent.

18 Anything to take up before we call Ms. Waltz back to the
19 witness stand?

20 Mr. Connell? Sorry, beat you to it, Mr. Sowards.

21 LDC [MR. CONNELL]: So, sir, we're making travel decisions for
22 Saturday in light of the change -- the witness changes. And
23 those -- the decision point boils down to whether you possibly have

1 it in contemplation to do a site visit next week, which does seem
2 like a decent use of time, but I know that you had not made any
3 decisions as to whether you were going to do that or not.

4 So I think the real question is, if you're in a position to
5 say, is that something you're still deciding?

6 MJ [Col McCALL]: Sure. So how I see things playing out, at
7 least this week, is the rest of today I anticipate we'll continue on
8 with Lieutenant Xu's cross and then go into Mr. Ruiz's cross of
9 Ms. Waltz.

10 Tomorrow, I think we're just going to be in closed. There
11 won't be any open session. I see us needing this 505(h) hearing. I
12 want to hash out some of the -- more of the discussion on the 505
13 process, and then I want to have an 802 with the parties to discuss
14 the witnesses for this session, again, based on Special Agent Gaudin
15 and the change with the Camp VII commander.

16 So I see us having some flexibility. I mean, I'm open to
17 continuing on with Ms. Waltz's testimony, the closed testimony and
18 the -- there will be, I assume, some open redirect and closed
19 redirect next week. But, again, because she's basically attached to
20 the prosecution, I think we could also move her. It doesn't have to
21 continue on next week.

22 I'm flexible depending on what witnesses are scheduled or
23 can be scheduled, could be put in place next week.

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1 So I'm potentially open to doing a site visit next week. I
2 don't think it's that complicated. I think I have an idea on
3 how -- what I would like to get accomplished from that, but I don't
4 know until we have this 802 what everything is going to look like.

5 And so I hope that's some clarity, but I know that there's
6 still data points that we need.

7 LDC [MR. CONNELL]: That gives me the information that I need,
8 that that is still an open question, the possibility of a site visit
9 next week.

10 MJ [Col McCALL]: I'm open to that.

11 LDC [MR. CONNELL]: Yeah, okay. Thank you, sir.

12 MJ [Col McCALL]: Sure.

13 Go ahead, Mr. Trivett.

14 And I understand that there's more than me just me saying,
15 hey, I want to do a site visit. I'm assuming there's a matter of
16 logistics in setting all that up.

17 MTC [MR. TRIVETT]: Actually, in regard to the site visit, I
18 think the most important data point for us is how many people you're
19 envisioning going out there. So, just for your situational
20 awareness, if you decide to issue an order, that's the one thing
21 we're most concerned about.

22 We're not opposed to it. We just need to be able to
23 communicate to JTF and they need to be able to support whatever

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1 number of people we have going out there.

2 MJ [Col McCALL]: Understood.

3 MTC [MR. TRIVETT]: Okay. And in regard to Ms. Waltz, she's
4 not currently intending to be on the island in weeks four and five,
5 just for your planning purposes.

6 MJ [Col McCALL]: Well, I mean, does she have, like, something
7 pressing?

8 MTC [MR. TRIVETT]: She has other work -- other work
9 commitments. I'm not sure if there's leave. There's a family
10 commitment as well.

11 MJ [Col McCALL]: Okay.

12 MTC [MR. TRIVETT]: That was originally her plan, is that
13 she'd come and testify, stay week two and then leave for weeks four
14 and five.

15 MJ [Col McCALL]: Sure. And so, again, those are data points
16 that I will need. Obviously if there is leave where it involves
17 tickets already purchased, you know, extensive plans, I get it. If
18 it's just leaving the local area to decompress after being at GTMO
19 for a month, that probably wouldn't suffice. So I'll probably need a
20 little more details, but obviously I'm not going to be unreasonable.

21 MTC [MR. TRIVETT]: Right. I believe it involves picking up
22 and bringing back college students.

23 MJ [Col McCALL]: Okay. Understood. I may need a little more

1 details on that. But, again, these are the things I want to discuss
2 at this 802 tomorrow. And, again, I encourage the parties to talk
3 and see how much agreement can be reached before we have this 802.

4 All right. But -- and I will give some thought tonight as
5 well more to, like, whether or not to do this site visit next week
6 and -- because I have general ideas on what I think can be
7 accomplished and how it should be accomplished. It's still -- it's
8 different from the views that I've been -- I've participated in
9 before as a litigator.

10 So I'm just trying to make sure that we have things
11 documented and are doing things properly, but we can discuss that
12 tomorrow at the 802 as well.

13 All right. Any other matters before we call in Supervisory
14 Intelligence Analyst Waltz?

15 Lieutenant Xu.

16 DDC [LT XU]: Your Honor, just to clarify, do you anticipate
17 going into this Saturday?

18 MJ [Col McCALL]: No.

19 DDC [LT XU]: Okay.

20 MJ [Col McCALL]: So good question. And I'd gotten this from
21 the guard force as well. So I think all of you all know, I'm more
22 than happy to go on Saturdays and federal holidays, whatever, going
23 late into the evening, if required.

1 I don't -- that doesn't seem reasonable right now when we're
2 already having issues with witnesses filling the -- what we have
3 scheduled. And I know that when we're not in court, all of you
4 y'all, to include my staff and me, we're all working, getting ready
5 for the rest of our session and other things that are pending.

6 So I think we have more than enough on our plate. I don't
7 anticipate that we're going to be in court this weekend. And
8 obviously, we've discussed some of those other weekends based on
9 counsel's issues. So does that answer your question?

10 All right. Did you have anything else, Mr. Sowards? Yes,
11 go ahead.

12 LDC [MR. SOWARDS]: Thank you, Your Honor. I wanted to
13 conserve the number of times I stood up today.

14 MJ [Col McCALL]: Understood.

15 LDC [MR. SOWARDS]: So I was just waiting to be called on.

16 Yeah, it's just that last week we had -- before we came down
17 here, we had filed AE 940A, I believe it was, the series dealing with
18 access to our offices and the commission had indicated that replies
19 would not be -- I believe it was either necessary or required.

20 And what we were noticing is that tomorrow -- if we were to
21 file a reply, tomorrow would be the date. So what we wanted to alert
22 the commission is we felt, based on the government's response and
23 then particularly some of the acknowledgements or concessions as we

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1 read them in Mr. Purtill's declaration, we thought a reply would be
2 appropriate.

3 And so -- but we also didn't want to circumvent the
4 commission's language, because we know you didn't say prohibited or
5 thou shalt not reply. You just sort of indicated as it looked then
6 based on our pleading, but we think in light of their pleading,
7 respectfully, that a very short reply is appropriate and we would be,
8 unless the court -- commission indicates otherwise, filing that
9 tomorrow.

10 MJ [Col McCALL]: No, that's fine.

11 LDC [MR. SOWARDS]: Okay. Thank you, sir. Appreciate it.

12 MJ [Col McCALL]: All right. Let's bring Ms. Waltz back in.

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

14 MJ [Col McCALL]: Ms. Waltz, please have a seat.

15 Lieutenant Xu, your witness.

16 DDC [LT XU]: Thank you, Your Honor.

17 **CROSS-EXAMINATION CONTINUED**

18 **Questions by the Detailed Defense Counsel [LT XU]:**

19 Q. Are you ready, Ms. Waltz?

20 A. Yes.

21 Q. Let we get back to the interview of Mr. Mohammad in
22 January of 2007. During your observation of Mr. Mohammad, his
23 interview, do you remember him having anything to say about his

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1 torture or mistreatment?

2 A. I -- I recall a slight reference and hand motions.

3 Q. What was -- do you recall what that was in reference to?

4 A. I believe there was a reference to his wrists.

5 Q. What did he say about his wrists?

6 A. I can't recall the specifics, but I recall, like, some
7 type of -- him pointing and referencing his -- his wrists.

8 Q. Was it about the scars that were on his wrists?

9 A. Scar -- I don't know if the -- if it was scars, marks, but
10 that there was reference to his wrists.

11 Q. Are you saying that it -- does it sound right that it was
12 either scars or marks that were on his wrists that he was referencing
13 to?

14 A. I recall him pointing to his wrists.

15 Q. And were you confirming that it was something like scars
16 or marks? Does that sound ----

17 MTC [MR. TRIVETT]: Objection. Asked and answered.

18 DDC [LT XU]: ---- or do you not remember at all?

19 Judge, I'm just not clear on whether the witness is
20 saying yeah.

21 MJ [Col McCALL]: Understood. Objection overruled.

22 If you'd go ahead and ask for clarification.

23 Q. Yeah. Ms. Waltz, I'm sorry if I'm being obtuse. But are

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1 you saying that you don't -- you remember the wrist gesture but not
2 what it was for? Or do you remember that it was something along the
3 lines of either marks or scars?

4 A. Something along those lines ----

5 Q. Okay.

6 A. ---- and the wrist gesture.

7 Q. Thank you. Were you able to observe any marks or scars on
8 his wrists from -- from the monitor?

9 A. Not from my perspective, no.

10 Q. And that was because you couldn't see due to an
11 obstruction or just that you couldn't see any wrists **[sic]** or marks
12 on his wrist?

13 A. I don't recall [REDACTED] so I
14 just -- I don't know that I -- I couldn't discern anything. I saw
15 the motions and that was -- that was it.

16 Q. Okay. And that was the only thing that you recall related
17 to his torture or mistreatment?

18 A. That's what I recall.

19 Q. Did it strike you as normal for someone who -- did it
20 strike you as normal that someone who was tortured for three years
21 barely mentioned it?

22 A. I don't know that I made any type of assessment of normal
23 or not normal.

1 Q. At the time were you aware that while he was in CIA
2 custody, he was subjected to the enhanced interrogation techniques?

3 A. At the time I had been -- I don't believe I had been
4 briefed on the techniques at that time. And at that time I don't
5 know that -- at that time I did not have awareness of what techniques
6 may or may not have been utilized.

7 Q. Were you aware that he was mistreated, at least, while in
8 CIA custody at that time?

9 A. I don't know what techniques were used or not used. At
10 that time I just did not have that level of knowledge.

11 Q. Understood. So at that time, really, you were only aware
12 that the CIA had asked some questions, but not how he was treated
13 while in CIA custody?

14 A. I did not have awareness of treatment.

15 Q. Okay. When did you become aware of -- of the details of
16 the EITs and torture?

17 A. At some point later, during the course of this litigation,
18 I became more aware of the techniques as approved.

19 Q. Okay. But sitting here now, you are aware of the
20 techniques that he was subjected to for three years prior to the LHM
21 interviews?

22 A. I've learned some. I don't -- I don't know that it's -- I
23 don't know that it's all-inclusive. I don't know if my knowledge is

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1 the full extent or ----

2 Q. Right.

3 A. I don't know.

4 Q. Are you aware of -- that he was waterboarded 183 times?

5 A. I've heard that numerous times, yes.

6 Q. Were you aware of walling?

7 A. I've heard the term.

8 Q. So you're not familiar with what walling is?

9 A. I -- I've heard the term. I have some general awareness
10 of what it is. Whether -- I have no idea if Mr. Mohammad was
11 subjected to walling or not. I don't know.

12 Q. Okay. I -- I can represent to you that -- so before today
13 you were not aware that Mr. Mohammad was subjected to repeated
14 walling?

15 A. I don't -- I don't have any awareness of the -- which EITs
16 were employed.

17 Q. Were you aware that he was subjected to stress positions?

18 A. I have -- no, I don't have awareness of that.

19 Q. And that's a good enough answer. I just wanted a yes or
20 no.

21 Were you aware that he was subjected to extended sleep
22 deprivation?

23 A. I don't have awareness of -- other than hearing and

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1 knowing about the 183 instances of the waterboarding, I don't have
2 awareness of other EITs.

3 Q. So this is the first time you're hearing of these EITs
4 being applied to him?

5 A. I -- this is not the first time I'm hearing of the
6 techniques, but I don't know what -- I don't know which techniques
7 were utilized when and on whom. I have indicated that I have learned
8 of the 183 waterboard incident -- 183 times of waterboarding.

9 Other than that -- and that's only, again, through the
10 course of being a part of -- being here for this litigation. I don't
11 have awareness of timing or numbers or application of other
12 techniques.

13 Q. Sure. And I'm not asking for any of that. I'm just
14 asking specifically, for example, the -- that he was subjected to
15 stress positions.

16 This is the -- as I'm telling you right now, this is the
17 first time you're hearing of him being subjected to that EIT?

18 A. I believe so, yes.

19 Q. Okay. And that goes for walling as well?

20 A. Yes.

21 Q. And were you aware that he had foreign objects inserted
22 rectally without his consent or medical need?

23 A. I don't know ----

1 MTC [MR. TRIVETT]: Objection. Arguing facts not in evidence.

2 MJ [Col McCALL]: Objection overruled.

3 A. I don't have awareness of what happened, when it happened,
4 or -- I don't know.

5 Q. I am not asking for your personal knowledge, Ms. Waltz.
6 I'm just asking whether, as I'm telling you this regarding foreign
7 objects rectally inserted, is this the first time you're hearing of
8 it, as I'm telling you?

9 A. I've heard this -- I've heard some of the terminology,
10 again, during this litigation. But as it relates to Mr. Mohammad,
11 perhaps I've -- I -- I don't know. I -- if I -- if I've learned that
12 specific incident, it would have been here in this -- somehow as it
13 relates to this litigation.

14 Q. Okay. But now that you've learned -- now that I've told
15 you all of those incidents, the walling, the stress positions, the
16 extended sleep deprivation, the anal insertion, effectively
17 sodomizing him by the CIA, does that change your assessment of his
18 voluntariness at all, the fact that that occurred prior to him
19 arriving for the LHM interviews?

20 A. My conclusions are the same. I observed an interview. I
21 made a conclusion of my own opinion on that based upon my
22 observations of that interview, and I still believe that it was
23 a -- a cordial -- it was a conversation. I -- what I observed seemed

1 to be -- in my opinion, was a -- a -- an interview that -- there was
2 a free back-and-forth of information, a dialogue, that it was -- in
3 my opinion, it was voluntary.

4 Q. So were you aware that the architect of the CIA program,
5 Dr. Mitchell, said that all of the things I described to you, the
6 EITs, were done to him in order to condition him, Mr. Mohammad, to
7 be -- to be willing to voluntarily answer questions when a person
8 came into the room and asked him those questions? Were you aware of
9 that?

10 A. Who said this?

11 Q. Dr. Mitchell.

12 A. I don't have awareness of the specifics of ----

13 Q. Okay.

14 A. ---- what Dr. Mitchell has said.

15 Q. So knowing that now, as I've told you, does that change
16 your assessment of whether Mr. Mohammad's statements were voluntary
17 during the LHM interviews?

18 A. My observations in 2007 are my observations. I sat and I
19 watched. I observed. I've -- I felt that at times Mr. Mohammad and
20 Frank Pellegrino were in -- in -- during their discussions, kind of
21 thinking back as if, you know, they're on opposite sides of the
22 fence, if you will, or kind of opposite sides, and maybe under
23 different circumstances or at a different point in time maybe they

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1 would have gotten, you know, they could have been friends or who
2 knows.

3 But it is -- you know, there was a mutual respect there.
4 There was -- I think I even may have said that it was like, you know,
5 kind of looking back on old times almost. That -- that was my
6 assessment then. It's still my assessment sitting here.

7 Q. And while they were looking back on old times, did
8 Mr. Pellegrino ever ask him about the torture that he experienced?

9 A. I -- I don't think -- I don't recall specific questioning
10 regarding treatment. I -- I don't recall that.

11 Q. Okay. Were you aware that the Senate Select Committee on
12 Intelligence report on CIA torture concluded that Camp VII, which is
13 where Mr. Mohammad was being held during the LHM interviews, the
14 report concluded that Camp VII was under the operational control of
15 the CIA? Were you aware of that?

16 A. I'm aware of the report.

17 Q. Were you aware of that fact?

18 A. I'm aware of the fact from the report.

19 Q. Okay. Does that -- did that impact your assessment as to
20 voluntariness?

21 A. No. My assessment is still the same.

22 Q. I want to move to sort of the time that you spent outside
23 of the interviews, when the interviews were -- were not occurring or

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1 during breaks. So prior to the start of each interviewing day, would
2 there be meetings to sort of prepare for those interviews?

3 A. Not that I recall.

4 Q. So you didn't meet with Mr. Pellegrino, Antol, or
5 Mr. Mason at all prior to each day to prepare?

6 A. If I recall correctly, the -- any meetings that we had
7 were not -- I don't believe we were having standard meetings, let's
8 say, before the interviews.

9 Q. Okay. Maybe it's my verbiage. Did you talk at all with
10 the interviewers before the interview started?

11 A. There may have been some -- there may have been some
12 dialogue. I didn't sit with Frank Pellegrino or Brian Antol and
13 if -- well, I didn't sit with them and have a discussion about, you
14 know, what was going to be covered or kind of what was about to
15 occur. I didn't do that.

16 Q. What about during the breaks? You had testified that
17 there were breaks in the interviews for prayer, you know, lunch and
18 all that. Did you have any discussions regarding the interviews
19 during those breaks?

20 A. I believe at -- during a break is when I provided Frank
21 Pellegrino the couple of documents that I mentioned earlier.

22 Q. Okay. And what about after the interviews in the evenings
23 when the -- when the interviews concluded for the day, did you have

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1 discussions then?

2 A. We did have some discussions about the day back in FBI
3 space once the -- everything was concluded for the day.

4 Q. And what did you discuss in those spaces?

5 A. In -- this was more of a team meeting-type thing in the
6 Bureau space. It was really just about the -- what -- you know, the
7 day's events, maybe some logistics going forward. Is anybody done?
8 Who's leaving the island? Are any new -- you know, again, just a
9 basic recap of the day and anything kind of as a team we needed to
10 know.

11 Q. Did you discuss what questions were to be asked the next
12 day?

13 A. I -- I don't believe we got down to that level of
14 specificity, no.

15 Q. So you didn't at all discuss strategy going forward with
16 regards to the interviews?

17 A. This is a -- the meetings that I'm referring to or that
18 I'm thinking about, again, are kind of larger FBI team meetings.
19 There's multiple interviews that are -- different interviews that are
20 happening, and what the timing is and it was some logistics.

21 Again, if there were issues that affected more than one
22 team, some of that would get brought up. It was during one of these
23 meetings that, as a group, we elicited some additional -- you know,

1 some additional guidance was elicited from OGC, which was
2 subsequently provided. And I believe that is the EC or -- that was
3 written by Rich Van Veldhuisen.

4 But with respect to, hey, tomorrow we're going to ask this
5 question, like, that type of thing did not -- was not occurring.

6 Q. What was the guidance that was elicited from the OGC?

7 A. It was the -- there was additional guidance sought from
8 OGC, I believe, with respect to how to document some of these -- some
9 of the issues that came up.

10 Q. And when you say OGC, do you mean FBI OGC?

11 A. FBI OGC, yes.

12 Q. And who else attended these meetings? Did the prosecutors
13 attend these meetings?

14 A. No.

15 Q. The OGC attended those meetings?

16 A. FBI OGC.

17 Q. Okay. Did CIA attend those meetings?

18 A. It was FBI in the FBI space. It was an FBI meeting.

19 Q. So the CIA did not attend those meetings?

20 A. No, the CIA was not there.

21 Q. Were there any meetings with the CIA at all outside of the
22 interviews during that time?

23 A. I don't recall having specific meetings with respect

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1 to -- this is from me speaking -- I don't recall having specific
2 meetings with CIA OGC.

3 Q. Do you recall other people having meetings with CIA OGC?

4 A. You have to ask those other people.

5 Q. Of course. But do you recall? Were you aware of?

6 A. What my boss was doing, what someone else was doing while
7 I'm working, I -- I don't know.

8 Q. Okay. And you had testified before that some of the
9 prosecutors were spending time in the kitchen that you mentioned,
10 correct, in the complex?

11 A. I think I specifically said I saw Bob Swann in the
12 kitchen.

13 Q. Bear with me here. This is maybe an obvious question, but
14 what was occurring in the kitchen?

15 A. I wasn't in the kitchen the whole time. I walked by the
16 kitchen. I probably was polite and said hello, maybe cordial
17 dialogue for a moment, and then I went to work.

18 Q. Okay. So this was an actual kitchen for, you know, food,
19 lunch, that type of stuff?

20 A. It's a kitchen.

21 Q. Okay. You said -- you testified that you don't know what
22 your boss was doing. Who was your boss at that time? Which person
23 are you referring to?

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1 A. Grant Mendenhall and Joan-Marie Turchiano.

2 Q. Thank you. Did Mr. Pellegrino, other than the documents
3 that you specifically handed him, did Mr. Pellegrino bring in any
4 notes or documents into the meeting -- interview?

5 A. I don't recall him using other documents with respect to
6 notes. Brian Antol was taking the notes, so he had notes that he was
7 creating during the interview.

8 Q. So outside of what you gave Mr. Pellegrino, he didn't have
9 any papers?

10 A. I don't recall anything else.

11 Q. Okay. And just -- sorry. Just getting back a little bit
12 to the -- to the interview here. What was the format of the
13 interview? So what I mean by that, was it Q&A? Or were they just
14 talking and conversation went wherever it went?

15 A. A little bit of both.

16 Q. Who drove the subject areas of the conversation?

17 A. Frank Pellegrino was leading the interview.

18 Q. Okay. So he was leading it from, like, sort of one
19 subject area to another?

20 A. Frank -- yes.

21 Q. Do you know how those subject areas were determined?

22 A. You'd have to ask Mr. Pellegrino.

23 Q. Okay. So that didn't come up in any of the discussions in

1 the preparations that you talked about?

2 A. I -- I don't recall specific -- sitting with Frank
3 Pellegrino and having discussions regarding specific topics. I gave
4 him the two documents to utilize during the interview. Frank is well
5 versed, very good at what he -- at his job. So Frank did
6 his -- Frank did his job.

7 Q. Just touching on the FBI policy you testified to that only
8 one person takes notes per interview; is that right?

9 A. One set of notes, yes.

10 Q. How would the impressions of the other participants in
11 that interview be memorialized in those notes?

12 A. You'd have to ask them.

13 Q. I'm referring to the policy. You said it was FBI policy
14 for only one person to take notes during any given interview; is that
15 correct?

16 A. Correct.

17 Q. So, then, I'm just asking in general: How were the
18 impressions of the other FBI agents or analysts who participated in
19 that interview, how were their impressions memorialized?

20 A. Impressions, I -- I don't know.

21 Q. So at the end of the interview, would it be normal for the
22 whole team to get together and then share what they saw and for
23 that -- those impressions to be, say, memorialized by that one

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1 person?

2 A. I don't recall a scenario of getting together after an
3 interview and writing something about the interview that occurred.
4 If there's notes ----

5 Q. Okay.

6 A. ---- the notes are from the interview, not after the
7 interview.

8 Q. Okay. And just from that one person who's taking them?

9 A. If there's a person taking notes, they're responsible for
10 the notes.

11 Q. So there's no opportunity for those other people to
12 contribute their impressions to ----

13 A. I'm sure in the reviewing of the notes and writing up the
14 document, they review the notes and they write up the LHM. The
15 note-taker and the party -- you know whoever's writing up the LHM,
16 they -- they are responsible for that.

17 Q. So the interview notes were typed up at the end of the day
18 on a laptop, correct?

19 A. The interview notes were typed up on a laptop, yes.

20 Q. A CIA laptop?

21 A. It was a CIA-provided laptop.

22 Q. Have you seen that laptop?

23 A. The laptop ----

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1 Q. CIA laptop.

2 A. I've seen CIA laptops. Whether I have seen this specific
3 laptop that you're referring to, I -- I don't know.

4 Q. I guess I'm asking whether there's a -- you have an
5 awareness of which laptop they were using, the FBI, to type up the
6 notes and, if so, whether you've seen it.

7 A. There was more than one laptop.

8 Q. Okay. What about the one for Mr. Mohammad?

9 A. I -- I guess I -- I don't know if I saw Mr. Mohammad's
10 laptop.

11 Q. Do you know who typed up Mr. Mohammad's notes on the
12 respective laptop that -- CIA laptop that was being used?

13 A. With respect to the drafting of the LHM, I was not a party
14 to that. You would have to ask Mr. Antol or Mr. Pellegrino.

15 Q. Okay. If I asked you if you were aware of where the
16 laptop was kept each evening, would you be able to answer?

17 A. I'm sorry. Can you repeat the question?

18 Q. If I asked you where the CIA laptop was kept after it was
19 used at the end of the day, would you be able to answer me?

20 A. I generally know where the laptop was kept.

21 Q. Okay. Would you be able to answer the question of where
22 it was kept?

23 A. I don't know.

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1 MJ [Col McCALL]: Maybe just ask the question.

2 Q. Where is -- where was the laptop kept?

3 A. The laptop was not in FBI space.

4 Q. It was in a CIA space?

5 A. Yes.

6 DDC [LT XU]: Your Honor, can I have one moment? I'm just
7 going to get some supervision.

8 MJ [Col McCALL]: Sure.

9 **[Counsel conferred.]**

10 Q. So, Ms. Waltz, I'm going to move on from the CIA laptop.
11 You testified that it was routine practice for agents to review
12 detainee reporting. Do you remember that? It was yesterday.

13 A. I said that they could review detainee reporting. And I
14 believe it also depended on the timing, et cetera, as to who would
15 have access to what.

16 Q. Did you routinely review detainee reporting during an
17 investigation?

18 A. I was -- I was reviewing detainee reporting at a certain
19 point in my career, yes.

20 Q. Meaning that you were reviewing cables coming out of the
21 CIA RDI program? That's what you mean by detainee reporting; is that
22 right?

23 A. I reviewed cables, yes.

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1 Q. Coming out of the CIA RDI program? I know you've reviewed
2 many cables. I just want to be specific that for different detainee
3 reporting, you're talking about the cables coming out of the
4 CIA's -- the Rendition, Detention, and Interrogation Program.

5 A. I've later learned that those were from the RDI program,
6 so in -- that was not a term that I would have used. I wouldn't
7 have ----

8 Q. Okay.

9 A. ---- said, I have a cable here from the RDI program.
10 That -- that ----

11 Q. We're talking about the same thing. I mean, we can call
12 it --

13 A. I believe so.

14 Q. Okay.

15 A. And in 2000 -- you know, in the early 2002 or 2003 time
16 frame, I don't -- I wouldn't have said, hey, I have a cable from the
17 RDI program. I -- it just -- it would have been a CIA cable.
18 This ----

19 Q. Understood. And you also reviewed the actual LHM
20 statements, the final product, in anticipation of your testimony in
21 this hearing; is that right?

22 A. Yes, I did.

23 Q. Okay. So you're familiar with the LHM statements?

1 A. I'm familiar with the LHMs.

2 Q. Okay.

3 DDC [LT XU]: May I have one moment, Your Honor?

4 MJ [Col McCALL]: Sure.

5 **[Pause.]**

6 DDC [LT XU]: Your Honor, may I have use of the ELMO, please?

7 MJ [Col McCALL]: Okay. What document?

8 DDC [LT XU]: Actually, let me ask the question first, and
9 then I'll go into the document.

10 MJ [Col McCALL]: Okay.

11 **[Pause.]**

12 Q. Ms. Waltz, are you familiar with the portion of the LHM
13 statement where it states that Hani Hanjour was already a pilot when
14 he traveled to Afghanistan for training? Do you remember that part?

15 A. I -- I reviewed the LHM. It seems like now a while ago,
16 I've -- if that is in the LHM, then at some point I've reviewed it.

17 Q. Do you need to refresh your memory?

18 A. I -- that's fine.

19 DDC [LT XU]: So, Your Honor, this is the LHM statement. It's
20 in the record at AE 630C (Gov) Attachment F, and for just the parties
21 and the witness, please.

22 MJ [Col McCALL]: All right. Go ahead. This won't be
23 displayed to the public.

1 A. Okay.

2 Q. So you see here where it says that: Hani Hanjour was
3 already a pilot when he traveled to Afghanistan for training. When
4 he filling out his background data, he identified himself as a pilot.
5 As a result, he was immediately sent to Mr. Mohammad.

6 A. I see that.

7 DDC [LT XU]: Your Honor, may I also display for the public as
8 well as the parties, this is MEA-STA-00000035, in the record at AE
9 628SSSS (AAA) Attachment C.

10 MJ [Col McCALL]: All right. If you want to go ahead and put
11 it on the ELMO. And this can be displayed to the gallery.

12 Q. And, Ms. Waltz, do you see here -- and I represent to you
13 this is the -- let me move up -- this is from a custodial interview
14 in mid-2003 while Mr. Mohammad was in CIA custody that he said Hani
15 Hanjour, one of the September 11th hijackers, were selected in this
16 manner because he indicated on his application that he had pilot
17 experience?

18 A. I see that.

19 Q. Do you agree that that is in substance the same as what is
20 in Mr. Mohammad's LHM statement?

21 A. Similar.

22 Q. Do you remember in the LHM statement, Ms. Waltz, where
23 Mr. Mohammad said that he always believed Zacarias Moussaoui was a

1 problem?

2 A. If it was in the LHM, I read the LHM in advance -- at some
3 point in advance of my direct testimony.

4 DDC [LT XU]: Your Honor, may I use the ELMO again for the LHM
5 statement?

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

7 DDC [LT XU]: Again, this is the same document, AE 630C (Gov)
8 at Attachment F.

9 MJ [Col McCALL]: And, again, this one will not be displayed
10 to the public. This is the LHM, correct?

11 DDC [LT XU]: Correct. Yes. Yes, Your Honor.

12 Q. And do you see that, Ms. Waltz, where it said KSM always
13 believed Moussaoui was a problem?

14 A. I see that.

15 DDC [LT XU]: And now I'm showing the witness
16 MEA-STA-00000099, in the record at AE 628SSSS (AAA) Attachment C, and
17 this will be for the public as well.

18 MJ [Col McCALL]: Okay. Go ahead. And this will be displayed
19 to the public.

20 Q. And, Ms. Waltz, do you see here where it says: KSM
21 reiterated that Moussaoui was problematic and KSM thought it was a
22 better move to cut ties with him while he was taking flight training?

23 A. I see that written.

1 Q. And do you agree that that's substantively similar to this
2 statement that he made in the black sites or substantively similar to
3 his LHM statement?

4 A. His LHM statement said that he -- that he, KSM, Khalid
5 Shaikh Mohammad, believed that Moussaoui was a problem. But the rest
6 of it wasn't there.

7 Q. Okay. I just have one more example. I don't want to take
8 up too much of the court's time doing this. But do you remember,
9 Ms. Waltz, in the LHM statement where it says that Mr. Mohammad first
10 discussed the idea of flying planes into buildings with Yousef during
11 their preparation of the Bojinka plot, and it was one of the many
12 ideas he discussed at the time?

13 A. Same as before. If it was -- if it's written in the LHM,
14 I reviewed the LHM prior to my earlier testimony.

15 Q. Do you need me to refresh your memory?

16 A. If -- yes.

17 DDC [LT XU]: Your Honor, may I? And this is not for display
18 to the public.

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

20 A. Okay.

21 DDC [LT XU]: And, Your Honor, I would like to show the
22 witness MEA-STA-00000157, in the record at AE 628SSSS (AAA)
23 Attachment C.

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1 MJ [Col McCALL]: All right. And this one can be displayed to
2 the public?

3 DDC [LT XU]: Yes, please.

4 MJ [Col McCALL]: Okay.

5 Q. And do you see here that it says: KSM said the idea of
6 using planes as missiles originated with himself and Ramzi Yousef who
7 discussed the idea during planning for the Bojinka operation?

8 A. I see that.

9 Q. So, Ms. Waltz, was the goal of the LHM interviews simply
10 to get Mr. Mohammad to repeat what he said in the black sites?

11 A. No.

12 Q. Are you aware of any part of the LHM statement that is
13 also not reflected in the cables or -- that came out of the CIA black
14 sites where he was tortured and interrogated?

15 A. Can you repeat the question, please?

16 Q. Are you aware of any portion of the LHM statements that
17 was also not, in some substance or form -- in some shape or form,
18 also in the cables that came out of the CIA RDI program where
19 Mr. Mohammad was interrogated?

20 A. I have no idea.

21 Q. So sitting here today, you can't think of any part of the
22 LHM statement that wasn't also reflected in the black site
23 interrogations?

1 A. It's not that I can't think of it. It's just that I -- I
2 don't know. I -- at no point in time did I take the LHM and try to
3 compare it against previous statements. I -- so I -- I -- I have no
4 idea what may or may not be in there as it relates to previous
5 statements.

6 Q. So, Ms. Waltz, for years you reviewed detainee reporting
7 coming out of the black sites as part of your investigation, correct?

8 A. I reviewed some detainee reporting, yes.

9 Q. So -- and you are familiar with the LHM statements?

10 A. I'm familiar with the LHM statements, yes.

11 Q. I'm asking from your knowledge and experience with both of
12 these, can you think of any statements in the LHM that's not
13 reflected from the statements that were derived from him during
14 torture?

15 MTC [MR. TRIVETT]: Objection. Asked and answered.

16 MJ [Col McCALL]: Sustained.

17 Q. Ms. Waltz, I have a quick question about regarding your
18 travel. You had testified that you traveled to Canada as part of
19 your official FBI duties, correct?

20 A. Yes.

21 Q. Could you tell me around what year that was?

22 A. I -- I don't know. I believe it was pre-COVID. I -- I
23 don't recall.

1 Q. Was it post-9/11?

2 A. Yes.

3 Q. Was it closer to 9/11 than COVID?

4 A. It was probably closer to COVID.

5 Q. Okay. I want to move on to the telephone calls.

6 A. Okay.

7 Q. You testified that the voice identification for the
8 telephone calls were done by FBI linguists, correct?

9 A. Yes.

10 Q. So you yourself didn't make those identifications?

11 A. No.

12 Q. And you testified that the phone calls were valuable
13 because they reflected real-time events as they were happening? Yes?

14 A. When questioned earlier during this, my cross-examination,
15 there were multiple questions about potential value. And I responded
16 yes to -- that there was value in the question because it was real
17 time.

18 Q. And what you mean by that is that you found corroborating
19 evidence of events that were occurring in real time that matched up
20 with when the phone calls were alleged to be; is that accurate?

21 A. When the phone calls were occurring, there was
22 additional -- I could correlate a ----

23 Q. I think that maybe I can ask the question better.

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1 You correlated real-world events to the time stamps that you
2 had on the call log, and that's how you knew -- that's how you
3 verified when the phone calls occurred; is that right?

4 A. Not just the time stamps.

5 Q. What else?

6 A. The content.

7 Q. Okay. So absent -- absent the corroborating evidence,
8 those real-world events -- right? -- for example, the airline tickets
9 that were purchased, would you be able to verify the time stamps that
10 are on the call log?

11 A. Take away the corroborating evidence, the paper and ----

12 Q. Yeah.

13 A. Could I still verify the -- the dates?

14 Q. The time stamps, yep, which has the dates in them.

15 A. Yes.

16 Q. If I asked you how you would be able to do so, would you
17 be able to answer?

18 A. I don't believe so.

19 Q. So the same would be true for both the bolded calls and
20 the un-bolded calls?

21 A. Yes.

22 Q. I also -- I'm going to move on now to your use of kunyas.
23 So you testified that kunyas, or nicknames, were used for operational

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1 security by the hijackers; is that right?

2 A. The hijackers had kunyas, yes.

3 Q. And that they were used for operational security?

4 A. Yes.

5 Q. You testified that they were part of al Qaeda's
6 tradecraft.

7 A. Yes.

8 Q. So like code names? Is that what you meant?

9 A. Yes.

10 Q. Okay. So in your analysis, you actually rely on kunyas to
11 tie the accused to various pieces of evidence, right?

12 A. In my analysis, I believe that when I was using a kunya as
13 it relates to a piece of evidence, I believe it was to -- the
14 evidence was with respect to one of the hijackers.

15 Q. Sure. Sure. So you used ----

16 A. Umm.

17 Q. Sorry. Go ahead.

18 A. There were a couple situations where there was reference
19 to an individual and an item of evidence helped me identify who was
20 talking.

21 Q. You used kunyas to tie together specific pieces of
22 evidence -- withdrawn.

23 You used kunyas to tie the alleged hijackers to the plot; is

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1 that right? To the conspiracy that was -- that was happening.

2 A. I used the kunyas of the hijackers to help understand what
3 was being discussed on the phone calls.

4 Q. Is it fair to say that it's an important part of your
5 investigation, the kunyas?

6 A. It is part of the investigation.

7 Q. It's not important?

8 A. It is a important part.

9 Q. Yeah.

10 A. There's lots of important parts.

11 Q. Of course, yeah.

12 Have you consulted an expert on Arab culture on the issue of
13 kunyas?

14 A. I spoke with our linguist, Robert Antoon, about kunyas.

15 Q. Was he -- did he have any expertise on Arab culture
16 or ----

17 A. Well, he is Iraqi, and I believe he's testified to his
18 background and qualifications.

19 Q. What did he tell you about kunyas?

20 A. That it was like a nickname, but also could be an
21 honorable thing to -- to have a kunya.

22 Q. Okay. So he did say that kunyas were uses -- could be
23 used as honorifics; is that right?

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1 A. I believe -- I believe so, yes.

2 Q. So, for example, you had testified in open -- on the
3 direct that there were several individuals with the name -- with the
4 kunya Abu Hafs; is that right?

5 A. I don't believe I said that there were several individuals
6 by the name of Abu Hafs.

7 Q. Are there several -- more than one person with the kunya
8 Abu Hafs?

9 A. There's a couple Abu Hafs that I can think of just during
10 the -- generally speaking.

11 Q. And that you came across during part of your
12 investigation, correct?

13 A. Yes.

14 Q. You would agree that it's not good operational security to
15 have multiple people with the same code name?

16 A. I -- they can use what operational security they want to
17 use.

18 Q. And did Mr. Antoon tell you what "Abu" meant?

19 A. I don't know that I've had that specific conversation of
20 "Abu" with Mr. Antoon.

21 Q. Okay. So are you aware that it means "father of"?

22 A. I've -- I have learned different things over the course of
23 my career. I have learned that at some point in time. When I

1 learned it and how I learned it, I -- I have no idea.

2 Q. And it's true that there are several people -- there are
3 several hijackers with a kunya that starts with Abu; is that right?

4 A. There are kunyas that start with Abu.

5 Q. Do you think it would be good operational security to have
6 a code name that uses the name of your -- your child?

7 A. They can use whatever operational security they want to
8 use. That -- I'm -- it's up to them.

9 Q. Were you aware that in the Arab world, it is -- it could
10 be extremely disrespectful to use someone's real first name? Were
11 you aware of that?

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

13 Q. So I'm going to move on to another topic, Ms. Waltz. I
14 want to cite to some of your testimony during the direct back in
15 March. Please let me know if you recall saying this, but there
16 was -- the first portion here is a question that Mr. Trivett asked
17 you.

18 He asked, specific to the phone records: What type of phone
19 records were typically being gathered?

20 To which you answered: We had some cell phone records. But
21 it's 2001. Cell phones were not as prevalent, but we had a lot of
22 calling card records.

23 Do you remember that part of the testimony?

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1 A. I do.

2 Q. What did you mean by "we"? Who did you mean by "we" when
3 you said "we had some cell phone records" and "we had a lot of
4 calling cards"?

5 A. I believe I was talking about the FBI investigation.

6 Q. Is this what you meant when you earlier repeatedly
7 referred to "big FBI"? Is that what you meant by that?

8 A. I think when I referred to big FBI, it was because I was
9 being asked, generally speaking, if there was some -- some type of
10 something between the FBI and maybe another agency or -- but that
11 is -- that I would refer to as big FBI, kind of the organization, if
12 you will. But -- so I wouldn't -- I think they're two separate
13 issues.

14 Q. So you weren't saying you personally had cell phone
15 records or you personally had a lot of call -- calling card records.
16 You were just speaking about FBI generally had that information? Is
17 that what you meant by your testimony?

18 A. What I was speaking about was during the course of the
19 PENTTBOM investigation, the FBI acquired telephone records and
20 calling card records as a part of the PENTTBOM investigation.

21 Q. Okay.

22 A. That's what I was referring to.

23 Q. Understood. Big FBI, is that -- can I use that

1 interchangeably?

2 A. I would not -- no. I would say the PENTTBOM
3 investigation.

4 Q. And how is that different from when you refer to big FBI?

5 MTC [MR. TRIVETT]: Objection. Asked and answered.

6 MJ [Col McCALL]: Sustained.

7 Q. And when Mr. Trivett asked you: Did the FBI ultimately
8 determine the four flights that crashed on September 11th were indeed
9 hijacked? You said: Yes, we did.

10 Who is "we" in that case?

11 A. The PENTTBOM investigation team. During -- during the
12 course of the PENTTBOM investigation, there was a lot of -- a lot of
13 material gathered by a lot of different people. September 12th,
14 2001, significant portions of the FBI were gathering information and
15 gathering materials related to the 9/11 attacks.

16 Following that, did the team narrow down over time? It did.
17 But when I -- if I'm saying we gathered evidence as it relates to the
18 9/11 investigation, I'm saying that we gathered -- we, the FBI, and
19 as a part of the PENTTBOM investigation, gathered a lot of evidence,
20 created a lot of 1As, a lot of 302s, et cetera. It's a large
21 investigation, sir.

22 Q. Yes. The largest investigation in American history.

23 A. One of them, yes.

1 Q. So you didn't determine that the four flights were
2 hijacked. You're just saying the FBI in general, big FBI did?

3 A. So I sat and have -- over the course of time, over the
4 past several years, probably, I've sat and I've listened to the phone
5 calls from flight attendants on Flight 11. I've heard their words.

6 I've looked at various pieces of evidence from the crash
7 sites. I have reviewed the flight manifests. I've looked at booking
8 records. I've looked at a lot of material.

9 Do I believe that I made -- am I the person sitting here who
10 made the initial determination, whether it be on September 12th or
11 September 13th, exactly what happened that day? Did I personally do
12 that all myself? No, I did not. Over time, have I reviewed a lot of
13 evidence? I have.

14 Q. Okay. I just have one more example here. Mr. Trivett
15 asked you: Was there a supplemental visa card attached to Mr. al
16 Hawsawi's account? You answered: We later learned that there was,
17 yes.

18 And he asked: Okay. And in what name was that visa card?
19 And you answered: In the name of Abdul Rahman -- Rahman al Ghamdi.

20 And he then asked: And was there a picture attached to the
21 application for that supplemental visa card. You said: Yes, there
22 was.

23 And he asked: And were you able to identify the individual

1 in the picture? You said: We identified the individual, yes, as
2 Khalid Shaikh Mohammad.

3 Do you remember that testimony?

4 A. I do.

5 Q. And what did you mean here when you said "we" identified
6 the individual?

7 A. There was a -- the photo was sent to the lab, so there was
8 some photo analysis done. And then that same photo has also been
9 used in an interview. So there's other people that could identify
10 Khalid Shaikh Mohammad.

11 Q. So here, again, you were speaking to the work of the photo
12 lab, not that you made that identification; is that accurate?

13 A. That's correct. I did not personally do that. I was able
14 to rely on the work of the FBI Laboratory. I'm not a fingerprint
15 expert either.

16 Q. Okay. So in your testimony, you are able to -- to recall
17 and rely on the work that you didn't personally do but that others in
18 the FBI did?

19 A. I've reviewed it, and I feel comfortable with the work
20 that was done.

21 Q. Okay. And I -- I want to move on now again. I just have
22 some short portions of different categories, so bear with me here as
23 I jump around a little.

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1 So, Ms. Waltz, when did you first become aware of
2 Mr. Mohammad's capture?

3 A. I became aware in March of 2003.

4 Q. And how did you become aware?

5 A. On the news.

6 Q. Okay. You testified that you served as a liaison between
7 the FBI and the prosecution team as it regards the FBI discovery. Do
8 you remember that testimony?

9 A. I don't know that I used the exact term "liaison," but I
10 certainly worked with the prosecution team, yes.

11 Q. Okay. And are you also involved in the processing of
12 defense requests for discovery when we send discovery to the
13 prosecution? Are you involved in that process?

14 A. At different points I have been.

15 Q. Could you expand on in what capacity?

16 A. They need help finding a document. I -- I've helped. If
17 it relates to the FBI, I might be able to help.

18 Q. You don't make any decisions regarding what is relevant or
19 not?

20 A. Of course not.

21 Q. Okay. And yesterday with regards to the topic of Tariq
22 Road, you had testified -- the Tariq Road raids -- you have testified
23 that: I may have sat in on an interview with one of our potential

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1 witnesses about Tariq Road.

2 Do you remember that testimony?

3 A. I do recall that, yes.

4 Q. What witness were you referring to?

5 A. I believe there was a discussion with David Cudmore that I
6 sat in on, not -- I would not categorize that as an interview.
7 But -- and then I recall sitting -- I recall sitting in discussions
8 with David Cudmore.

9 Q. Can you spell his last name, if you're able?

10 A. C-U-D-M-O-R-E.

11 Q. Thank you. And what was that -- I don't want to call it
12 interview, but discussion about?

13 A. His -- whether he would be able to testify at some point.

14 Q. Testify as to what subject area?

15 A. I can't recall sitting here. I'm sorry.

16 Q. Okay. You testified on direct, also, that there's
17 additional evidence identifying and linking the hijackers that you
18 will later testify to in a case in chief. Do you remember that
19 testimony?

20 A. I do.

21 Q. Okay. Who made that decision as to what evidence to use
22 at this stage of the case versus the case in chief?

23 A. Prosecution.

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1 Q. Did you have any input on that decision?

2 A. Ultimately, the decision about what to present in the
3 courtroom is up to them.

4 Q. Understood. But did you have any input on that decision?

5 A. I can have as much input as I want. It doesn't mean
6 they're going to take it.

7 Q. Sure. But did you give any input on that decision?

8 A. With respect to the ----

9 Q. What to include in pretrial versus case in chief.

10 A. No.

11 Q. And the evidence that has not been presented in this stage
12 of the case as it relates to identifying and linking the hijackers,
13 is that evidence already in the government's possession?

14 A. Yes.

15 Q. Okay. I just want to talk about Agent Aaron Zebley
16 briefly. How did you come to first know Agent Aaron Zebley?

17 A. At some point in 2002/2003 time frame, I met him.

18 Q. In what -- in what capacity was that?

19 A. In a work capacity.

20 Q. And what was the first thing that you worked on together?

21 A. I -- I don't know.

22 Q. Did you work with him on -- on the Moussaoui case?

23 A. Well, Aaron was assigned to PENTTBOM and the Moussaoui

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1 trial team. I had some interactions with Aaron, not a ton. I knew
2 him. I can't recall specifics of working directly with him on
3 anything in particular.

4 Q. Understood.

5 DDC [LT XU]: Your Honor, I just have one more thing. If I
6 can get the court's indulgence for a moment?

7 MJ [Col McCALL]: Sure.

8 **[Pause.]**

9 DDC [LT XU]: Your Honor, may I use -- have use of the ELMO?
10 And this is the -- this is AE 885H, page 17. This is the
11 prosecution -- page 17 of the prosecution's presentation.

12 MJ [Col McCALL]: All right. Go ahead. Is this for --

13 DDC [LT XU]: Just to the parties, please.

14 MJ [Col McCALL]: All right. So this will not be displayed to
15 the public?

16 DDC [LT XU]: Correct.

17 MJ [Col McCALL]: Go ahead. And you can zoom in if you need
18 to.

19 Q. So, Ms. Waltz, I just have a few questions about this
20 document, which you've seen before. On the "by" line where it says
21 Special Agent Adam Drucker -- do you see that?

22 A. I do.

23 Q. Why does it also say "by Special Agent Fitzgerald" in

1 parentheses? What does that mean?

2 A. I believe Jim Fitzgerald wrote this, but you would have to
3 ask Jim Fitzgerald.

4 Q. Okay. And then, lastly, where -- do you see where it says
5 the -- the Federal Rules of Criminal Procedure, it's not checked yes
6 or no? Do you need me to zoom in more?

7 A. No, I see it.

8 Q. Okay. Oh, yeah. Why is that not -- is that -- what does
9 it mean to not have that checked?

10 A. It doesn't mean anything.

11 Q. Okay. Is it usually checked yes or no?

12 A. A lot of times it's just not checked, just like this.

13 Q. Okay.

14 DDC [LT XU]: One moment, Your Honor.

15 **[Counsel conferred.]**

16 Q. One last question, Ms. Waltz. Thanks for bearing with me.
17 I think you answered this, and I just want to clarify.

18 You were not assigned to the PENTTBOM team; is that right?

19 A. That's correct.

20 Q. Okay.

21 DDC [LT XU]: And that's all I have, Your Honor.

22 MJ [Col McCALL]: All right. Thank you, Lieutenant Xu.

23 All right. Let's go ahead and take a recess.

1 Mr. Ruiz?

2 LDC [MR. RUIZ]: Judge, could I request an extended break,
3 just an additional five minutes?

4 MJ [Col McCALL]: Okay. Say 1505? Does that work?

5 LDC [MR. RUIZ]: Yes, sir. Thank you.

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

7 MJ [Col McCALL]: All right. We'll be in recess until 1505.

8 **[The R.M.C. 803 session recessed at 1444, 18 April 2024.]**

9 **[The R.M.C. 803 session was called to order at 1507, 18 April 2024.]**

10 MJ [Col McCALL]: The commission is called to order.

11 Parties are present. The accused are absent.

12 Anything to take up before you bring the witness back in?

13 DC [Capt LEAHY]: Yes, Your Honor. If I may be heard briefly.

14 MJ [Col McCALL]: Okay. What do you have, Captain Leahy?

15 DC [Capt LEAHY]: Yes, Your Honor. Earlier this week I
16 believe I heard you say that you were going to be pushing something
17 out with regard to AE 929. So noting that, I didn't want to miss the
18 moment, based on the testimony this morning, to put a plug in for
19 that motion.

20 As you recall, in our reply filing, AE 929B, there was some
21 discussion between our team and the prosecution with regard to
22 identities because identities were a big part of the requests made in
23 DR-121-MOH.

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1 Specifically in our filing we noted that the prosecution had
2 told us, quote, by design, not a single OCP-assigned prosecutor,
3 current or former, watched even one second of any interview of any of
4 the high-value detainees.

5 And we noted that, in fact, in 2017, Special Agent Perkins
6 testified that, in fact, Mr. Swann had been in the [REDACTED]
7 watching the interview of Mr. al Hawsawi.

8 So regarding the testimony we heard this morning from
9 Ms. Waltz about the different prosecutors who were around during
10 these interviews, we'd ask that you consider those facts when you're
11 looking at AE 929.

12 And if you'd prefer, we could also file a supplementary
13 filing if that -- if the court finds that that is needed.

14 MJ [Col McCALL]: No, I don't need a supplement. But I
15 appreciate you bringing that to my attention.

16 DC [Capt LEAHY]: All right. Thank you, Your Honor.

17 MJ [Col McCALL]: All right. If we can bring the witness back
18 in.

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

20 MJ [Col McCALL]: Ms. Waltz, please have a seat.

21 Mr. Ruiz, your witness.

22 **[END OF PAGE]**

CROSS-EXAMINATION

Questions by the Learned Defense Counsel [MR. RUIZ]:

Q. Ms. Waltz, you've testified that over the years you've had a very close working relationship with this prosecution team, correct?

A. Yes.

Q. Part of that close working relationship with this prosecution team involves being present in court?

A. I have been present in court, yes.

Q. And throughout the course of this litigation, at various times, you have been in court to witness various witnesses' testimony, correct?

A. Yes.

Q. You've also, during that time, at times assisted the prosecution with questions that arise during litigation in this court, correct?

A. I have.

Q. With respect to Special Agent Fitzgerald, were you present in this courtroom for his testimony?

A. In his most recent testimony, yes, I was. For his previous testimony, meaning probably -- maybe 2019 time frame, I was not.

Q. Okay. Now, he's testified three times.

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1 A. Okay.

2 Q. Were you present the first time he testified?

3 A. I don't believe so.

4 Q. Special Agent Perkins, I believe you testified you were
5 present during the last or most recent portion of her testimony,
6 correct?

7 A. Yes.

8 Q. You were not present during the earlier portions of her
9 testimony?

10 A. I -- her -- I'm thinking the testimony pre-COVID, so I was
11 not in the courtroom. I wasn't here for that testimony. And for her
12 most recent testimony, I believe I only saw part of it. I don't
13 believe I saw all of it.

14 Q. With respect to Special Agent Fitzsimmons, were you
15 present in the courtroom during his testimony?

16 A. No.

17 Q. Robert Antoon?

18 A. No.

19 Q. Mr. Antol?

20 A. I saw part of his testimony, not all of it.

21 Q. What about Special Agent Maguire?

22 A. I saw her testimony.

23 Q. Were you present in the courtroom for testimony of

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1 Dr. James Mitchell?

2 A. No.

3 Q. Did you review any of Dr. Mitchell's testimony?

4 A. I haven't reviewed any of his -- like, the transcripts?

5 No, I haven't reviewed his testimony. There were -- I believe I

6 saw -- I mean, I may have seen part of it during the -- on the

7 screens, but that's it. I didn't really watch his testimony.

8 Q. Are you generally familiar with the defense's theory of

9 suppression of the LHM statements based on your interactions with the

10 government, this prosecuting team, and the observations that you've

11 had in court of the litigation in this case?

12 A. I -- can you be more specific, please?

13 Q. Are you familiar with the defense's theory of suppression

14 of the letterhead memorandum statements, based on your observations

15 in this courtroom of the litigation of this case, your interactions

16 with the prosecuting team? Are you familiar with the defense's

17 theory of exclusion for the LHM statements?

18 A. I believe I -- I don't know. I don't ----

19 Q. What is your understanding of the defense's theory of the

20 suppression of the LHM statements?

21 MTC [MR. TRIVETT]: Objection. The witness should be allowed

22 to answer.

23 LDC [MR. RUIZ]: Her answer was "I don't know," so I followed

1 up with a different question.

2 MJ [Col McCALL]: Yeah, go ahead. Repeat that last question.

3 LDC [MR. RUIZ]: Sure.

4 Q. What is your understanding of the defense's theory of
5 suppression for the letterhead memorandum statements?

6 A. My belief is that it's because there is -- the defense
7 believes that they were derived from torture. I'm giving my opinion.

8 Q. Do you understand that the government's theory of
9 admissibility of the LHM statements is that the evidence obtained was
10 independent of tainted evidence obtained from the black sites? Were
11 you aware of that prior to your testimony?

12 A. I -- I understand that, yes.

13 Q. And you understand that because you've had a close working
14 relationship with these prosecutors, and they've explained that to
15 you during the course of your preparation, correct?

16 A. I wouldn't say they've explained that to me during ----

17 Q. What would you say?

18 A. ---- preparation.

19 I've been -- what would I say to what?

20 Q. To why you understand the government's theory of
21 admissibility.

22 A. Because -- with respect to the LHMs?

23 Q. That's the question before the court.

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1 A. That the LHMs were a voluntary interview.

2 Q. Collected -- and the evidence collected was in the course
3 of intelligence-gathering, correct? As opposed to a law enforcement
4 function. You understand that, right?

5 A. I -- I -- I wouldn't say that. Those aren't my words.

6 Q. Do you understand that is the government's theory of
7 admissibility?

8 A. That the evidence was -- I don't -- I don't think the
9 government's theory is that evidence was gathered as intelligence. I
10 don't -- I'm confused by your question. I apologize -- like, I
11 just ----

12 Q. Do you understand what the government's theory of
13 admissibility is for the LHM statements? Just articulate it as you
14 understand it.

15 A. That it was a law enforcement interview, it was an
16 interview that was conducted, and that it is reliable, and that it is
17 admissible under the military rules. I'm not an attorney, and
18 I'm -- have learned some components of military commissions over
19 time, but I'm -- with respect to the different legal theories, I
20 can't ----

21 Q. I'm not asking you to give a legal theory.

22 MJ [Col McCALL]: Let me stop counsel and the witness just for
23 a second, because -- don't speak over the witness. And if you could

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1 give Ms. Waltz just a moment to answer.

2 I've noticed that her -- the way that she answers these
3 questions, there is a little bit of a pause as she works through what
4 she wants to say. So I'd just ask you to be a little patient,
5 Mr. Ruiz.

6 LDC [MR. RUIZ]: Could I have the witness excused for a
7 moment?

8 MJ [Col McCALL]: Sure.

9 Ms. Waltz, could you step out of the courtroom?

10 WIT: Yes, sir.

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

12 MJ [Col McCALL]: Go ahead, Mr. Ruiz.

13 LDC [MR. RUIZ]: Yes, sir. I just want to address just
14 the -- since you raised the issue of your observations of the manner
15 in which this witness answers questions. My own observations are
16 that she tends to be nonresponsive and at times rambles and engages
17 in a narrative that's not responsive to the question that is asked.

18 My goal is to try and to rein that in, one, for purposes of
19 efficiency and to move this forward, which is why I'm trying to stop
20 her when I see her moving off track and bring her back to the
21 question that is asked.

22 In reality, I could probably do my examination in under two
23 hours for two factors. One, if the witness answers directly the

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1 question that I ask her without going into lengthy narratives, which
2 I do not wish to allow to happen.

3 Second, depends on the degree of interaction with the
4 government. What I'm trying to do in the very early stage is to
5 bring it back to where it's a responsive question to a question that
6 is asked as narrowly tailored as I can, and I'm trying to fashion my
7 questions in that format.

8 My goal is not to allow her to engage in these lengthy
9 narratives that she tends to go on that are nonresponsive.

10 MJ [Col McCALL]: I appreciate that, and I appreciate you
11 controlling the witness and asking leading questions. Just be
12 cognizant of at the same time the witness has to have a chance to
13 answer your question if they are going to answer your question. But
14 I understand what you're doing to control the witness.

15 LDC [MR. RUIZ]: Well, in that case, I understand that, and I
16 agree. I'll try to strike that balance. And if I see that she's not
17 going that route, then perhaps I'll just make an objection as to
18 nonresponsiveness, because otherwise we're going to be here a very
19 long time.

20 MJ [Col McCALL]: No, that's fine.

21 LDC [MR. RUIZ]: And I don't think we need to.

22 MJ [Col McCALL]: I think we're on the same page.

23 LDC [MR. RUIZ]: All right. Thank you.

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1 MJ [Col McCALL]: All right. If we can bring the witness back
2 in.

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

4 MJ [Col McCALL]: All right. Mr. Ruiz, go ahead.

5 LDC [MR. RUIZ]: All right.

6 Q. If you could listen very closely to the question I'm
7 asking you, I'm going to try very carefully to be as clear and as
8 concise as I can to narrow the question for you. All right?

9 A. Okay.

10 Q. Do you have an understanding -- I'm not asking you for a
11 legal or scholarly or lawyerly understanding -- do you, Ms. Waltz,
12 have an understanding of what the government's theory of
13 admissibility is for the LHM statements? And if so, what is that?

14 MTC [MR. TRIVETT]: Objection. Asked and answered.

15 MJ [Col McCALL]: Objection overruled.

16 A. The prosecution's choosing to use the LHMs as affirmative
17 evidence because it is their opinion, under the Rules of Evidence for
18 Military Commissions, that they can do so.

19 The -- I understand that there's evaluations of weight and
20 reliability, and they make that calculus.

21 Q. Okay. What is your understanding of what the significance
22 is of the documentary evidence that you gathered in that theory of
23 admissibility?

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1 A. I understand that we -- that the FBI gathered documents
2 during the course of the 9/11 investigation and that that
3 document -- those -- when you asked -- you're asking about the
4 specific documents because they were utilized during the interviews,
5 that those -- and those items were not derived from torture. That's
6 my general understanding.

7 Q. Thank you. During the course of your work with this
8 prosecution team and your engagement in this case, have you had the
9 opportunity to meet with victim family members?

10 A. Yes, sir.

11 Q. And can you tell us -- estimate approximately how many
12 times you've had the opportunity to meet with victim family members?

13 A. I -- I've -- I couldn't. I don't think I can estimate
14 over the course of time.

15 Q. Is it more than one time?

16 A. Yes, sir.

17 Q. More than ten?

18 A. Yes.

19 Q. More than 20?

20 A. I ----

21 Q. You've testified that all you can testify about is what
22 you've done.

23 A. Yes.

1 Q. You're the person who's met with victim family members,
2 correct?

3 A. I -- I'm -- I am a -- I've met with victim family members.
4 Other people from the FBI have as well.

5 Q. I'm not asking you, ma'am, about ----

6 A. I understand that ----

7 Q. ---- other people.

8 A. ---- but you said "the," so...

9 Q. What is your estimate based on your interactions and your
10 work over the course of the years of how many times you have met with
11 victim family members? Simple, straightforward question.

12 A. It is a simple and straightforward question. I don't -- I
13 don't know. There's been interactions here in Guantanamo. There's
14 been interactions back in the United States for a variety of reasons.

15 Q. So let me -- let me try to help you. My question was not
16 where the interactions were. And this is what I'm talking about, if
17 you will please listen to my question closely.

18 My question was: Can you estimate the number of times you
19 met with family members? Not where, not how. That was my question.
20 Can you please answer that question?

21 A. Can I estimate?

22 Q. Will you estimate? You're the one who met with family
23 members. You're the best person to estimate. I can't do it.

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1 More than a hundred times?

2 A. I was going to say a hundred.

3 Q. More than a hundred?

4 A. More than a hundred.

5 Q. Okay. So lots of times.

6 A. Lots of times.

7 Q. All right. And I think as -- my next series of questions
8 were going to be in what sites or what sorts of settings. And I
9 think you've talked about that a little bit already, right? So there
10 are various settings in which you interacted with family members.

11 A. Yes.

12 Q. All right. Some of those were in professional settings
13 where you and the prosecuting team went to brief family members,
14 correct, about the status of the case?

15 A. Yes.

16 Q. And some of those were in more personal interactions, such
17 as going out to dinner and meeting with family members who had come
18 to the island, correct?

19 A. I have had dinner, yes.

20 Q. All right. In terms of your working relationship -- and
21 this is generally, right? In terms of your working relationships
22 with FBI agents, you testified that because you were working on
23 financial matters, you were exposed to more sources of information,

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1 correct?

2 A. Yes.

3 Q. And that you were actually not, quote, in a box because
4 the financial aspect of the case transcended the individual
5 assignments where agents tended to be, from my lack of a better term,
6 compartmentalized?

7 A. Yes.

8 Q. But it is true that, in the course of your interactions
9 with the agents, there were numerous times where you worked with
10 agents hand in hand on specific aspects of the investigation,
11 correct?

12 A. Yes, I've worked with agents.

13 Q. Hand in hand, meaning very closely, talking with them
14 about the goals and the objectives of the investigation, correct?

15 A. Yes.

16 Q. And you were at times directed to take actions to help
17 support those goals, correct?

18 A. I -- generally speaking, yes.

19 Q. Were there times where you were able to exercise
20 independent, unilateral judgment as to taking investigative action on
21 the case? Without consulting, for instance, with a lead agent or a
22 supervisory agent or someone else.

23 What I'm trying to get at here is, what type of freedom did

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1 you have in your role to initiate investigative actions without
2 having some sort of supervision?

3 A. Well, if I were going to -- if I were going to do
4 something, it would have to be -- I mean, ultimately it would have to
5 be approved. Like, if I'm ----

6 Q. So -- so I think that answers my question.

7 So you individually could not simply say, "Ah, you know,
8 I've looked at these -- this cable traffic, and I think I need to
9 send this request to the Central Bank of the UAE"? You would have to
10 confer with at least an agent that is working in the same field or in
11 the same area to make sure that that is consistent with the way the
12 investigation needs to go, correct?

13 A. I would -- I would have conferred with -- I would likely
14 have conferred with somebody.

15 Q. All right. So, for example, one example that you've
16 testified about is when you were in the UAE, after several
17 interactions with members of the UAE government, Central Bank, you
18 came back and thought these are the people we need to be talking to,
19 and these are the people that we need to enlist to help us obtain
20 information.

21 Do you remember that testimony?

22 A. I do.

23 Q. All right. And then you conferred with Agent

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1 Drucker -- right? -- and Agent Perkins and then decided to draft up
2 this request for information, correct?

3 A. Yes.

4 Q. So that's an example of the collaborative relationship you
5 had with agents working hand in hand towards a goal of the
6 investigation, correct?

7 A. Yes.

8 Q. All right. Now, in that particular instance, one of the
9 things that you talked about was the importance of building those
10 relationships with people in the UAE government.

11 A. Yes.

12 Q. And you also testified that you traveled to the UAE
13 between 20 to 30 times -- and that was an estimate -- in the course
14 of your involvement in the investigation, correct?

15 A. Yes.

16 Q. Some of those trips were for purposes of having
17 face-to-face meetings with those government officials?

18 A. Yes.

19 Q. And some of those were accompanied by Agents Drucker and
20 Agent Perkins as well, correct?

21 A. Yes.

22 Q. And the reason it was important to meet with these people
23 face-to-face was because you needed to develop a real relationship in

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1 order to obtain information from them, correct?

2 A. A working relationship, yes.

3 Q. You needed to explain to them the reason why information
4 was needed, correct?

5 A. Yes.

6 Q. And you needed to assure them that the information would
7 be safeguarded to the greatest extent, given some of their concerns?

8 A. Yes.

9 Q. All right. Why didn't you simply just send a letter to
10 the Central Bank governor explaining the same thing, rather than have
11 to take a trip to the UAE to do exactly that?

12 A. Face-to-face conversations are better.

13 Q. Right. So in your view, based on your experience, simply
14 sending a letter to the Central Bank governor, sending a letter to
15 these officials you needed to establish relationships with to obtain
16 important information, was not an effective means of communication?

17 A. Not in this instance.

18 Q. Okay. On 5 November 2014, you traveled to the UAE -- or
19 maybe previous to that -- but on 5 November 2014, you participated in
20 an interview with Agent Gaudin of a person by the name of [REDACTED]
21 [REDACTED] correct?

22 A. Yes.

23 Q. And that was in Abu Dhabi?

1 A. I believe so, yes.

2 Q. And as I said, that was along with Stephen Gaudin, who at
3 the time was the legal attaché, correct?

4 A. Yes.

5 Q. At that interview was also a representative from the UAE
6 government?

7 A. Yes.

8 Q. And the [REDACTED] for the witness who was the subject of the
9 interview, who was also a [REDACTED] correct?

10 A. Yes.

11 Q. How did you go about -- well, let me back up.

12 How did that interview come about? Why did you go to
13 interview this witness?

14 A. [REDACTED] had been interviewed previously and provided some
15 information, but we wanted to do a more -- a more thorough interview.

16 Q. Who's "we"?

17 A. We -- the -- well, the -- the FBI. So as a part of
18 the ----

19 Q. The entirety of the FBI?

20 A. As a part of the current -- the investigation at that
21 time, but also to potentially see if there was any benefit to [REDACTED] if
22 [REDACTED] was able to testify.

23 Q. Okay. Let ----

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1 LDC [MR. RUIZ]: If I may, Judge?

2 MJ [Col McCALL]: Go ahead.

3 LDC [MR. RUIZ]: All right.

4 Q. Let me ask you my question again. Please listen closely
5 to what I'm asking you.

6 Who is "we"? You said FBI. But, as you said, there's big
7 FBI and there's little me, right?

8 A. That's right.

9 Q. All right. So I'm asking you who the "we" is. And you're
10 telling me the entirety of the FBI?

11 A. I'm -- at some point there was some conversation about
12 a -- a more thorough interview with [REDACTED] I don't recall who
13 that conversation would have been with.

14 Q. And by conversation, I take it you mean who gave you the
15 directive to re-interview [REDACTED] Because that wasn't your unilateral
16 decision, right? Or was it?

17 I -- for the record, you shook your head "no," correct?

18 A. Sorry. No, that's correct. It was not my unilateral
19 decision. There would ----

20 Q. Someone -- someone gave you a directive. Or made a
21 request, if you don't like the word "directive," whatever.

22 A. Yes.

23 Q. Do you remember if that was another agent?

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1 A. I -- I can't recall what led up to that specific
2 interview.

3 Q. Meaning who gave you the instruction or directed that [REDACTED]
4 be re-interviewed? You can't remember that piece, correct?

5 A. Correct.

6 Q. But you can remember -- I think you started to talk a
7 little bit earlier about the fact that an earlier statement was given
8 and some information was given? You remember that?

9 A. Correct.

10 Q. So are you saying that there was a desire to obtain
11 additional information?

12 A. I -- I -- I can't recall. I know that [REDACTED] was interviewed
13 previously. I know that -- I obviously recall being in Abu Dhabi
14 participating in the interview with [REDACTED] I don't recall what
15 conversations led up to the occurrence of that interview.

16 Q. All right. Now, you mentioned [REDACTED] was interviewed
17 previously. That would have been in September of 2002, correct?

18 A. I believe so, yes.

19 Q. Right. And that interview was conducted by Special Agent
20 Abigail Perkins and Special Agent Drucker, correct?

21 A. Yes.

22 Q. Two agents.

23 A. Yes.

1 Q. Two very experienced agents.

2 A. Yes.

3 Q. Who were working the leads on the investigative aspects
4 of -- on the financial aspects of the investigation, correct?

5 A. Yes.

6 Q. And they went -- they talked to this witness relatively
7 shortly after September 11, 2001. I mean, in terms of relative
8 closeness, compared to 2014, right?

9 A. Yes.

10 Q. And they obtained an interview -- a statement from [REDACTED] at
11 that time, correct?

12 A. Yes.

13 Q. Now, this interview was also attended by Stephen Gaudin,
14 who was a special agent as well -- correct? -- at that time, legal
15 attaché?

16 A. Yes.

17 Q. Why did he attend?

18 A. Because he was there to assist us,
19 assist -- because -- because he was there to -- to work. He was
20 there to help.

21 Q. And you said "us." Was that a mistake? Because
22 the -- the report, the document itself says that it was you and
23 Stephen Gaudin who conducted the interview.

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1 A. Correct.

2 Q. Were there more people aside from the [REDACTED] and
3 the UAE official?

4 A. I don't recall. I'm trying to recall the circumstances of
5 that trip. I recall -- I recall the interview occurring. I know
6 that Steve was the legat at the time, and I know that he was present
7 for the interview. I -- I'm trying -- I don't recall all of the
8 circumstances around what led up to that interview.

9 Q. Okay. Who conducted the questioning of [REDACTED] during
10 that interview?

11 A. I went through some of the bank records with [REDACTED] to
12 identify what may have been [REDACTED] handwriting or what -- to what
13 was -- what belonged to [REDACTED]

14 Q. So you conducted that portion of the interview. Did you
15 conduct the entirety of the interview?

16 A. I don't -- I'm -- I'm -- I wouldn't have -- I wouldn't
17 have conducted -- I mean, we sit down. There's -- we -- Steve and I
18 sat down.

19 I'm trying -- trying to recall the specific circumstances.
20 I recall sitting with [REDACTED] to look through the specific bank
21 documents with respect to some additional discussion, not just about
22 the bank documents. That -- that would have been some combination of
23 myself and Steve Gaudin.

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1 Q. All right. So Agent Gaudin also conducted portions of the
2 interview?

3 A. I -- I can't recall who said what.

4 Q. Let me stop you there. Because I'm not asking you
5 specifics of who said what. What I'm really asking you right now is
6 generalities of who participated and really kind of what kind of
7 involvement you had. I'm trying to get at your role in the
8 interview.

9 So I'm not asking you who said X, Y, or Z, because I haven't
10 asked you about the substantive facts in the document, right?

11 A. Okay.

12 Q. What I'm trying to get a sense of, for the record and for
13 us, is what your role was, how extensive it was, and what -- or, if
14 any, role Agent Gaudin had. So that's what my question is focused
15 on, is: Did he conduct portions of that investigation -- of that
16 interview?

17 A. I'm -- yes, he was there.

18 Q. All right. Did you have preparation time with him prior
19 to the interview of [REDACTED]

20 A. I don't recall the -- I don't recall leading up to and
21 how -- I don't recall.

22 Q. Okay. Was it your view that Special Agent Gaudin at that
23 time was proficient enough in the significance of this witness to

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1 conduct [REDACTED] interview?

2 MTC [MR. TRIVETT]: I'm going to object on relevance at this
3 point. We're way outside the scope of the direct.

4 LDC [MR. RUIZ]: I can answer that, Judge, but not in front of
5 the witness.

6 MJ [Col McCALL]: Well, hold on. I'm just thinking it
7 through. Yeah, response?

8 LDC [MR. RUIZ]: If I can have the witness step out, Judge?

9 MJ [Col McCALL]: Sure.

10 Ms. Waltz, can you step outside the courtroom?

11 WIT: Yes, sir.

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

13 MJ [Col McCALL]: Mr. Ruiz.

14 LDC [MR. RUIZ]: Judge, respectfully, I do not believe that
15 there is a very narrow scope in this examination whatsoever. I did
16 my best during the last session to try to narrow the scope. This
17 would have been outside the scope of that.

18 But Ms. Waltz testified extensively to her numerous trips to
19 the UAE. She said she traveled over 20 to 30 times. She indicated
20 that some of the business was not PENTTBOM team.

21 So I think that that is fair. This is an issue that is
22 squarely and directly related to information that is going to be used
23 at trial against Mr. al Hawsawi by the government to try and

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1 establish that Mr. al Hawsawi had prior knowledge of these attacks.
2 [REDACTED] is a key witness in the government's case. Ms. Waltz is
3 the person who directly interviewed [REDACTED] And she's placed this at
4 issue, again, based on her travel and her time in the UAE, which I
5 think is fair game.

6 I think you've given great latitude and quite broad
7 application to the relevance in her testimony, and I certainly think
8 this is within the scope of what we should properly do to protect
9 Mr. al Hawsawi's right to cross-examination under the
10 Sixth Amendment, heightened reliability, and due process.

11 So I think it's squarely within the scope.

12 MJ [Col McCALL]: All right. I'll allow it.

13 Objection overruled.

14 If we can bring Ms. Waltz back in.

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

16 MJ [Col McCALL]: Ask your question again just to refresh the
17 witness on this.

18 LDC [MR. RUIZ]: I'm afraid I've forgotten what my last
19 question was, Judge. So I'll try to remember.

20 MJ [Col McCALL]: I believe it was whether Agent Gaudin was
21 adequately prepared to be able to question the witness.

22 LDC [MR. RUIZ]: Yes. I think that is correct, Judge. Thank
23 you very much.

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1 Q. Do you recall having time to meet with Agent Gaudin and to
2 prepare prior to the witness' testimony?

3 A. There -- I would have had some discussion with Agent
4 Gaudin. I can't recall the specifics or the details of that, but
5 there would have been some discussion.

6 Q. And then my follow-up question to that was: Was it your
7 belief that Agent Gaudin possessed the certain level of knowledge and
8 proficiency to conduct the interview of that witness at that time?

9 A. At that time I was able to review the documents with
10 [REDACTED] I -- and I didn't -- I don't know that Steve had a
11 particular expertise in the bank records, but I was able to review
12 them with [REDACTED]

13 Q. Okay. Is it your assertion that the only subject matter
14 covered during that interview was pertaining to bank records?

15 A. I haven't reviewed that document in quite some time, so I
16 don't want to make any assertion.

17 Q. I understand. How did you and Agent Gaudin identify
18 yourselves to [REDACTED]

19 A. I don't recall.

20 Q. Do you recall how the interview was arranged and by whom?

21 A. Steve Gaudin would have made arrangements, as he was also
22 the legat at that time in Abu Dhabi. With respect to the specifics,
23 I didn't do that.

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1 Q. And how was the interview documented -- or memorialized, I
2 should say?

3 A. I believe it was in a 302.

4 Q. Okay. Now, you've testified that there's a one note-taker
5 policy for the FBI. Who took the notes?

6 A. I haven't looked -- I haven't looked at this in quite some
7 time. I reviewed the bank records with [REDACTED]. I would have to
8 go back and look at the material.

9 Q. Were notes taken?

10 A. I -- I would have to go back and look at the -- I would
11 have to look at the 1A.

12 Q. Well, what I'm getting at is, you've testified that
13 there's a one note-taker policy with the FBI, correct?

14 A. Yes.

15 Q. Right. All I'm asking you is: Do you remember if notes
16 were taken ----

17 A. I ----

18 Q. ---- during this interview?

19 MTC [MR. TRIVETT]: Objection. Asked and answered.

20 MJ [Col McCALL]: Overruled.

21 A. I can't -- I can't recall specifically what's in the 1A.

22 Q. Who prepared the 302?

23 A. I believe I did.

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1 Q. Did [REDACTED] express any concerns to you about engaging
2 in that interview?

3 A. I haven't looked at this stuff in quite some time. I know
4 at one point -- I would have to look at that interview again.

5 Q. Let me ask you this question: Are you confident that the
6 302 that was prepared from that interview contains all of the
7 relevant information that came out of that interview?

8 A. I would have to look at the documents.

9 LDC [MR. RUIZ]: Judge, I'm going to ask to display to the
10 witness and to the parties what's been previously marked as Appellate
11 Exhibit 632CCC (MAH) JJJJ. It's an FOUO//LES document.

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

13 LDC [MR. RUIZ]: Actually, scratch that. I'm sorry. Wrong
14 one.

15 632CCC NNN FOUO//LES document, 5 November 2014. It's tab
16 number 6, clean copy.

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

18 LDC [MR. RUIZ]: I ask for the feed from Table 5, please.

19 MJ [Col McCALL]: All right. And this will not be displayed
20 to the public?

21 LDC [MR. RUIZ]: All right. No, I'm looking for the 5
22 November 2014 doc. Just give me one second, Judge.

23 MJ [Col McCALL]: Take your time.

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1 **[Pause.]**

2 Q. Okay. Just, Ms. Waltz, if you'd take your time to look
3 through this document. When you get to the last portion on the page
4 that you can read, just let us know so we can scroll down for you, or
5 scroll up.

6 **[Pause.]**

7 A. Okay.

8 **[Pause.]**

9 A. Okay.

10 **[Pause.]**

11 A. Okay.

12 **[Pause.]**

13 A. Okay.

14 **[Pause.]**

15 A. Okay.

16 **[Pause.]**

17 A. Okay.

18 **[Pause.]**

19 A. Okay.

20 **[Pause.]**

21 A. Okay.

22 **[Pause.]**

23 A. Okay.

1 **[Pause.]**

2 A. Okay.

3 **[Pause.]**

4 LDC [MR. RUIZ]: Okay. We can cut the feed, please.

5 Q. Ms. Waltz, having reviewed this document, does it refresh
6 your memory ----

7 MJ [Col McCALL]: We can turn off the document camera. It's
8 still on. Thanks.

9 Q. Does this refresh your memory regarding the substance of
10 the interview with [REDACTED]

11 A. It's -- it refreshes some, yes.

12 Q. And this is, in fact, the document that you testified you
13 prepared?

14 A. Yes.

15 Q. Did you prepare this document from memory?

16 A. No.

17 Q. All right. What did you use to prepare this document?

18 A. The bank documents and notes.

19 Q. Okay. When you refer to notes, are you referring to
20 personal notes taken during the interview?

21 A. I -- yeah, I believe I took notes during the interview,
22 yes.

23 Q. Okay. So you believe, as you were looking through

1 documents with [REDACTED], you were also taking notes at the same
2 time?

3 A. Yes.

4 Q. Okay. So Agent Gaudin was not the one taking notes?

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

6 Q. All right. Did [REDACTED] express to you some concerns for
7 [REDACTED] personal safety?

8 A. Yes.

9 Q. Okay. Did [REDACTED] express to you that she was concerned that
10 the United States Government would consider [REDACTED] to be complicit in
11 the conspiracy of 9/11?

12 A. I -- I just read it again to refresh my memory. I -- if
13 it's the -- it seems as if that's what [REDACTED] said.

14 Q. You, having read this document, remember how you and Agent
15 Gaudin identified yourself to [REDACTED]

16 A. I would have used my name.

17 Q. Would you have used your affiliation with the Federal
18 Bureau of Investigation as an identifying credential?

19 A. Yes.

20 Q. Okay. Well, I'm not assuming it. I have to ask you, and
21 you have to answer.

22 A. I answered yes.

23 Q. Do you know if Agent Gaudin presented his FBI credentials?

1 A. I -- I don't recall credentials. I don't recall that
2 level of specificity. I would have used my name. Steve Gaudin would
3 have used his name. I don't have specific recollection of
4 credentials either way.

5 Q. Okay. Based on your many years of experience in the FBI,
6 would it have been a standard operating procedure when interviewing a
7 witness to present your credentials and disclose your affiliation
8 with the Federal Bureau of Investigation to a witness that you were
9 interviewing?

10 A. I -- I would have -- I used my name. I used -- I would
11 have said that I was from the FBI. I don't -- I don't recall ----

12 Q. So let me ask you my question again, because I heard that
13 part of it. But my question is: Based on your experience with the
14 FBI for many, many years, would it have been standard operating
15 procedure for the FBI to disclose their affiliation with the FBI when
16 interviewing a witness? Is that something that an agent, an analyst
17 going to interview a prospective witness in a major case, be expected
18 to do?

19 A. I -- I would disclose my affiliation, yes.

20 Q. All right. Any reason in this instance why you think that
21 procedure would not have been followed with [REDACTED]

22 A. What I said was I can't recall if ----

23 Q. I'm just -- please answer my question. Listen closely to

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1 my question.

2 MTC [MR. TRIVETT]: Objection. The witness should be able to
3 answer the question.

4 MJ [Col McCALL]: Objection overruled.

5 Go ahead, Mr. Ruiz.

6 Q. Is there any reason -- I'm trying to make these very clear
7 for you. If you listen to my question, that's the question I'm
8 asking you.

9 Is there any reason in this instance why you and Agent
10 Gaudin would have departed from that procedure when interviewing
11 [REDACTED]?

12 A. No.

13 Q. Thank you. But nevertheless, [REDACTED] voiced concerns to
14 you about the fact that [REDACTED] was worried that the U.S. Government saw
15 [REDACTED] as complicit in the conspiracy of 9/11, correct?

16 A. [REDACTED] voiced concerns, yes.

17 Q. And that is why there was a UAE official present, as well
18 as [REDACTED] correct?

19 A. I -- I don't know that that was the terms of [REDACTED]
20 and the official being there were because of [REDACTED] concerns. I don't
21 know that it was specific to that. I just know that they were there.

22 Q. All right. And as you indicated, [REDACTED] had been
23 interviewed some 12 years prior to that, correct?

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1 A. [REDACTED] had, yes.

2 Q. So, naturally, [REDACTED] expressed some reticence and some
3 confusion as to why the U.S. Government and why FBI agents would need
4 to question [REDACTED] again, correct?

5 MTC [MR. TRIVETT]: Objection. Relevance.

6 MJ [Col McCALL]: Objection overruled.

7 A. Can you repeat the question, please?

8 Q. Sure. Since [REDACTED] had been previously questioned in
9 2002 by Agent Drucker and Agent Fitzgerald, [REDACTED] naturally expressed
10 to you and Agent Gaudin some concern and some questions about why the
11 FBI would need to question [REDACTED] again about the same matter -- subject
12 matter [REDACTED] been questioned before, correct?

13 A. I -- I believe [REDACTED] was curious as to why we were asking,
14 and -- yes.

15 Q. Well, was it curious, or [REDACTED] was concerned?

16 A. [REDACTED] wanted to know why we weren't -- we wanted to meet
17 with [REDACTED] again.

18 **[Pause.]**

19 Q. All right. So I know you indicated you didn't remember
20 who gave you the direction to go and re-interview [REDACTED] You
21 remembered some of the events leading up to it.

22 My question is: Generally, was it your impression that
23 there was a sense that the initial interview, the one in 2002, was

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1 not sufficient for purposes of the prosecution of Mr. al Hawsawi and,
2 therefore, [REDACTED] needed to be re-interviewed?

3 A. I don't recall that specific conversation.

4 Q. I'm going to ask you a few questions regarding your access
5 to CIA network, although I've cut out the vast majority of questions
6 that I've asked. I see Mr. Trivett standing up getting ready to
7 object.

8 MTC [MR. TRIVETT]: Sir, I just wanted to flag that under
9 Protective Order #2 we had a sealed witness list where the names of
10 future witnesses had not yet been presented. We obviously were not
11 tracking this issue because we did not believe it was part of our
12 direct, so we may have to seek some relief from the commission based
13 on that.

14 MJ [Col McCALL]: All right.

15 MTC [MR. TRIVETT]: In the future, not immediately.

16 MJ [Col McCALL]: Understood.

17 LDC [MR. RUIZ]: Okay.

18 Q. So there were some -- there were some questions back and
19 forth yesterday, and at least I didn't ultimately get the -- the
20 answer to this about when you actually obtained access to detainee
21 reporting. It is correct, however, that you testified that you moved
22 from FBI Headquarters to LX1 in Virginia in 2004, correct?

23 A. Late 2004.

1 Q. All right. And you did testify before that prior to that
2 move, you've had access to the network; isn't that right?

3 A. The FBI developed the TS network at some point prior to
4 us -- to me moving from FBI Headquarters to LX1. The exact rollout
5 of that TS enclave, I can't recall, but I do know that it was
6 available to me at some point prior to moving to LX1.

7 Q. Okay. So prior to moving to LX1, you did get that access,
8 correct?

9 A. Yes.

10 Q. All right. And that was 2004, late 2004, you moved to
11 LX1, correct?

12 A. Yes. I recall based upon the traffic, like school was
13 already in.

14 Q. Okay. All right. You had some reference and there was
15 some discussion with respect to the term "buckets." Do you remember
16 that?

17 A. I recall.

18 Q. All right. Your testimony was that your
19 understanding -- your understanding was that buckets contained
20 information regarding detainee reporting from the CIA, correct?

21 A. Yes.

22 Q. The part I want to focus on is where you say "your
23 understanding." Are you saying you did not actually access or see

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1 the buckets, and, therefore, the only source of knowledge you have is
2 what you understand them to be?

3 A. The buckets are not related to the FBI TS network.

4 Q. Yes. I've moved on to ----

5 A. Okay.

6 Q. I've moved on to the bucket subject.

7 A. Sorry.

8 Q. We're done with that.

9 A. I thought you were asking if the buckets were a part of
10 this network.

11 Q. That's not what I asked.

12 A. Okay.

13 Q. I did not ask that question.

14 A. Okay. I thought you were trying to ----

15 MJ [Col McCALL]: Just ask your question again.

16 LDC [MR. RUIZ]: Yes, sir.

17 Q. So if you please listen to my question, it will go, I
18 think, a little bit smoother.

19 So my question was in reference to your testimony about
20 buckets. You said your understanding was they contained detainee
21 reporting, correct?

22 A. Yes.

23 Q. All right. So my question now is: Did you actually have

1 access to those buckets and go into those buckets?

2 A. I had access to the buckets. I think there were multiple
3 buckets.

4 Q. Well, that's not -- I didn't ask you that question, ma'am.
5 You -- I think you've answered the question, which is you had access
6 to the buckets. Yes?

7 A. Yes.

8 Q. All right. My next question was: Did you go into the
9 buckets?

10 A. At some point in time I believe I went into a bucket.

11 Q. All right. Okay. Thank you.

12 A. You're welcome.

13 Q. Appreciate it.

14 You've also testified that the -- you have reviewed hundreds
15 of thousands of documents, correct? That was at transcript 43096.
16 Would you like to see it?

17 A. I don't need to see it. And it was in response to how
18 many documents I believe I've reviewed over the course of a very long
19 time, and I was making some attempt to estimate.

20 Q. All right. So I did not ask you what it was in response
21 to, ma'am. I asked you if you had, in fact, testified you had access
22 to hundreds of thousands of documents, which I believe you said yes.

23 A. Yes.

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1 Q. Thank you. Now, in a separate line of examination,
2 Mr. Trivett asked you: Did you use or recall any of the information
3 the accused may have said about the acquired calls?

4 Do you remember that question?

5 A. Yes.

6 Q. All right. And you answered no.

7 Do you remember that?

8 A. I do.

9 Q. And then you said -- he said: Are you certain of that?
10 And you said: Yes.

11 A. Yes.

12 Q. All right. The -- the key piece of that question that I
13 want to focus in on is the part where he asks you -- well, he first
14 asks you: Did you use it? The answer is no, right?

15 A. Correct.

16 Q. The second part of that question was: Do you recall?
17 Right?

18 A. Yes.

19 Q. So are you saying that you may have seen some of the
20 terminology that appears in phone calls, but you simply do not recall
21 it? Because that was an either/or question, use or recall. I'm
22 focusing on the recall part.

23 A. I don't recall having read -- I don't -- I don't recall.

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1 Q. Okay. It's possible? So is it possible that in the
2 hundreds of thousands of documents that you read, given the great
3 breadth of your experience and the transcendence of your role, that
4 you saw information that you do not recall having seen?

5 A. Can you ask your question again, please?

6 Q. I doubt it, but maybe the judge can help me out on this
7 one again.

8 Yes. Again, focusing in on the part that's recall,
9 right? Is it possible that, based on the fact that you reviewed
10 hundreds of thousands of documents and the transcendence of your role
11 across various lines of investigative aspects of the investigation,
12 that you may have seen information that appeared on the phone calls
13 and detainee reporting but simply not recall it?

14 A. I -- I don't know.

15 Q. Okay. And I think -- I think, as you've, I think, very
16 ably established, your role involved obtaining information from just
17 a variety of number of sources -- correct? -- including other
18 agencies? Yes?

19 A. Can you be more specific, please?

20 Q. Well, I'm using your language.

21 So you indicated that, quote, my role was to review
22 intelligence, but that could come from a variety of places.

23 And yesterday you testified: Such as other agencies,

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1 correct?

2 A. Correct.

3 Q. Other governments?

4 A. Yes.

5 Q. Traditional criminal documents?

6 A. Yes.

7 Q. Again, that goes into the same sphere of the hundreds of
8 thousands of documents that you reviewed during the course of your
9 involvement in this investigation, correct?

10 A. Yes.

11 Q. With respect -- now I'm transitioning here.

12 With respect to your certifications, you testified that the
13 UAE Central Bank assisted you with certifications of financial
14 records, correct?

15 A. Yes.

16 Q. Okay. Now, it is, I think -- and I want to make sure this
17 point is clear -- you personally -- you personally did not go to the
18 individual financial institutions to obtain those certifications,
19 correct?

20 A. Correct.

21 Q. You personally did not meet the actual certifying
22 officials whose name appear on those certifications, correct?

23 A. Correct.

1 Q. Neither in 2005, correct?

2 A. Correct.

3 Q. Or 2008, right?

4 A. Correct.

5 Q. You obtained those documents from officials from the UAE
6 Central Bank, correct?

7 A. Yes.

8 Q. And the Ministry of the Interior, correct? Or a separate
9 set of documents.

10 A. The original -- some of the original documents early on,
11 not the -- not the 2005 or 2008 certifications.

12 Q. And one thing I want to clarify from your testimony
13 yesterday is, did you say that Agent Drucker testified that he had
14 personally met the certifying officials for these records? Did you
15 say that?

16 A. No. I believe what I said was that he had an opportunity
17 to interview some bank employees in 2002.

18 Q. Okay. Were those bank employees the certifying officials
19 whose names appear on those financial records?

20 A. I don't know.

21 Q. All right. Is there any documentation that the FBI
22 possesses that would allow us to answer that question?

23 A. Whatever -- it would -- we would have -- I would have to

1 look at the -- anything written by Adam Drucker from 2002.

2 Q. Okay. And similar line of question with respect to
3 Agent Perkins. Because I think you also made the allusion -- and I
4 want to make sure it's clear -- that she met with certifying
5 officials whose names appear on these financial records. Did you say
6 that?

7 A. No, I did not say that.

8 Q. Do you have that knowledge? Do you have knowledge of
9 that, that she met with certifying officials whose names actually
10 appear on the records?

11 A. No, I don't have knowledge of that.

12 Q. All right. Now, you do have knowledge to some extent of
13 what the UAE Central Bank's hierarchy and structure is because you
14 met with those officials, correct?

15 A. I met with some officials, yes.

16 Q. All right. Now, the UAE Central Bank is fairly similar to
17 the Central Reserve, right? The Fed ----

18 A. Yes.

19 Q. ---- like for our country, right?

20 A. Yes.

21 Q. They're essentially a Central Alliance banking hub that
22 oversees the UAE's banking, individual banking institutions, correct?

23 A. Yes.

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1 Q. And it is from the UAE Central Bank and those officials
2 that you obtained these certifications, correct?

3 A. Yes.

4 Q. All right. Now, do you know specifically what
5 communications took place between the UAE Central Bank and the
6 individual banking institutions to obtain these certifications?

7 A. No.

8 Q. All right. Do you -- are you aware of any agent who knows
9 what the communications were between the UAE Central Bank and the
10 individual institutions to obtain these certifications?

11 A. No.

12 Q. Are you aware of any agent who has knowledge about what
13 those communications were with the individual banking institutions to
14 obtain these certifications?

15 A. The 2005 certifications were obtained by Athena Lien. I
16 don't -- so she would have to speak to her knowledge. I wasn't -- I
17 didn't receive those directly from the bank. Athena Lien did.

18 Q. Okay. So as far as what you did and what you know, you
19 have no idea whether the persons whose names appear on the certifying
20 record is actually a qualified records custodian, correct?

21 A. I -- I don't know who that individual is.

22 Q. You have no idea what qualifications, if any, they possess
23 to put their name on that document, correct?

1 A. Correct.

2 Q. Now, there's been a great deal, I think, of testimony and
3 discussion about this 1B 4970. The good news is I'm not going to ask
4 you actually very many questions, if any, about this -- actually one.
5 But I do have one question for you about that, and I want to make
6 sure that the timeline is very clear on this.

7 With respect to the 1B 4970 documents -- okay? -- it is
8 correct, is it not, that those documents were not immediately placed
9 into the FBI's chain of custody, correct?

10 A. Correct.

11 Q. In fact, it was some three years later that this 1B was
12 created with respect to those documents, correct?

13 A. Correct.

14 **[Pause.]**

15 Q. With respect to ----

16 LDC [MR. RUIZ]: Actually, one moment, Judge?

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

18 **[Pause.]**

19 Q. So we have talked about the 26 phone calls quite
20 extensively.

21 A. Yes.

22 Q. Right. And we also know that there was a larger universe
23 of phone calls from which those 26 were selected, correct?

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1 A. Yes.

2 Q. So for the next series of questions I'm going to ask to
3 display certain documents to you. Okay?

4 A. Okay.

5 Q. These are classified documents. I'm going to ask you
6 questions about certain of the terms in the document, but I'm
7 not -- I'm going to ask you not to actually say what the term is.
8 Okay?

9 A. Okay.

10 Q. And so ----

11 LDC [MR. RUIZ]: Judge, at this time I would like to
12 display -- and I'm going to ask for the ELMO. I think it's already
13 on -- STA-00003097. It's a Secret document. It's found at 632PPP
14 Attachment Z.

15 MJ [Col McCALL]: All right. Go ahead. This will not
16 be displayed ----

17 LDC [MR. RUIZ]: This will be just for the parties and for the
18 witness, Judge.

19 MJ [Col McCALL]: Right. This will not be displayed to the
20 public.

21 LDC [MR. RUIZ]: Correct.

22 MJ [Col McCALL]: Go ahead.

23 LDC [MR. RUIZ]: Actually, I'm going to ----

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1 MJ [Col McCALL]: Maybe zoom out a little bit.

2 LDC [MR. RUIZ]: Sure.

3 Does that work?

4 MJ [Col McCALL]: That works.

5 Q. All right. And I'm going to -- feel free to, like, read
6 the whole thing, but I'm just going to direct your attention to the
7 highlighted portions of this document, right?

8 A. Okay.

9 Q. The first portion will focus you on the timeline for the
10 collection of this information. Do you see that?

11 A. Yes.

12 Q. All right. Now, if you can read down to where you see the
13 red arrow and the red underlines, that paragraph, if you could read
14 that whole paragraph.

15 **[Pause.]**

16 A. Okay.

17 Q. Did you have an opportunity to read that?

18 A. I did read it.

19 Q. Okay. So I have several questions about this document.
20 First, you recognize this as a substitute for CIA cable traffics
21 including information on detainee reporting, correct?

22 A. Yes.

23 Q. All right. And with respect to the terms referenced next

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1 to the arrow -- don't say the terms, okay? All right? Do you
2 recognize those references as references that are also found in some
3 of the phone calls that you analyzed?

4 MTC [MR. TRIVETT]: Sir, I would object at this point. It
5 goes into content analysis. I understand he's not asking her to say
6 the words, but he is asking her if those words are consistent with
7 her analysis, which needs to be in closed session.

8 MJ [Col McCALL]: Ask your question again for me to be able to
9 hear it. I'm sorry, I was ----

10 LDC [MR. RUIZ]: Yes, sir.

11 MJ [Col McCALL]: ---- focused on something else momentarily.
12 Go ahead.

13 Q. My question is: Having reviewed the underlined words in
14 the document, isn't it correct that this terminology in this detainee
15 reporting also appears in some of the phone calls which you analyzed
16 in the course of your telephone analysis? And, again, I'm not asking
17 for the -- for any type of ----

18 MJ [Col McCALL]: It's a yes-or-no answer.

19 LDC [MR. RUIZ]: Yes.

20 MJ [Col McCALL]: So tell me again the issue, Mr. Trivett. I
21 mean, if it's -- go ahead.

22 MTC [MR. TRIVETT]: Please, if you can ----

23 MJ [Col McCALL]: It seems to be calling for a yes-or-no

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1 answer, so that ----

2 MTC [MR. TRIVETT]: But it's asking -- I'm sorry. Go ahead,
3 sir.

4 MJ [Col McCALL]: No, just that what's in front of us -- I
5 mean, and, again, it's not being disclosed to the public if it's the
6 same as the substance of some of the phone calls.

7 LDC [MR. RUIZ]: And I'm not asking her how she analyzed it or
8 what document -- I'm just saying is this the same term that you found
9 in other -- that's it.

10 MTC [MR. TRIVETT]: But it's asking her to verify the content
11 of the phone calls, which are classified.

12 LDC [MR. RUIZ]: The classified content is the specificity of
13 what the actual words are, not -- the word I used was "term," and I
14 used that word for a reason.

15 MJ [Col McCALL]: Well, again, as long as -- I mean, using a
16 Secret document to confirm another Secret document, but the substance
17 of which is still not being disclosed, I'm not understanding the
18 issue. I want to make sure -- this always gets a little wonky, but
19 tell me what I'm missing.

20 MTC [MR. TRIVETT]: Right. I'll sit down and listen to a
21 couple other questions and see if I have any more concerns.

22 MJ [Col McCALL]: No, and please, I mean, again, let me know
23 if we're getting into an area where it -- we shouldn't, but, again, I

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1 don't see it here. So ----

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

3 MJ [Col McCALL]: And the reason I was a little distracted is
4 with the -- highlights I don't mind typically, but if there's
5 line -- underlining and arrow, I wanted the court reporters to get a
6 screen shot, so that's what they were doing, for making this an
7 exhibit.

8 LDC [MR. RUIZ]: And I will also tell you, Judge, that my
9 intention, as I did with 688, AE 688, outrageous government conduct,
10 is that we will give you all a conforming copy of these documents as
11 a composite exhibit after so that you have, from us, a record as
12 well.

13 MJ [Col McCALL]: That's fine. It will be a
14 belt-and-suspenders approach. I get a little concerned when it's not
15 in the record already. So ----

16 LDC [MR. RUIZ]: I understand.

17 MJ [Col McCALL]: And we've already done the work, so
18 it's ----

19 LDC [MR. RUIZ]: Then I'll -- then I'll move along so that you
20 can ----

21 MJ [Col McCALL]: Well, it's not -- let me just put on the
22 record. So it's AE 632PPP (MAH Sup) for this screenshot.

23 LDC [MR. RUIZ]: Thank you, Judge.

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1 MJ [Col McCALL]: All right.

2 LDC [MR. RUIZ]: And just so -- this is the procedure I'm
3 going to employ for the -- for the next few documents. And, again,
4 just to -- maybe to appease Mr. Trivett's concerns, I understand
5 fully the, as I indicated to you in our closed session, the contours
6 of Protective Order #3.

7 I understand that the goal is to protect classified
8 information and facts, anything that would reveal sources and
9 methods. And that's why I've crafted this very carefully, so that
10 there is no specificity whatsoever in terms of the actual terminology
11 or any question beyond how she actually analyzed the document.

12 MJ [Col McCALL]: Understood.

13 LDC [MR. RUIZ]: As long as the witness remains directly
14 responsive, that's the other variable here, right? And I don't
15 control that, obviously, as you've kind of seen or tried to.

16 MJ [Col McCALL]: Ms. Waltz seems to understand the guidance.
17 And so for this one, go ahead. It's a yes-or-no question.

18 LDC [MR. RUIZ]: Yes, sir.

19 MJ [Col McCALL]: Go ahead.

20 LDC [MR. RUIZ]: All right.

21 Q. So if you look at that paragraph that has the highlighting
22 and the yellow arrow -- excuse me -- and the red arrow, there's a
23 couple of terms there that are underlined.

1 And my question to you: Isn't this terminology the same
2 terminology or similar terminology to what was contained in some of
3 the telephone calls that you analyzed?

4 A. Some, yes.

5 Q. All right. And we'll get into more specificity in closed.
6 But is it your testimony under oath that you never saw this detainee
7 reporting in the course of your involvement in this case prior to
8 your analysis of the phone calls? So are you saying that you never
9 saw this detainee reporting from the CIA prior to your analysis of
10 the phone calls?

11 A. I -- I don't have recollection of this document. I also
12 didn't -- I said that I didn't work on -- I'm now stopping myself,
13 because I didn't want to go into anything classified on this, so...

14 Q. So you don't recall?

15 A. I -- I don't recall ever reading this document.

16 Q. Okay.

17 MJ [Col McCALL]: And we can turn off the document camera.

18 LDC [MR. RUIZ]: I'm actually going to be using it a lot,
19 so ----

20 MJ [Col McCALL]: Oh, you're going to continue to use it? All
21 right.

22 LDC [MR. RUIZ]: So, if that's okay with Your Honor if we keep
23 it on.

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1 MJ [Col McCALL]: No, that's fine. Of course.

2 LDC [MR. RUIZ]: All right. The next document I'm going to
3 ask to display, Judge, is STA-00005094 through '96. It's a Secret
4 document. It is contained at 632PPP Attachment U.

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

6 LDC [MR. RUIZ]: And if I ----

7 Q. And I'm just going to give you some time to read that to
8 yourself.

9 A. Okay. Similar, the highlighted portions?

10 Q. If you like, you can read the entire document. I'm trying
11 to focus you on the highlighted portions, but I don't want to be
12 accused of trying to narrow your focus on this, so up to you.

13 A. Okay.

14 **[Pause.]**

15 A. Okay.

16 Q. All right. So you recognize this as a record of detainee
17 reporting from a CIA cable, correct?

18 A. Correct.

19 Q. And I think you've testified that, although it wasn't in
20 the original form, you recognize it based on your work on this case?

21 A. On my general work, yes.

22 Q. Correct. And this is a mid-2004 report of a custodial
23 interview of Mr. al Hawsawi, correct?

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1 A. Yes.

2 Q. All right. So referencing the line on there which has the
3 number 1 and the arrow and is pointing to a particular term; do you
4 see that?

5 A. Yes.

6 Q. It is true, isn't it not, that that term also appears in
7 the phone calls that you analyzed?

8 A. I'd have to -- I would have to look.

9 Q. Okay. Let me move on to number 2. Isn't it true that
10 that term appears in the phone calls that you analyzed?

11 A. I didn't -- I -- again, I would have to look.

12 Q. Okay. Number 3, if you can look at that as well.

13 A. I recall that.

14 Q. Okay. So at least with respect to number 3, it is
15 accurate that those terms and the information contained in that
16 highlighted paragraph is also contained in the phone calls that you
17 analyzed, correct?

18 A. The term.

19 Q. Okay.

20 A. That ----

21 Q. And there is also an explanation here as to what that term
22 means, correct -- or right?

23 A. Yes.

1 Q. That would allow somebody reading this document to
2 understand the use of that term and what it actually means, correct?

3 A. Yes.

4 Q. All right. With respect to number 4, that is also a term
5 that appears in the phone calls that you reviewed and analyzed; isn't
6 that right?

7 A. I -- I would have to look.

8 Q. All right. But you've testified extensively in this case,
9 in closed session, regarding terminology that you analyzed, correct?

10 A. Yes.

11 Q. And am I to understand correctly that the testimony in
12 that closed session was true and, to the best of your ability,
13 accurate?

14 A. Yes.

15 Q. All right. The reason I'm asking you that is because I'm
16 not going to go through and show you every phone call. We're going
17 to rely on the transcript of your testimony to correlate these facts.
18 Because I think it's just more efficient. So I'm not going
19 to -- that's why I'm not showing you the document because I'm
20 confident that it is contained elsewhere in your testimony.

21 A. Okay.

22 Q. All right? Just so you know.

23 All right. With respect to that document I just showed you,

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1 is it your testimony that you had never seen that detainee reporting
2 and the information contained in that document prior to your analysis
3 of those phone calls?

4 A. I don't recall reviewing that document.

5 Q. Okay. So my question -- I know -- I understand your
6 answer. My question was: Have you seen that detainee reporting
7 before? Not this document, but have you seen the information
8 contained? See the difference?

9 A. I understand.

10 Q. Gotcha. Have you seen the information contained in this
11 detainee reporting document prior to your analysis of the phone
12 calls?

13 A. I don't believe so.

14 Q. So you're -- so it's not a "no," but it's a you "don't
15 think so"?

16 A. I'm trying to think back 20 years.

17 Q. Okay. So you're not sure?

18 A. I just said I don't believe so.

19 Q. All right.

20 LDC [MR. RUIZ]: If I could have the document camera again,
21 please?

22 MJ [Col McCALL]: Go ahead.

23 **[Pause.]**

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1 LDC [MR. RUIZ]: Judge, and just for the record, this is the
2 same AE that I referenced for the first page that we reviewed. So
3 we're still on STA00005094 through '96. This is just a different
4 page ----

5 MJ [Col McCALL]: I appreciate that clarification.

6 LDC [MR. RUIZ]: ---- which is STA-000050- -- STA-00005095.

7 MJ [Col McCALL]: Okay. Understood.

8 LDC [MR. RUIZ]: Okay.

9 MJ [Col McCALL]: And we've gotten a screenshot of it.

10 LDC [MR. RUIZ]: Okay. Great.

11 Q. All right. So my question with respect to this document
12 is: Again, this is detainee reporting, correct?

13 A. Correct.

14 Q. From the CIA?

15 A. Yes.

16 Q. All right. With respect to the number 5 arrow pointing to
17 the underlined term, that is, in fact, a term that appears in the
18 phone calls that you reviewed and analyzed, correct?

19 A. I believe so.

20 Q. All right. And if you scroll down from that initial
21 underline to the next time that that same term is underlined, that is
22 the same term, correct?

23 A. It's the same term.

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1 Q. All right. Do you see the brackets on the left-hand side
2 of this document?

3 A. I -- I do.

4 Q. All right. And you see the names there?

5 A. Yes.

6 Q. Those are also names that were contained in the telephone
7 calls that you reviewed and analyzed, correct?

8 A. A couple of them.

9 Q. All right. Down to number 6, the underlined
10 term -- terms. Let's talk about the first underlined term in that
11 number 6 arrow. That is, in fact, the term that appears in the phone
12 calls that you analyzed, correct?

13 A. Correct.

14 Q. And then moving down from that, there's more of a phrase,
15 correct?

16 A. Yes.

17 Q. All right. That phrase was also contained in the
18 telephone calls that you analyzed, correct?

19 A. Similar.

20 Q. All right. And then there is an additional follow-up
21 following that phrase that explains to the reader what that means or
22 who that -- who that person refers to, correct?

23 A. I see that.

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1 Q. All right. Is it your testimony that you never saw this
2 detainee reporting, this information, prior to your analysis of the
3 telephone calls?

4 A. I don't recall reading this -- reading this document.

5 Q. All right. So I want to be very particular about the term
6 "document," right? Because I'm not asking you if you read this
7 document. What I'm asking you is if you ever read the substance
8 contained in this report.

9 A. I ----

10 Q. May have been in a different document, may have been in a
11 different format. I'm asking you if you ever read the substance of
12 this detainee reporting that is depicted in this document. Do you
13 see the difference?

14 A. I understand the difference.

15 Q. All right. Have you ever seen the substance that is
16 depicted in this ----

17 A. I don't recall ever reviewing the substance.

18 Q. Prior to your analysis of the phone calls?

19 A. That's correct.

20 Q. All right.

21 LDC [MR. RUIZ]: Judge, the next document I'm going to ask to
22 display is STA-00005088. It's a Secret document contained at 632PPP
23 Attachment R.

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

2 **[Pause.]**

3 A. All right.

4 Q. Do you recognize this document as a summary of CIA
5 detainee reporting?

6 A. I do.

7 Q. All right. With respect to the number 1 arrow ----

8 A. Yes.

9 Q. ---- isn't it true that that information is also contained
10 in the telephone calls that you reviewed?

11 A. The first portion.

12 Q. Very well. All right. The second portion in this
13 document explains what the first underline means, correct?

14 A. Correct.

15 Q. So a person reading this detainee reporting would
16 understand what the term that is used actually means, correct?

17 A. Correct.

18 Q. All right. And, therefore, be able to decipher the code,
19 correct?

20 A. Correct.

21 Q. All right. Moving down to number 2 arrow. The underlined
22 term in that document is a term that also appears in the telephone
23 call transcripts that you analyzed, correct?

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1 A. Correct.

2 Q. All right. And this particular paragraph speculates, or
3 at least tries to explain, what that term means and what that term is
4 in reference to, correct?

5 A. It does.

6 Q. So that a reader going through and looking at this
7 detainee reporting would have an understanding of what that
8 terminology actually might mean, correct?

9 A. Correct.

10 Q. Is it your testimony here today that you've never seen the
11 substance of this detainee reporting prior to your analysis of these
12 phone calls?

13 A. I don't recall ever reviewing this material and reviewing
14 the substance of this.

15 Q. And "this," you're referring to the current document we're
16 talking about?

17 A. The document that you're showing.

18 Q. All right.

19 A. I do not recall reviewing this.

20 Q. Okay.

21 LDC [MR. RUIZ]: Judge, this next document I would like to
22 display for the witness and the parties is contained at STA -- well,
23 it's STA-00005099. It's a Secret document at 632PPP Attachment X.

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

2 A. Okay.

3 Q. Have you had an opportunity to review that? Again, you
4 recognize this as a summary of detainee reporting?

5 A. I do.

6 Q. From the CIA?

7 A. Yes.

8 Q. And this is a mid-2004 report of Mr. al Hawsawi's
9 interrogation?

10 A. It is.

11 Q. All right. You see the term there next to the arrow with
12 the number 1 that's underlined?

13 A. Yes.

14 Q. It is correct, in fact, that that term is also found in
15 the phone calls and the transcripts that you analyzed, correct?

16 A. I believe so.

17 Q. All right. Is it your testimony that you had never seen
18 the substance of this detainee reporting prior to your analysis of
19 these telephone calls?

20 A. Same as before. I don't recall reviewing the cable that
21 had that -- that had that information in it.

22 Q. Okay. And the cable you're referring to, this cable? I
23 just want to be precise because there's a record, and I don't want to

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1 generalize across documents.

2 A. You showed me a document that's a summarization of a
3 cable. So that substance of -- I don't recall reviewing that
4 substance ----

5 Q. Okay.

6 A. ---- that would have been in a cable at some point in
7 time.

8 Q. Right. You just don't remember if you did or not?

9 A. I don't believe that I did.

10 Q. Okay. All right.

11 LDC [MR. RUIZ]: Judge, this is the same -- same STA
12 reference. Just -- this is 00005099.

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

14 **[Pause.]**

15 A. Okay.

16 Q. Okay. Again, you recognize this as CIA detainee reporting
17 summary?

18 A. Yes.

19 Q. All right. And this one refers to a mid-2001
20 conversation, correct?

21 A. It does, yes.

22 Q. All right. You see the number 2 arrow there pointing to
23 the underlined term?

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1 A. I do.

2 Q. The underlined term, in fact, was a term that is also
3 found in the telephone calls that you analyzed, correct?

4 A. Correct.

5 Q. All right. The arrow number 3 then explains to the reader
6 what that term means, correct?

7 A. Correct.

8 Q. Therefore, a person reviewing this detainee reporting
9 would understand the meaning of the actual term, correct?

10 A. Correct.

11 Q. Moving down to arrow number 4. The number 4 is a little
12 bit different, obviously, because it encompasses a concept in a
13 conversation -- right? -- not just one singular term. But my
14 question to you about number 4 is: Isn't it true that that, in and
15 of itself, that discussion is also contained in the telephone calls
16 that you analyzed?

17 A. It is, yes.

18 Q. All right. And the nature of the information contained
19 here is explanatory as to what these things mean, correct?

20 A. Correct.

21 Q. Therefore, a reader of this detainee reporting would have
22 a greater and a better understanding of what that terminology means,
23 correct?

1 A. Correct.

2 Q. Right. Number 5, that is also a reference to terminology
3 that was used in the telephone calls that you analyzed, correct?

4 A. Correct.

5 Q. And it's explanatory in nature, correct?

6 A. Yes.

7 Q. And so a reader reviewing this detainee reporting would
8 have an understanding of what this term actually means?

9 A. Correct.

10 Q. Right. So same question as I've asked you before. Is it
11 your testimony that with relation to this specific substance of this
12 report, you had never seen this detainee reporting prior to your
13 analysis of the telephone calls?

14 A. I -- I don't recall ever reviewing this, the
15 substance -- this substance.

16 LDC [MR. RUIZ]: Judge, the next document is contained at AE
17 632PPP Attachment P. It's STA-00005086. It's a Secret document.

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

19 **[Pause.]**

20 A. Okay.

21 Q. So I notice I didn't put an arrow on these. So I'm just
22 going to refer you to the first underline in order of precedence.

23 A. Yes.

1 Q. It is, in fact, a term that appears in the phone calls
2 that you analyzed, correct?

3 A. Yes.

4 Q. All right. With respect to the second term, is that, in
5 fact, a term that you also used in the phone calls that you analyzed?

6 A. I -- I don't believe -- I don't recall. I don't believe
7 so.

8 Q. Okay. Is it your testimony that you did not review the
9 substance of this detainee reporting prior to your analysis of the
10 telephone calls?

11 A. That's correct.

12 Q. Okay.

13 A. I -- I don't recall reviewing -- I don't recall reviewing
14 these.

15 LDC [MR. RUIZ]: Next document, Judge, is 632PPP Attachment J,
16 STA-00002225, Secret document.

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

18 **[Pause.]**

19 A. Okay.

20 Q. All right. You recognize this as a summary of detainee
21 reporting, correct?

22 A. Yes, I do.

23 Q. From the CIA?

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1 A. Yes.

2 Q. And this was a mid-2003 custodial interview?

3 A. Yes.

4 Q. Okay. Of Ramzi Binalshibh?

5 A. Yes.

6 Q. All right. Referring to line number 1 in the underlined

7 portion of that highlighted document, it is true that that reference

8 contains words that were, in fact, also used in the telephone calls

9 that you reviewed and analyzed; isn't that right?

10 A. Um ----

11 Q. If you look at the second line, the next-to-last word in

12 that second -- in that second line is the one I'm really keying on.

13 A. Okay.

14 Q. It's correct that that word is contained in the telephone

15 calls that you reviewed and analyzed, correct?

16 A. Yes.

17 Q. All right. And the remainder of the terminology in that

18 highlighted portion gives greater context to what exactly that means,

19 yes?

20 A. It does.

21 Q. Right. Moving down to number 2, number 2 paragraph

22 actually gives the reader an understanding of how coded

23 communications would work, correct?

1 A. It does.

2 Q. All right. And so somebody reviewing this detainee
3 reporting would have a greater understanding of exactly how the
4 communications model worked in terms of coded terminology, correct?

5 A. Yes.

6 Q. All right. Did you review -- did you -- actually, not
7 review. Let me use the word "see." Did you ever see this detainee
8 reporting prior to your analysis of the telephone calls?

9 A. I -- I don't recall seeing this, the text of this. I
10 don't recall reading the cable that had this information in it.

11 Q. I understand. I mean, you actually -- I mean, like you
12 said, you had hundreds of thousands of documents, so I get it.

13 LDC [MR. RUIZ]: Judge, the next document is contained at
14 632PPP Attachment T. It's STA-00005093. It's a Secret document.

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

16 **[Pause.]**

17 A. Okay.

18 Q. All right. This is, again, detainee reporting from the
19 CIA, correct, a summary?

20 A. It is.

21 Q. And this one refers to a custodial interview conducted in
22 mid-2004 of Mr. al Hawsawi, correct?

23 A. Correct.

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1 Q. All right. With respect to the number 1 arrow, do you see
2 the term there?

3 A. I do.

4 Q. All right. It is true, is it not, that that term is also
5 found in the telephone calls that you reviewed and analyzed?

6 A. I -- I -- I don't recall. I would have to -- I don't
7 recall that one.

8 Q. Okay. Moving down to arrow number 2. That particular
9 paragraph does, in fact, use a word that has been also seen in the
10 telephone calls that you reviewed and analyzed, correct?

11 A. A word, yes.

12 Q. Correct. And the remainder of the text in that
13 highlighted portion gives a greater understanding of what that
14 reference is referring to?

15 A. It does.

16 Q. All right. And you recognize the names that are there?

17 A. I do recognize those names.

18 Q. And those are names that you testified about in closed
19 session as well, correct?

20 A. I did, yes.

21 Q. In connection to the telephone calls?

22 A. The names were in my closed testimony.

23 Q. Yes. I'm not asking you the names. I'm just asking you

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1 the fact that you testified regarding these names in reference to the
2 phone calls.

3 A. One name as it relates to the phone calls?

4 Q. Okay. All right. With respect to the substance of this
5 detainee reporting, is it your testimony that prior to reviewing
6 these phone calls and analyzing them, you never saw this detainee
7 reporting?

8 A. I don't recall ever seeing this material.

9 LDC [MR. RUIZ]: Next document, Judge, is 632PPP W,
10 STA-00005098, Secret document.

11 MJ [Col McCALL]: Go ahead.

12 **[Pause.]**

13 A. Okay.

14 Q. All right. So this is a custodial interview. It's a CIA
15 summary of detainee reporting, correct?

16 A. Correct.

17 Q. Of a custodial interview in 2004 of Mr. al Hawsawi,
18 correct?

19 A. Correct.

20 Q. All right. Now, just for -- so we can orient ourselves in
21 terms of the timeline, your analysis of these telephone calls took
22 place on or about 2009, correct?

23 A. That's when I started, yes -- when I started looking at

1 them, yes.

2 Q. Right. Okay. With reference to the first arrow here in
3 the terminology that is underlined there, it is correct that that
4 terminology is contained in telephone calls that you reviewed and
5 analyzed, correct?

6 A. The term, yes. Not ----

7 Q. Not the -- not the explanation?

8 A. Correct.

9 Q. Right. But a person reviewing this detainee reporting,
10 CIA detainee reporting that is being disseminated, would understand,
11 based on this reporting, what that term means, correct?

12 A. Correct.

13 Q. Right. And just so that we are also clear, I think you
14 also testified that as early as 2002, you and the FBI were already
15 very much focused on Mr. al Hawsawi and has identified him as a key
16 figure in the financial investigation into 9/11, correct?

17 A. That's correct.

18 Q. And this detainee reporting refers to Mr. al Hawsawi,
19 correct?

20 A. It does.

21 Q. You were also focused on Mr. Binalshibh because of his
22 role in the 9/11 conspiracy as early as 2002, correct?

23 A. Correct.

1 Q. And some of the documents I've shown you in terms of this
2 detainee reporting are directly related to interrogations of
3 Mr. Binalshibh, who was also a key player in the financial
4 investigation in this case, correct?

5 A. Correct.

6 Q. Of which you were a part, correct?

7 A. I was.

8 Q. All right.

9 LDC [MR. RUIZ]: Next document is contained at 632PPP
10 Attachment H, STA-00001095 through 00001096.

11 Now, Judge, while this is an UNCLASSIFIED//FOUO document, I
12 do believe that it should only be displayed to the parties based on
13 the ----

14 MJ [Col McCALL]: Because you're linking the information
15 to ----

16 LDC [MR. RUIZ]: Correct.

17 MJ [Col McCALL]: Yeah.

18 LDC [MR. RUIZ]: Yeah.

19 MJ [Col McCALL]: No, I understand that.

20 LDC [MR. RUIZ]: So I ask to display this just to the parties
21 and to the witness.

22 MJ [Col McCALL]: All right. That's fine. This will not be
23 displayed to the public.

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1 Q. Okay. You recognize this as detainee reporting from the
2 CIA ----

3 A. I do.

4 Q. ---- correct? Of a mid-2003 interview conducted of
5 Mustafa al Hawsawi?

6 A. Yes.

7 Q. And you see arrow number 1 and the term that is referenced
8 underlined in red?

9 A. Yes.

10 Q. And that term is, in fact, a term that has appeared in the
11 telephone calls and the analysis and the review you conducted,
12 correct?

13 A. Well, part of it.

14 Q. Okay. Right. We'll follow up on that in closed session,
15 too, further elucidate that.

16 But the rest of that, not the highlighted portion, but if
17 you read to the first period, gives you an explanation of what that
18 term actually refers to, correct?

19 A. Yes.

20 Q. So that a reader would have context and understanding of
21 what that term -- or what that person is referring to, correct?

22 A. The person.

23 Q. Correct. And your testimony, I think, with respect to

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1 this document is that you have never seen this detainee reporting
2 from the CIA on Mr. al Hawsawi referring to this terminology prior to
3 your analysis of the phone calls?

4 A. I -- I don't recall ever reviewing that material.

5 Q. Okay.

6 LDC [MR. RUIZ]: Judge, the next document is AE 632PPP
7 Attachment Q, STA-00005087. It is a classified document.

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

9 **[Pause.]**

10 A. Okay.

11 Q. Okay. You recognize this as a CIA summary of detainee
12 reporting, correct?

13 A. Yes, I do.

14 Q. And this is a mid-2004 interview conducted of Mr. Khalid
15 Shaikh Mohammad?

16 A. Yes.

17 Q. All right. In that first red arrow, bracketed and
18 underlined, isn't it correct that the general nature of that
19 paragraph is to be of explanatory in terms of how a particular
20 conversation would mean or what it might mean, correct?

21 A. Yes. There's some explanation.

22 Q. All right. Following that there's another highlighted
23 portion, which is a different color highlighting. Isn't it right

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1 that that highlighted portion also gives additional context as to the
2 meaning, or not, of coded communications, correct?

3 A. General, yes.

4 Q. And then moving down the page to red arrow number 2 and
5 the underlined term. Again, that's a term that you've seen in the
6 telephone calls that you analyzed in -- and reviewed, correct?

7 A. Not the -- again, not the full name.

8 Q. Okay. With respect to this detainee reporting of
9 Mr. Mohammad, who, by the way, I think it's fair to say he was also
10 very much a central focus of your investigation and the FBI's
11 investigation, certainly as -- you know, in 2004, correct?

12 A. Yes, he was.

13 Q. Right. Your testimony is that you have never seen the
14 substance of this detainee reporting prior to your analysis of the
15 telephone calls?

16 A. I don't recall reviewing this reporting. I ----

17 LDC [MR. RUIZ]: All right. The next document is contained at
18 632PPP Attachment M, STA-00005070, a Secret document.

19 **[Pause.]**

20 A. Okay.

21 Q. All right. With respect to this, this is also a summary
22 of CIA detainee reporting, correct?

23 A. Yes.

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1 Q. Is this a custodial interview in 2004 of Mr. Mohammad?

2 A. It is.

3 Q. Respect to the arrow at number 1 in the underlined
4 document, that is a term that was also, in fact, contained in the
5 telephone calls that you reviewed and analyzed, correct?

6 A. I -- I don't recall that term.

7 Q. All right. With respect to number 2, the term that is
8 underlined there, that is, in fact, a term that was also contained in
9 the phone calls that you reviewed and analyzed, correct?

10 A. I don't recall that specific term.

11 Q. With respect to number 2?

12 A. Yes.

13 Q. All right. Is it your testimony that with respect to this
14 substance of this detainee reporting, you have never seen the
15 substance contained in this CIA detainee reporting?

16 A. I don't -- I don't recall reviewing this -- this CIA
17 reporting.

18 LDC [MR. RUIZ]: Next document is 632PPP Attachment S,
19 STA-00005089, Secret document.

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

21 **[Pause.]**

22 A. Okay.

23 Q. Now, I'm actually going to show you the first page of this

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1 detainee reporting to give you a reference to the timeline.

2 A. My screen went blank. There we go. Okay.

3 Q. All right. So you recognize this as a summary of the
4 detainee, CIA detainee reporting ----

5 A. Correct.

6 Q. ---- right?

7 And this is a custodial interview in mid-2004 of Mr. Khalid
8 Shaikh Mohammad?

9 A. It is.

10 Q. Okay. Now, back to STA-00005089, which is the
11 continuation of this document.

12 A. Okay.

13 Q. With respect to the first arrow, right? The -- the
14 initial term in that sentence that is underlined is one that was
15 contained in the telephone calls you reviewed and analyzed, correct?

16 A. It is.

17 Q. And then the following two words explain to the reader
18 what that means, correct?

19 A. It does.

20 Q. In fact, you testified in closed session regarding the
21 meaning of that same term.

22 A. I did.

23 Q. Consistent with what this detainee reporting asked,

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1 correct?

2 A. It is consistent.

3 Q. All right. And it also references one of the co-accused
4 in this case, correct?

5 A. It does.

6 Q. All right. With respect to arrow number 2, there are also
7 a number of terms in that particular paragraph that appear in the
8 telephone calls that you reviewed and you analyzed and which you've
9 testified about, correct?

10 A. I recall a couple of the terms, not all of the terms that
11 are there.

12 Q. Right. And that particular paragraph also provides
13 additional context and explanatory information to whoever is
14 reviewing this detainee reporting to give context and -- and greater
15 guidance as to what this means, correct?

16 A. Correct.

17 Q. Right. And then with respect to arrow number 3, that is
18 also a term that appears in the telephone calls that you reviewed and
19 you analyzed, correct?

20 A. It appears, yes.

21 Q. And the remainder of that, which is not highlighted, does,
22 in fact, go on to explain what the reference means to -- or purports
23 to explain what the reference means, correct?

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1 A. Correct.

2 Q. Therefore, a person or a consumer of this detainee
3 reporting with respect to Mr. Mohammad would stand and have a greater
4 understanding of what this terminology means, correct?

5 A. Correct.

6 Q. So it's your testimony, I think, again -- right? -- that
7 you never reviewed or you never saw -- let me use the word "saw."
8 You never saw the substance of this detainee reporting prior to your
9 analysis of these phone calls? Is that your -- is that your
10 testimony?

11 A. That's correct. I don't recall reviewing the substance of
12 this document.

13 LDC [MR. RUIZ]: Okay. Next document is 632PPP Attachment I,
14 STA-00002224, Secret document.

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

16 **[Pause.]**

17 A. Okay.

18 Q. All right. This document is also an example of CIA
19 reporting, correct ----

20 A. It is.

21 Q. ---- detainee reporting?

22 And this particular one is a mid-2003 custodial interview of
23 Mr. Ramzi Binalshibh?

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1 A. It is.

2 Q. All right. With respect to the first arrow, which
3 references the yellow paragraph, do you recognize that underlined
4 term as one that appears in the phone calls that you reviewed and
5 analyzed?

6 A. A -- a version of it.

7 Q. Okay. The general context and nature of this paragraph is
8 to give explanation and context to what this means, correct? So it
9 tells you what it is a reference to?

10 A. Yes.

11 Q. And it also refers you to the area of the investigation
12 that you were participating in as well, correct?

13 A. It -- it refers to it, yes.

14 Q. Right. And by that, I mean you were assigned to the
15 financial -- or portions of your work was on the financial aspects of
16 the investigation in 9/11, correct?

17 A. Correct.

18 Q. And Ramzi Binalshibh, as you've established, is one of
19 those persons who was directly relevant to that investigation,
20 correct?

21 A. Correct.

22 Q. And that first paragraph appears to be reporting that is
23 very relevant to those efforts, correct?

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1 A. It appears to be.

2 Q. Right. Second paragraph, the first underlined term on
3 there is one of the terms that's also contained or found in the
4 telephone calls that you've reviewed and you've analyzed, correct?

5 A. Can you repeat the question, please? I was reading.

6 Q. Sure. No problem.

7 I was referring you to arrow number 2, and then I was
8 focusing you on the very first word underlined in that paragraph.

9 A. Okay.

10 Q. That is also a term that is contained and found in the
11 telephone calls that you reviewed and analyzed, correct?

12 A. Correct.

13 Q. All right. And the remainder of that -- of the context of
14 that paragraph gives an explanation -- gives greater context to what
15 that meaning of that was, correct?

16 A. Of the -- of the term that precedes it?

17 Q. In the context of the persons that it is referring to.

18 A. Okay.

19 Q. So I guess what I'm asking you there, number one, is:
20 It's a term that appears in the phone calls, correct, the very first
21 underlined term?

22 A. The first term, yes.

23 Q. And then the remainder portion of the underline really

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1 gives additional context to not only that, but to the paragraph?

2 A. Okay. Yes.

3 Q. Right. And you see the names there that are referenced
4 there? The persons' names?

5 A. Yes, I do.

6 Q. Those were also names that you testified to in closed
7 session in relation to the telephone calls, correct?

8 A. Yes, I did, both of ----

9 Q. All right. So with respect to this -- the substance of
10 this detainee reporting, is it your testimony that you never saw this
11 detainee reporting directly related to Mr. Ramzi Binalshibh prior to
12 your analysis of these phone calls?

13 A. I -- that is my testimony. I -- I don't recognize and I
14 don't recall reading these documents.

15 Q. Can you -- can you say with absolute certainty, "I never
16 reviewed this document"? Can you do that?

17 A. I -- I don't believe I ever reviewed the substance of
18 those documents, especially based upon some of the time frames of
19 the -- of when they were disseminated on the dates. I didn't review
20 every single document that came out.

21 Q. Let me repeat my question. Can you say under oath that
22 you never reviewed the substance contained in this detainee
23 reporting?

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1 MTC [MR. TRIVETT]: Objection. Asked and answered.

2 MJ [Col McCALL]: Overruled.

3 LDC [MR. RUIZ]: It hasn't been answered.

4 MJ [Col McCALL]: Overruled.

5 A. I don't -- I don't recall ever reviewing and reading this
6 material.

7 Q. That's not my question. My question is: Can you say you
8 never saw this detainee reporting?

9 A. I ----

10 MTC [MR. TRIVETT]: Objection. Asked and answered.

11 MJ [Col McCALL]: Overruled.

12 A. I can't say that I never saw it.

13 Q. Okay.

14 A. I don't recall reviewing it.

15 LDC [MR. RUIZ]: Next document, Judge.

16 MTC [MR. TRIVETT]: Your Honor, are you planning on having an
17 afternoon break?

18 MJ [Col McCALL]: Well, let's do this. How much longer do you
19 have?

20 LDC [MR. RUIZ]: This is not a good breaking point, Judge. I
21 think this is a critical portion of the investigation.

22 MJ [Col McCALL]: Sure. I mean, but give me an idea on how
23 much longer you have.

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1 LDC [MR. RUIZ]: Sure.

2 MJ [Col McCALL]: I mean, I'll let the parties know. My
3 intention is we're going to wrap up Mr. Ruiz's questioning tonight.
4 So we can go as late as we need. But -- and that's not an invitation
5 to take your time. But if we're getting close, then I don't see the
6 need to take a break, but I try to be aware of the needs of the -- of
7 counsel.

8 How much longer do you think you have?

9 LDC [MR. RUIZ]: Well, I have in this section, I probably have
10 maybe another 20, 30 minutes. And I would like to finish this
11 section. But, of course, I know you control the ----

12 MJ [Col McCALL]: We've been going for a while, then. So I
13 will go ahead and say let's take a 15-minute recess. So be back in
14 15 minutes.

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

16 MJ [Col McCALL]: Commission's in recess.

17 **[The R.M.C. 803 session recessed at 1721, 18 April 2024.]**

18 **[The R.M.C. 803 session was called to order at 1738, 18 April 2024.]**

19 MJ [Col McCALL]: The commission is called to order.

20 Parties are present. Accused are absent. Ms. Waltz is on
21 the witness stand.

22 Mr. Ruiz, over to you.

23 LDC [MR. RUIZ]: Thank you, Judge.

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

2 CROSS-EXAMINATION CONTINUED

3 Questions by the Learned Defense Counsel [MR. RUIZ]:

4 Q. Ms. Waltz, did you talk to anybody in between the break
5 and now?

6 A. I went to the -- no. I saw two FBI employees back in the
7 trailer. I got some water. I was looking for a snack and came back.

8 Q. I was actually just asking if you talked to someone, not
9 the rest of the stuff, but thank you.

10 Okay. All right.

11 LDC [MR. RUIZ]: Next document is 632PPP Attachment L,
12 STA-00005067, Secret document.

13 MJ [Col McCALL]: Go ahead.

14 [Pause.]

15 A. Okay.

16 Q. You recognize this as a summary of CIA detainee reporting?

17 A. Yes, I do.

18 Q. And this is an early 2004 interview conducted of
19 Mr. Khalid Shaikh Mohammad?

20 A. Yes, it is.

21 Q. And moving further down on the page to the number 1 red
22 arrow and the term that is underlined there, isn't it correct that
23 that term also is found in the telephone calls that you reviewed and

1 you analyzed?

2 A. It is.

3 Q. As well as moving down to red arrow number 2, isn't it
4 also correct that that term is found in the phone calls that you
5 reviewed and analyzed?

6 A. Not exactly.

7 Q. The first portion of that, without -- necessarily, without
8 the second word?

9 A. The first word.

10 Q. Okay. And did you see the substance of this detainee
11 reporting prior to your review and analysis of the telephone
12 conversations?

13 A. I don't recall. I don't recall reviewing this or I don't
14 recall seeing the substance of this.

15 LDC [MR. RUIZ]: All right. Next document is 632PPP
16 Attachment BB, STA-00005071, Secret document.

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

18 **[Pause.]**

19 A. Okay.

20 Q. You recognize this as a summary of CIA detainee reporting?

21 A. I do.

22 Q. It's an early 2004 ----

23 A. It is.

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1 Q. ---- custodial interview of Khalid Shaikh Mohammad?

2 A. It is.

3 Q. All right. And moving down to number 1, the red arrow and
4 the term that is underlined?

5 A. I see there's an -- there's more than a term, but yes.

6 Q. Sure. Just looking at the first three words in that -- in
7 that underline, that is a -- that is terminology that is used in the
8 telephone calls that you review and analyze, correct?

9 A. It is.

10 Q. And the remainder of the term that is underlined gives
11 context and explanation as to what that term means, correct?

12 A. Yes, it provides information.

13 Q. So a consumer of this information would have a greater
14 understanding of what that term means, correct?

15 A. Yes.

16 Q. All right. And have you seen -- did you see this detainee
17 reporting prior to your analysis and review of the telephone calls?

18 A. I -- I don't recall reviewing that specific document or
19 the specific content that would have been in a cable.

20 Q. All right. Well, the last part of that was -- that would
21 have been in the cable piece, let me follow up on that.

22 Would you have -- would there have been other sources of
23 this information that you ----

1 A. No.

2 Q. We're being precise here.

3 A. I understand. I have not reviewed that substance before.

4 Q. All right. Did you hear the substance from someone else?

5 A. I -- I -- no. I don't recall the substance.

6 Q. Okay.

7 LDC [MR. RUIZ]: Next document is 632PPP Attachment AA,
8 STA-00005068, Secret document.

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

10 LDC [MR. RUIZ]: Actually, just give me one second here,
11 Judge, before you do that.

12 **[Pause.]**

13 A. Okay.

14 Q. All right. Do you recognize this as detainee reporting
15 from the CIA?

16 A. I do.

17 Q. And this one refers to a custodial interview conducted in
18 early 2004 of Khalid Shaikh Mohammad?

19 A. It does.

20 Q. All right. Moving down to paragraph 1, in the first
21 underlined phrase, three words, do you recognize that as a phrase
22 that also appears in the telephone calls that you reviewed and you
23 analyzed?

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1 A. I -- yes, that phrase is familiar to me.

2 Q. And the next underlined word, that is also a term that
3 appears in the phone calls that you reviewed and analyzed, correct?

4 A. Yes, it is.

5 Q. And the remainder of this paragraph gives greater context
6 as to what this terminology may have been referred to and gives the
7 name of a person, correct?

8 A. It does.

9 Q. All right. With respect to red arrow number 2, the
10 underlined term is also a term -- or at least the first portion of
11 that is a term that has appeared in the telephone calls that you
12 reviewed and you have analyzed, correct?

13 A. The first term, yes.

14 Q. All right. Have you seen this substance of this detainee
15 reporting prior to your review and your analysis of the phone calls?

16 A. I -- I don't recall. Can I -- can I actually see the
17 document again, please?

18 Q. Sure.

19 **[Pause.]**

20 A. Okay. Thank you.

21 Q. Does that change your answer?

22 A. It doesn't change my answer. I just -- I have no
23 recollection of reviewing that material.

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1 Q. All right.

2 LDC [MR. RUIZ]: The next page is the same STA, Judge, but
3 00005068.

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

5 **[Pause.]**

6 A. Okay.

7 Q. All right. Referencing red arrow number 3 and the term
8 that is underlined, that is, in fact, a term that also appears in the
9 telephone calls you reviewed and you analyzed, correct?

10 A. References, yes. That's ----

11 Q. The term itself appears in the phone calls?

12 A. The term itself, I believe it was.

13 Q. Okay. Is it your testimony that you had never seen the
14 substance of this detainee reporting that explains in part what this
15 term means?

16 A. Can I see what -- is this the beginning of the document?

17 Q. This is the first page that I've showed you a couple of
18 times.

19 A. Okay. Sorry. I didn't recognize that that was a -- it
20 was a continuation.

21 Q. Yeah, yeah. If you -- if you kind of listen closely, when
22 I tell the judge it's the same STA, and I'll give the -- it's the
23 follow-on page.

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1 A. Okay.

2 Q. Do you want the other one back up? Okay. Do you need to
3 see it again?

4 A. No, thank you.

5 Q. All right. That particular term does, in fact, appear in
6 the phone calls, right?

7 A. Yes.

8 Q. That you analyzed?

9 A. Yes.

10 Q. And there's explanatory information here as to what that
11 may mean?

12 A. Yes, there is.

13 Q. All right. Did you see the substance of this detainee
14 reporting referring to Mr. Khalid Shaikh Mohammad?

15 A. I don't recall reviewing this reporting.

16 LDC [MR. RUIZ]: The next document is 632PPP Attachment K,
17 STA-00003100, Secret document.

18 MJ [Col McCALL]: Go ahead.

19 LDC [MR. RUIZ]: Thank you, Judge. Just give me one second.

20 MJ [Col McCALL]: Take your time.

21 **[Pause.]**

22 A. Okay.

23 LDC [MR. RUIZ]: Actually, I need a moment, Judge, before my

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1 follow-on question here.

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

3 LDC [MR. RUIZ]: Yeah.

4 **[Pause.]**

5 Q. So I'm going to put the first page of this document on so
6 you can have the date reference. It's the same document. This is
7 just the date portion of the document ----

8 A. Okay.

9 Q. ---- from STA.

10 A. Okay.

11 Q. Okay. You recognize this as the CIA detainee reporting?

12 A. I do.

13 Q. And this is an interview conducted of Mr. Ramzi Binalshibh
14 in mid-2003?

15 A. It is.

16 Q. All right. And I'll show you the STA at the bottom. It's
17 00003097.

18 A. Yes.

19 Q. The page I'm going to show you now is the same document,
20 but a couple of pages afterwards.

21 A. Okay.

22 Q. It's the relevant -- the relevant material.

23 You've seen that one, right?

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1 A. Yes.

2 Q. The first red arrow -- and particularly I'm -- I'm
3 referring to the term in quotations there, right?

4 A. Yes.

5 Q. That is a term, in fact, that you're familiar with and
6 that was contained in the telephone conversations you reviewed and
7 analyzed; isn't that right?

8 A. Yes.

9 Q. This particular document provides greater context as to
10 who was using that particular term, correct?

11 A. It does.

12 Q. And the reader would, therefore, gain an understanding of
13 what that term and who it refers to, correct?

14 A. Correct.

15 Q. With respect to number 2, there is a -- there is a word
16 that is underlined in red arrow number 2. And that is, in fact, also
17 a term that appears in the telephone calls that you reviewed and you
18 analyzed; isn't that right?

19 A. Yes, it is.

20 Q. Okay. And the remaining of the paragraph, which is not
21 highlighted, goes on to give the reader of this information
22 additional information to understand the terminology that is included
23 and referenced, as we just discussed; isn't that right?

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1 A. Yes.

2 Q. All right. So a reader, consumer of this detainee
3 reporting relating to Mr. Binalshibh, would have an understanding of
4 what this means, correct?

5 A. Correct.

6 Q. But it is your testimony -- is it your testimony that you
7 never saw this detainee reporting referenced -- in reference to
8 Mr. Ramzi Binalshibh who was also very much, in fact, a part of your
9 investigation?

10 A. I -- I don't recall reviewing this reporting.
11 There's -- I keep looking at the time frames. I do not recall
12 reviewing this.

13 Q. Okay. Well, you said "review," so I want to ask you about
14 seeing it. Do you remember seeing the substance of this reporting?

15 A. I don't recall seeing the substance of this reporting.

16 LDC [MR. RUIZ]: Next document is 632PPP Attachment O,
17 STA-00005083, Secret document.

18 MJ [Col McCALL]: Go ahead.

19 **[Pause.]**

20 A. Okay.

21 Q. You recognize this as CIA detainee reporting?

22 A. Yes.

23 Q. All right. And you see the number 1 and the red arrow

1 pointing to the word that is underlined?

2 A. I do.

3 Q. All right. You recognize that as a term and a word that
4 is contained in the telephone calls that you reviewed and you
5 analyzed, correct?

6 A. I -- I do, yes.

7 Q. And, in fact, this particular paragraph, the words -- the
8 sentence following the underlined word explains what that term means?

9 A. It does.

10 Q. All right. Is it your testimony that you've never seen
11 the substance of this detainee reporting prior to your analysis of
12 the telephone calls?

13 A. Can I see the beginning of this ----

14 Q. Yeah.

15 A. ---- please?

16 Q. Let me get that page for you.

17 I'm missing that cover page, but I'm having somebody go get
18 it so that you'll have the first page of this document.

19 A. Okay.

20 Q. All right. But while -- while they're doing that, we'll
21 move on.

22 But do you have any question as to the fact that the term
23 that is underlined there was, in fact, a term found in the telephone

1 calls, in the conversation?

2 A. The term is -- is there.

3 Q. All right. Gotcha.

4 And then the explanatory sentence or words that follow that
5 explains what the term is, correct?

6 A. Yes, I see that.

7 Q. Right. So while I've been very careful not to talk just
8 about the document, but the substance of the document, is it your
9 testimony that you've never seen the substance of detainee reporting
10 in reference to this term and its meaning?

11 A. I'm -- I don't recall seeing this, but I -- that's why I
12 also wanted to see ----

13 Q. Sure.

14 A. ---- the document in its entirety.

15 Q. So I'm going to flag this for -- so I can show it to you
16 when we get it.

17 A. Okay.

18 Q. All right. Now, we have established throughout your
19 testimony that you, in fact, did have access to CIA reporting,
20 correct? And the key phrase there is "access to CIA reporting on
21 detainees."

22 A. I -- I had access, yes.

23 Q. Right. With respect to the number of documents that I've

1 shown you, kind of the progression that we've gone through, I know I
2 asked you if you had seen the substance of this reporting. The
3 question now with respect to the ones we've seen is: Did somebody
4 tell you the substance of this reporting? Or did you hear it? Or
5 was it conveyed to you by someone else?

6 A. I don't believe so. Not that I recall.

7 Q. Now, I do know you -- I remember you did talk about Agent
8 Drucker and conversation with him related to some terminology.
9 Remember that, your testimony on that issue?

10 A. Specific to one phone call, yes.

11 Q. Right. And then you referenced three particular terms
12 that he had discussed with you ----

13 A. Correct.

14 Q. ---- right?

15 That's -- that's kind of along the lines of what I'm
16 referring to here. Is it your testimony that no agent, no other FBI
17 personnel -- or we can just put it to any person -- ever related to
18 you the substance of this reporting?

19 A. I -- I don't recall the substance of the reporting. I
20 don't recall having conversations about this reporting.

21 Q. You testified -- you've testified in respect to a Toshiba
22 laptop that was recovered in one of the raids. Do you recall that?

23 A. I do.

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1 Q. Okay. All right. And isn't it -- and you've also
2 testified that you reviewed Mr. Mohammad's LHM statements, correct?
3 In preparation for your testimony.

4 A. Yes.

5 Q. Now, isn't it correct that the -- the chats and the
6 documents on that computer were put on that computer by Mr. Mohammad;
7 isn't that right?

8 A. I -- I don't know.

9 Q. Okay. You did, however, review Mr. Mohammad's LHM
10 statement, correct?

11 A. I did review it, yes.

12 Q. All right. So I'm going to show you the relevant page of
13 Mr. Mohammad's LHM statement ----

14 A. Okay.

15 Q. ---- in an effort to refresh your recollection.

16 LDC [MR. RUIZ]: This is a highlighted document and it's also
17 underlined. It is contained at 632PPP Attachment E, and it's
18 MEA-LHM-00000010.

19 MJ [Col McCALL]: Hold up.

20 Mr. Connell, could you adjust the angle on your monitor? I
21 know you all were fiddling with it. It's -- I just want to make sure
22 it's -- that's perfect.

23 LDC [MR. RUIZ]: And this document is FOUO//LES, so that would

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1 just go to the parties, Judge.

2 MJ [Col McCALL]: Understood. Go ahead.

3 **[Pause.]**

4 A. Okay. I see that.

5 Q. All right. And I'm just going to roll it up a little bit
6 here so that you can see the trigram, which is LHM.

7 A. Yes.

8 Q. Which you're familiar with those based on your work with
9 the prosecution as to what the LHM means, correct?

10 A. Yes.

11 Q. Right. So having reviewed Mr. Mohammad's LHM statement,
12 does that refresh your recollection?

13 A. It does.

14 Q. All right. And isn't it, in fact, consistent with what is
15 contained in this document, it is true that the chat and other
16 documents on the computer in the apartment at the time of
17 Mr. Mohammad's arrest were put on there by Mr. Mohammad?

18 A. Yes, that's what this says.

19 Q. And the chat that was found on that computer, even though
20 at the time it was in Mr. Hawsawi's possession, was brought to
21 Mr. Mohammad by Mr. Binalshibh, this paragraph right above the other
22 paragraph, correct?

23 A. Correct.

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1 Q. All right. So while the computers may have been in the
2 possession of Mr. al Hawsawi at the time of the raid, in fact, those
3 computers previously belonged to Mr. Mohammad, correct?

4 A. That's what the LHM says.

5 Q. Right. And you observed that and you believed that to be
6 reliable information?

7 A. Yes.

8 Q. And based on your testimony, you believe it was
9 voluntarily given?

10 A. Yes.

11 Q. All right. So you're not contesting that?

12 A. No.

13 Q. Right. And the documents and the chats contained in that
14 computer consistent with the reporting in that document also were put
15 on there by Mr. Mohammad and not Mr. al Hawsawi, correct?

16 A. Correct.

17 **[Pause.]**

18 Q. You've testified regarding your observation of the LHM
19 interviews. And you've testified that you watched all of
20 Mr. al Hawsawi's LHM interviews, correct?

21 A. Yes.

22 Q. And that you also observed all of Mr. Ali's interviews,
23 correct?

1 A. Yes.

2 Q. And then you've testified that you've also observed
3 Mr. Mohammad's LHM interviews. And I understood from your testimony
4 today that, with the exception of a portion where you stepped out to
5 go retrieve a document, you observed all of Mr. Mohammad's
6 statements, correct?

7 A. I've -- I believe I've observed the majority of
8 Mr. Mohammad's interview.

9 Q. Is that -- when you reference "the majority," is that
10 because you, as you testified today, you stepped out, got some
11 documents that you later passed on to Agent Pellegrino? Or are you
12 referring to not observing other portions of his testimony -- excuse
13 me -- of his interview?

14 A. I -- I would -- I would have to -- I would want to relook
15 at the documents just to double-check.

16 Q. I'm sorry, which documents?

17 A. I'm trying to recall. I know that -- I believe I saw the
18 majority of Mr. Mohammad's interview.

19 Q. Okay. Can you quantify what "majority" means? Does that
20 mean you saw everything but the period in time where you went out?
21 Or are you saying -- I'm trying to just get a better sense of how
22 much of it. Like, I know he was questioned for four different
23 interviews on four separate days, right? And I will -- isn't -- do

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1 you recall that?

2 A. I -- I don't recall the specific days.

3 Q. So I'm going to represent to you ----

4 LDC [MR. RUIZ]: Actually, give me one second.

5 **[Counsel conferred.]**

6 Q. ---- that in order to streamline this process,
7 I -- Mr. Trivett and the government has agreed to stipulate to these
8 facts that I'm about to relay to you, right? That Mr. Mohammad was
9 questioned on four separate days ----

10 A. Okay.

11 Q. ---- right?

12 And that would have been January 12th, 13th, 14th, and 16th
13 of 2007. So four interviews, four days. Okay?

14 A. Okay.

15 Q. The government agrees with this point.

16 Having said that, since were you, in fact, the person who
17 observed these interviews and are in the best position to tell us,
18 how many of those days do you remember that you attended when you say
19 a majority?

20 A. I -- I -- I don't recall. I'm sorry. I don't recall.

21 Q. Okay. And with respect to Mr. al Hawsawi's, you said you
22 attended all. And, actually, you said you observed all of his
23 interviews. Do I take that to mean -- and, again, we've agreed to

1 these facts -- that Mr. Hawsawi was interviewed on four separate
2 occasions as well, that that occurred on January 11th, 12th, 13th,
3 and 16th of 2007?

4 So taking that as fact that we've agreed on, can you tell us
5 whether you attended and observed each and every one of those days
6 the entirety of his testimony -- of his interview?

7 A. I believe I -- for Mr. Hawsawi and for Mr. Ali, I believe
8 I did.

9 Q. Okay. And for Mr. Mohammad, the majority? But that's the
10 best quantification you can give us.

11 A. That's the best I can do right now.

12 Q. You do remember there was one period in time you stepped
13 out and got a document, correct?

14 A. Yes.

15 Q. Do you remember missing any of Mr. Mohammad's days?

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

17 Q. That's fine. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 A. Yes.

21 Q. If you didn't do that, you then, therefore, could not
22 listen to the interview that was ongoing [REDACTED], correct?

23 A. That's my recollection, yes.

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1 Q. In other words, you couldn't [REDACTED]
2 [REDACTED] correct?

3 A. Correct.

4 LDC [MR. RUIZ]: All right. Judge, I have -- I'd like to
5 display what was been previously -- actually, I'd like to introduce
6 what's been previously marked as AE 632SSS (MAH). This will be an
7 in-court submission.

8 MJ [Col McCALL]: Okay.

9 LDC [MR. RUIZ]: And so I would like to display it and then
10 actually move to -- move it into evidence.

11 MJ [Col McCALL]: All right.

12 **[Pause.]**

13 Q. Ms. Waltz, just take an opportunity to look at this
14 document.

15 A. Okay.

16 **[Pause.]**

17 Q. Does this refresh your recollection in terms of the dates
18 of the LHM statements?

19 A. It represents them, yes, um-hmm.

20 Q. And it is correct, is it not, that three -- at least three
21 of the dates on which Mr. al Hawsawi was questioned also overlap with
22 Mr. Mohammad?

23 A. I see that, yes.

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1 Q. All right. [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 A. I have specific recollection of Mr. Hawsawi's interview.
5 I have recollection of observing Mr. Mohammad's interview. I don't
6 have recollection of the specific timing. I know that I wasn't the
7 only -- I wasn't solely responsible, but I ----

8 Q. Okay.

9 A. ---- know that I -- I observed the interviews.
10 Exactly -- I have specific recollection of Hawsawi, and I have some
11 recollection -- I have recollection of at least a portion of
12 Mr. Mohammad's.

13 Q. Well, now you said "a portion" as opposed to "the
14 majority."

15 A. Okay.

16 Q. That's a ----

17 A. I ----

18 Q. ---- that's an important word difference.

19 A. I understand.

20 Q. Is it the majority or now is it a portion?

21 A. I observed Mr. Mohammad's -- I recall Mr. Mohammad's
22 interviews. I ----

23 Q. Well, I'm -- I'm sorry. I'm not -- I'm not contesting the

1 fact that you saw them or remember them. What I'm actually testing
2 your reliability on at this point, frankly, is how much you actually
3 did see, based on what you've represented to this court before, which
4 was the majority of Mr. Mohammad's interview and the totality of
5 Mr. Hawsawi's interviews, even though they overlap on three days.

6 A. Okay.

7 Q. That's -- that's the question I'm asking you. Is it still
8 your testimony that you observed the totality of all of Mr. Hawsawi's
9 interviews and the majority of Mr. Mohammad's?

10 A. I recall Mr. Hawsawi's interview. I don't recall the
11 specific timing of how these related. I don't recall.

12 Q. Okay. Having refreshed your recollection as to the timing
13 and the sequencing of these events, is it possible that you did not,
14 in fact, observe the entirety of Mr. al Hawsawi's interview because
15 you were, in fact, also attempting to watch Mr. Mohammad's?

16 A. I have specific recollection of Mr. Hawsawi's interview.

17 Q. So if I can stop you there, because I -- I think my
18 question is not whether you have recollection. My question
19 is -- just if you will listen closely, my question is: Having now
20 refreshed your recollection, your memory on the timing and sequencing
21 of these interviews, is it still -- is it a possibility that you did
22 not, in fact, observe all of Mr. al Hawsawi's LHM interviews?

23 A. It's possible.

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1 LDC [MR. RUIZ]: Judge, I'd like to move this document into
2 evidence.

3 MJ [Col McCALL]: All right.

4 LDC [MR. RUIZ]: May I approach?

5 MJ [Col McCALL]: Sure.

6 **[Pause.]**

7 Q. All right. With respect to the preparation of the LHM
8 interviews -- okay?

9 A. Yes.

10 Q. You testified that you had assisted in the preparation of
11 those interviews, correct?

12 A. Yes.

13 Q. And specifically with respect to Mr. Al Hawsawi as well,
14 correct?

15 A. I assisted.

16 Q. Right. You testified that you helped to gather, quote,
17 some of the documents that were going to be used during the interview
18 by Agent Perkins; is that right?

19 A. Correct.

20 Q. Is it also correct, then, to say that you did not collect
21 all of these documents that Agent Perkins ultimately would have used
22 in Mr. al Hawsawi's LHM interrogation?

23 A. That's correct.

1 Q. Right. And that's because Agent Perkins, as I think
2 you've testified, also had independent access to other sources of
3 information that she could use to prepare for Mr. al Hawsawi's
4 interview, correct?

5 A. Correct.

6 Q. Including CIA sources, correct?

7 A. That -- Agent Perkins would have to respond to that.

8 Q. Well, let me ask you this: When you were -- when you were
9 here helping for the preparation, did you work with her directly?

10 A. I worked some with her, yes.

11 Q. Did you talk to her?

12 A. I did talk to her.

13 Q. Were you in the same room?

14 A. Yes.

15 Q. Did you help gather documents?

16 A. I helped -- I helped gather some documents, yes.

17 Q. In fact, I think the words you used, you said it was a
18 very interactive process or iterative process in terms of the
19 preparation of the interviews, correct?

20 A. Correct.

21 Q. So are you saying you have no knowledge as to what other
22 sources of information she had access to for help for in preparation?
23 Is that what you're saying?

1 A. I -- what I'm saying is we -- we were working to get
2 images of evidence and copies of records. That's what I worked with
3 her on.

4 Q. Okay. So are you saying that you have no knowledge of
5 what other sources of information she had access to while you were
6 helping her craft the very materials that she was going to use in
7 Mr. Hawsawi's interrogation?

8 A. When we were down here, I have specific recollection that
9 we were working from a binder of, again, images of evidence and
10 other, like, business in other -- like, business records.

11 Q. Okay. Agent Perkins testified that there was a pile of
12 documents that she reviewed, there were hard copy documents, and
13 there were buckets per detainee. There was a computer system. Do
14 you dispute that?

15 A. I'm not disputing what she testified to.

16 Q. She testified that there was CIA reporting that had been
17 disseminated out about a detainee from a detainee and that this was
18 the information contained in the buckets. Do you dispute that?

19 A. I'm not disputing her testimony.

20 Q. Right. The reason I'm asking is because the impression
21 you left when you gave your direct testimony was that the only
22 documents that Agent Perkins had used in her interview of Mr. Al
23 Hawsawi were the ones you had prepared for her. That's not correct,

1 is it?

2 A. Those aren't the -- I never said those were the only
3 documents Agent Perkins used. What I was saying is that I helped her
4 assemble documents, meaning the actual copies of evidence or business
5 records that she was intending to use during the interview.

6 Q. Okay. Well, thank you for clarifying that. Because the
7 impression was -- and I wanted to make sure it was clear, that
8 the ----

9 MTC [MR. TRIVETT]: Objection. Comment on the evidence.

10 MJ [Col McCALL]: Objection sustained.

11 LDC [MR. RUIZ]: What was the objection?

12 MTC [MR. TRIVETT]: Your comment on the evidence.

13 MJ [Col McCALL]: I'm sorry. Let's not talk over each other.

14 So the objection was sustained. It seemed like you're
15 commenting on the evidence and what her testimony was, what you were
16 inferring from it. Just ask her if she said something and ----

17 LDC [MR. RUIZ]: Sure, sure, sure. So it was one of the
18 reasons I tried to lay the foundation at the very beginning of my
19 examination as to whether she was present in the room, to infer
20 knowledge from that in terms of her testimony. I can do that. But
21 I ----

22 MJ [Col McCALL]: I don't think that's what's needed. But go
23 ahead, ask ----

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1 LDC [MR. RUIZ]: Okay. All right. I understand.
2 MJ [Col McCALL]: All right.
3 LDC [MR. RUIZ]: I think I know what you're saying, and I
4 think -- quite frankly, I think I got the point I need, so ----
5 MJ [Col McCALL]: I think so.
6 LDC [MR. RUIZ]: Yeah, so we're good.
7 Q. All right. So do you have a background in psychology?
8 A. I have a bachelor's degree in psychology.
9 Q. Okay. How about psychiatry?
10 A. No.
11 Q. All right. Did you ever practice in the field of
12 psychology?
13 A. No.
14 Q. Psychiatry?
15 A. No.
16 Q. Have you received any specialized training with respect to
17 torture victims and torture survivors?
18 A. No.
19 Q. Do you have any specialized training when it comes to
20 assessing whether a person is suffering from post-traumatic stress
21 disorder?
22 A. No.
23 Q. In terms of your opinion on the voluntariness of

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1 Mr. al Hawsawi's statement, it is correct that that opinion is based
2 on your observations of his external manifestations during the
3 interview, correct?

4 A. It's my observations of the interview, yes.

5 Q. Right. So there is -- in that opinion, there is nothing
6 that -- no insight that you have in terms of the internal motivations
7 why Mr. al Hawsawi may have had for complying with that interview,
8 correct?

9 A. That's correct.

10 Q. Right.

11 LDC [MR. RUIZ]: One moment, Judge.

12 **[Counsel conferred.]**

13 LDC [MR. RUIZ]: Okay. I'm going to circle back to 632PPP
14 Attachment O, STA-00005083. It's a Secret document.

15 Q. And, Ms. Waltz, you had asked for the front page of that
16 document, so we have it now for you.

17 A. Thank you.

18 Q. All right.

19 MJ [Col McCALL]: Go ahead.

20 **[Pause.]**

21 A. Okay.

22 Q. All right. And then to refresh your memory, the question
23 that I had asked you ----

1 LDC [MR. RUIZ]: If I can have the document camera, Judge?
2 Same STA, same classification.

3 MJ [Col McCALL]: Yes, go ahead.

4 Q. I had asked you a question about number 1 and the term in
5 that document?

6 A. Yes, sir.

7 Q. And then I had asked if, in fact, that was a document -- a
8 term that appeared in the telephone calls that you had reviewed and
9 analyzed?

10 A. Yes.

11 Q. And that this particular reference gave greater context
12 and explanation of what that -- what that term meant?

13 A. Yes.

14 Q. All right. I've now shown you the -- the cover page to
15 that. Does that change your answer, or is there anything you need to
16 add because of that?

17 A. No.

18 Q. All right.

19 LDC [MR. RUIZ]: That's all I have, Judge.

20 MJ [Col McCALL]: All right.

21 All right. Ms. Waltz, thank you for your patience today, as
22 we went kind of late. I know it's been a long day of testifying.

23 So I don't anticipate that we're going to need you tomorrow.

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1 So the next time I anticipate that you're going to be testifying is
2 going to be on Monday, starting at 0900 in a closed session.

3 WIT: Okay.

4 MJ [Col McCALL]: All right. So during the weekend and
5 tomorrow, please don't discuss your testimony or the substance of it
6 with anyone, to include counsel for any of the parties.

7 WIT: Okay.

8 MJ [Col McCALL]: All right. You can leave the courtroom.

9 WIT: Thank you.

10 MJ [Col McCALL]: Thank you.

11 **[The witness was warned, was excused, and withdrew from the**
12 **courtroom.]**

13 MJ [Col McCALL]: All right. As I discussed earlier, right
14 after the lunch recess, I anticipate tomorrow we will start with
15 having a 505(h) hearing, discuss the 505 process. And then after
16 that, I want to have an 802 to discuss the witnesses.

17 So I also want to give the parties a chance -- I mentioned
18 this morning -- I thought maybe today we'd have a chance to give you
19 a bit of a break to reach out, hopefully. I know you don't have all
20 of your teams here in the courtroom, so hopefully people that are not
21 in the courtroom have started reaching out and making contact with
22 any potential witnesses and you've had a chance to start to think
23 about witnesses for the open periods that we have.

1 What I'm thinking is we come back tomorrow, and we can start
2 with that 505(h) session at 1330. It doesn't seem like it will take
3 that long, and then I don't think the 802 should take that long
4 either. That would give the parties the morning to sharpen their
5 arguments for the 505 issues and also to start to figure out these
6 witness issues.

7 Thoughts? I'm open to starting earlier, but I mean, that
8 seems to make sense to me.

9 Mr. Trivett?

10 MTC [MR. TRIVETT]: So a couple issues, sir. We
11 haven't -- I've been the main point of contact for the Camp VII
12 commander, and I obviously haven't reached out to him today.

13 MJ [Col McCALL]: Yeah.

14 MTC [MR. TRIVETT]: So one of the things I was speaking to
15 Mr. Connell about this, although it doesn't necessarily apply to
16 him -- and I do not know the availability of any of these witnesses,
17 I want to preface this. But, at some point we had taken the position
18 that we would not oppose the defense calling anybody who was in the
19 actual LHM interview. And so to the extent that the defense do seek
20 to call any of those people, we would not oppose, and then we would
21 seek to see if they were available. I just don't know if they still
22 intend to call anyone.

23 MJ [Col McCALL]: I understand.

1 MTC [MR. TRIVETT]: So that's an idea that I just wanted to
2 put to the commission in the event that the defense counsel can think
3 about that overnight, potentially let us know, and then we can see if
4 they are available. Because there's no litigation involved as far as
5 whether we're going to produce them; it's just a matter of whether
6 they're available.

7 MJ [Col McCALL]: No, I understand that. It's a good point.
8 And, again, if we -- if we can't fill the space with witnesses,
9 potentially we do these site visits, and then there's always oral
10 argument. I can always also give you back a little bit of your time.
11 I know we have a busy schedule while we're down here and, again, we
12 have some flexibility, but --

13 All right. Anyone else desire to be heard on this?

14 Mr. Connell?

15 LDC [MR. CONNELL]: No, sir. Although we have had
16 conversations about how to fill time productively with witnesses and
17 otherwise. But I just wanted to ask: Is there something in
18 particular you want us to be prepared to address about 505 process
19 tomorrow?

20 MJ [Col McCALL]: No. Well, I -- I wasn't sure if there was
21 more -- I know I heard some today. I wasn't sure if there was more
22 argument. I know what you mentioned earlier today, that the 505(h)
23 hearings end up being really not -- there's not a whole lot of

1 substance to it. If so, great.

2 Then, again, that's why I ----

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

4 MJ [Col McCALL]: ---- I'm not worried about starting at 1330.
5 But I have a hard time understanding what maybe couldn't be revealed
6 today in an open session.

7 LDC [MR. CONNELL]: Understood, sir. Thank you.

8 MJ [Col McCALL]: Okay. All right.

9 Mr. Dykstra.

10 DMTC [MR. DYKSTRA]: Yes, sir. And this is just a very short
11 clerical matter. I earlier referenced Appellate Exhibit 632P (MAH)
12 as something I did not object to. It's actually Appellate
13 Exhibit 937P (MAH), and I appreciate your clerks pointing that out.

14 And then, secondly, I just want to put on the record, in
15 your order in 8850, and Mr. Connell kind of alluded to it yesterday,
16 we did turn over the material by the deadline. I note in your order
17 it says to notice the commission when we have done so. We'll follow
18 up with a paper notice, but I just wanted to be in compliance with
19 Your Honor's order.

20 MJ [Col McCALL]: I appreciate that. All right.

21 All right. Well, so just to make sure that the --

22 Mr. Sowards, yes?

23 LDC [MR. SOWARDS]: Without jinxing anything, I was just

1 wondering, we will probably be meeting with Mr. Mohammad in the ----

2 MJ [Col McCALL]: The adjacent facility.

3 LDC [MR. SOWARDS]: ---- whatever we're calling that these
4 days ----

5 MJ [Col McCALL]: Right.

6 LDC [MR. SOWARDS]: ---- tomorrow. And I was just wondering
7 if it's possible to make that a -- what would it be, 1345 rather than
8 1330?

9 MJ [Col McCALL]: Is that because of the prayer times?

10 LDC [MR. SOWARDS]: Yes, sir.

11 MJ [Col McCALL]: 1345 is fine.

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

13 MJ [Col McCALL]: And, again, I'm -- I think the parties
14 already know this, and you haven't been asking, but, again, I'm
15 always fine with parties meeting with their clients in the courtroom,
16 if they desire, or in the adjacent facilities.

17 Mr. Connell.

18 LDC [MR. CONNELL]: Your Honor, if we're asking for slight
19 adjustments, I have a class from 1300 to 1400. If we could make it
20 1400, I can slide out of my class five minutes early and ----

21 MJ [Col McCALL]: I have no plans tomorrow night. So we can
22 keep sliding it back. I mean, that's fine. So 1400 should still get
23 us out of here.

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1 LDC [MR. CONNELL]: Or whatever ----

2 MJ [Col McCALL]: No, 1400. I anticipate -- I just always
3 hate making assumptions, but it doesn't seem like this is going to
4 take that long, and so 1400 works.

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

6 MJ [Col McCALL]: All right. So, again, just to make sure
7 that the public and the media is aware, so tomorrow is a closed
8 session. The next open session I anticipate maybe Wednesday.

9 I mean, if -- I don't imagine we're going to do all of
10 closed. But we will put out another docket order and get it out
11 through the normal channels through PAO to make sure that the public
12 is aware. But for planning purposes, I anticipate -- Monday for sure
13 is going to be closed, Tuesday potentially is closed but TBD.

14 All right. Thank you for your hard work today.

15 Commission's in recess.

16 **[The R.M.C. 803 session recessed at 1834, 18 April 2024.]**

17 **[END OF PAGE]**