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1 [The R.M.C. 803 session was called to order at 0901,
2 18 September 2019.]

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

4 Trial Counsel, it looks like your team is still here
5 today. Is that correct?

6 CP [BG MARTINS]: Your Honor, counsel representing the
7 United States remain the same, except that Mr. Robert Swann
8 has joined trial counsel.

9 MJ [Col COHEN]: That is correct. I didn't see Mr. Swann
10 there. Good morning, Mr. Swann.

11 Mr. Sowards, I recognize Mr. Mohammad is here,
12 and will everyone ---- you have a new addition today as well?

13 LDC [MR. SOWARDS]: Indeed, Your Honor. And first of all,
14 we want to extend a hearty welcome back to Mr. Swann, and then
15 introduce you to Marine Lieutenant Colonel Derek Poteet ----

16 MJ [Col COHEN]: Great. Thank you.

17 LDC [MR. SOWARDS]: -- detailed military counsel.

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

19 Ms. Bormann, I recognize that Mr. Bin'Attash is here.
20 Any changes to your counsel today?

21 LDC [MS. BORMANN]: Mr. Perry is away doing other
22 commission work.

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

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1 Mr. Harrington, I notice that Mr. Binalshibh is here.

2 Any additional notifications that you need to make?

3 LDC [MR. HARRINGTON]: No changes, Judge.

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

5 I recognize that Mr. Ali is absent as is Mr. Hawsawi.

6 Mr. Connell, any additions to your counsel?

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

8 MJ [Col COHEN]: Good morning.

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

10 MJ [Col COHEN]: Mr. Ruiz, same question to you.

11 LDC [MR. RUIZ]: No additions, sir.

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

13 All right, then. Trial Counsel, do we have a witness

14 with respect to the two accused who are absent?

15 I recognize the assistant staff judge advocate to be

16 the same assistant staff judge advocate that has testified

17 previously in these commissions. You remain under oath.

18 WIT: Thank you, sir.

19 MJ [Col COHEN]: Thank you.

20 [END OF PAGE]

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

3 DIRECT EXAMINATION

4 Questions by the Trial Counsel [MR. SWANN]:

5 Q. Major, did you have occasion to advise Mr. Ali and
6 Mr. al Hawsawi of their right to attend today's proceeding?

7 A. Yes, sir.

8 Q. Did you use AE 660N and, with respect to Hawsawi,
9 AE 6600?

10 A. Yes, sir.

11 Q. Both documents consist of two pages?

12 A. Yes, sir.

13 Q. Did you do this advisement the same way that you have
14 done it in the past?

15 A. Yes, sir.

16 Q. You used the English or the Arabic form?

17 A. English for both.

18 Q. And did Mr. Ali indicate that he wished to attend or
19 did not wish to attend?

20 A. That he did not wish to attend.

21 Q. His signature appears on page 2 of 660N?

22 A. Yes, sir.

23 Q. With respect to Mr. Hawsawi, does his signature

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1 appear on the second page of AE 6600?

2 A. Yes, sir.

3 Q. Do you believe that they voluntarily waived their
4 rights to attend today's proceedings?

5 A. I do.

6 TC [MR. SWANN]: I have nothing further, Judge.

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

8 Mr. Connell, have you had an opportunity to review
9 660N, and do you have any questions about the document or the
10 witness?

11 LDC [MR. CONNELL]: Your Honor, I have reviewed AE 660N.
12 I do have one question.

13 MJ [Col COHEN]: You may.

14 **CROSS-EXAMINATION**

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

16 Q. Ma'am, did Mr. al Baluchi make any statements about
17 his intentions later in the day?

18 A. He did not. He stated that he had another meeting he
19 was going to attend, but not attend the commissions.

20 LDC [MR. CONNELL]: Thank you.

21 MJ [Col COHEN]: Thank you.

22 Mr. Ruiz, same questions to you: Have you had the
23 opportunity to see 6600, and do you have any questions for the

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1 witness and/or about the document?

2 LDC [MR. RUIZ]: Yes, I've had an opportunity to review
3 the document, and I don't have any questions.

4 MJ [Col COHEN]: All right. Thank you. Standing
5 objection remains with respect to identity.

6 Thank you very much. We'll temporarily excuse you
7 for today. Thank you.

8 WIT: Thank you, sir.

9 [The witness was excused.]

10 MJ [Col COHEN]: Handing these to the court reporter.

11 I find that Mr. Ali and Mr. al Hawsawi have knowingly
12 and voluntarily waived their right at this time to be present
13 at today's hearings. If they elect to come later in the day,
14 consistent with the instructions that I gave them earlier in
15 the proceedings, they will be allowed to do so in the same
16 manner that the gentlemen were able to come yesterday later in
17 the proceedings.

18 All right. Mr. Connell, are you ready to proceed
19 with your -- Mr. Sowards?

20 LDC [MR. SOWARDS]: Yes, Your Honor. Thank you. I just
21 wanted to bring one matter to the court's attention ----

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

23 LDC [MR. SOWARDS]: ---- before we begin.

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1 And perhaps you would wish to discuss this a little
2 further in an 802 at a more convenient time.

3 MJ [Col COHEN]: Okay.

4 LDC [MR. SOWARDS]: But I just wanted to alert you with
5 respect to your indication yesterday that we may require a
6 Saturday session.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. SOWARDS]: If the -- in thinking of alternatives
9 to that, and I'm sure the parties are moving along as briskly
10 as they can, one thing that has been brought to my attention
11 is apparently due to the budgetary shortfalls for the
12 remainder of the fiscal year, there is not going to be
13 compensation available for overtime on behalf of the affected
14 employees of MCD0, the Military Commission Defense
15 Organization; and that what there may be -- and I believe the
16 communication I received emphasizes the "may be," is -- I'm
17 sorry, compensatory time off in the sense of making up for the
18 overtime, but without pay ----

19 MJ [Col COHEN]: Correct.

20 LDC [MR. SOWARDS]: ---- so that they would have some time
21 to use in the future. But I can tell you, as you can imagine,
22 seeing the way we work here, and what the schedule going
23 forward portends, most of these dedicated employees are really

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1 effectively are not going to be able to use that.

2 MJ [Col COHEN]: Thank you for bringing that to my
3 attention, sir. I will -- yeah, let's -- yeah, I think that's
4 probably appropriate. Let's have an 802 so I can just have a
5 discussion with you all as to a better understanding of what
6 that might be. I won't call it really a ruling so much, but
7 it is something to probably discuss.

8 LDC [MR. SOWARDS]: Sure. And just as with you, when I
9 was sort of nodding in agreement yesterday, I wasn't aware of
10 this context.

11 MJ [Col COHEN]: That's all right. No, I appreciate you
12 bringing that to my attention. Thank you.

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

14 LDC [MR. RUIZ]: Judge?

15 MJ [Col COHEN]: Mr. Ruiz.

16 LDC [MR. RUIZ]: Just to add on that particular point, our
17 position for our team is that we would suggest that the Court
18 also consider if it's looking into going into the weekend,
19 that our attorney-client meetings are scheduled for Saturdays
20 and Sundays as well. At least for myself, those are the only
21 times that I have, outside during the week, to meet with
22 Mr. al Hawsawi, because obviously I can't leave the courtroom.
23 So I would ask you to consider that as well.

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1 And at least for our team, we would be amenable if
2 you wanted to either start earlier or end later to extend the
3 day in order to provide for us to have the ability to do that
4 as well.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. RUIZ]: I know we can discuss that later, but I
7 wanted to bring that to your attention.

8 MJ [Col COHEN]: No, I thank you. I tell you what we'll
9 do, this evening after we recess, let's have an 802 with
10 the -- with the learned counsel, and at least -- I don't know
11 how the government's position is on that, but at least for
12 those who would not require overtime pay, let's have an 802 at
13 least for that, or whoever wants to show up, that's fine, if
14 they want comp time. Let's have an 802 and let's talk about
15 that.

16 I want to talk about the guard schedule as well with
17 respect to starting earlier or starting later so I can just
18 get an idea of what we're looking at.

19 Ms. Bormann.

20 LDC [MS. BORMANN]: I rose before you spoke, but I just
21 wanted to make sure that you understood that starting earlier
22 or going later doesn't solve the overtime compensation problem
23 for all of our GS employees and contractors.

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1 MJ [Col COHEN]: I understand, ma'am. Inevitably, I'll
2 probably get six different opinions on how to properly handle
3 this, so I'll work through the issue. All right.

4 For now, we are on regular time, and we are on the
5 clock. Mr. Connell, are you ready to proceed with your
6 cross-examination?

7 All right. Please call the witness.

8 **[The witness returned to the witness stand.]**

9 MJ [Col COHEN]: Agent Fitzgerald, please have a seat. I
10 remind you you are still under oath.

11 WIT: Yes, Your Honor.

12 MJ [Col COHEN]: Thank you.

13 Mr. Connell, when you are ready, the witness is
14 yours.

15 LDC [MR. CONNELL]: Thank you.

16 **JAMES FITZGERALD, civilian, was called as a witness for the**
17 **prosecution, was reminded of his previous oath, and testified**
18 **as follows:**

19 **CROSS-EXAMINATION CONTINUED**

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

21 Q. Good morning, sir.

22 A. Good morning.

23 LDC [MR. CONNELL]: The court's indulgence?

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1 MJ [Col COHEN]: Please -- and for the tech listening, if
2 you please make sure that we've increased the mic levels for
3 both the podium where counsel is asking questions and the
4 response of the witness, please.

5 Q. Can you hear me okay, Special Agent?

6 A. Yes, I can.

7 Q. Thank you. Sir, when we left off yesterday, we were
8 talking about the team structure of the PENTTBOM team?

9 A. Yes.

10 Q. That you work in a collaborative and largely
11 decentralized way?

12 A. In general terms, yes.

13 Q. Yes. And in your direct examination, you frequently
14 testified that the investigation found or something was
15 consistent with the investigation. When you did that, you
16 didn't mean necessarily that you personally were involved, but
17 that you and the person with -- people with whom you worked
18 closely found certain facts; is that correct?

19 A. Yes.

20 Q. Okay. And in the course of that -- those, your
21 colleagues would have passed your -- the information along to
22 you that was relevant to your investigation, correct?

23 A. Yes.

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1 Q. When an item was of investigative significance?

2 A. Yes. When possible, yes.

3 Q. And you, in turn, would rely on that information for
4 your own investigation -- investigative activities?

5 A. As appropriate, yes.

6 Q. Yes. And similarly, you would provide information to
7 your colleagues for their investigative activities as
8 appropriate?

9 A. Again, as appropriate, yes.

10 Q. All right. The -- now, you testified on direct
11 examination that you had access to detainee reporting, quote,
12 through colleagues and coworkers. Do you recall that
13 testimony?

14 A. Yes.

15 Q. Okay. And when you said "colleagues," you meant
16 other FBI special agents or intelligence analysts or other
17 professionals within the FBI?

18 A. Yes.

19 Q. And when you said "coworkers," you meant people from
20 other government agencies; is that right?

21 A. No. I was in general describing in my mind at that
22 time that people on the PENTTBOM team, so I was referring
23 specifically to other FBI agents. Again, I think I described

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1 a New York City police officer, a Port Authority police
2 officer, immigration officer.

3 Not to say that I haven't talked with people from the
4 CIA, but that specifically was not what I was referring to at
5 that time.

6 Q. Okay. So you actually weren't drawing a distinction
7 between colleagues and coworkers; it was just a collective
8 expression?

9 A. Yes.

10 Q. Okay. You testified on direct examination that you
11 had information about Mr. al Baluchi's pre-2000 treatment. Do
12 you recall that testimony?

13 A. You said pre-2000.

14 Q. Excuse me. Pre-2006 treatment.

15 A. Yes.

16 Q. And what information was available to you prior to
17 the end of 2006 about Mr. al Baluchi's pre-2000 [sic]
18 treatment?

19 A. At some point when I became involved in the effort to
20 reinterview the high-value detainees, and specifically Mr. Ali
21 and Mr. al Hawsawi, I received a briefing regarding some of
22 the circumstances of the EITs, in general terms, regarding the
23 detainees. So I'm -- that's specifically what I'm thinking

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1 about right now as far as specific recollection of what I was
2 told about his conditions of capture and interrogation.

3 Q. Okay. Before we move to that specific briefing, in
4 2004, the Abu Ghraib scandal broke. You recall that, right?

5 A. Yes.

6 Q. And I'm not saying that you had any investigative --
7 you didn't have any investigative responsibility for that, did
8 you?

9 A. No.

10 Q. No. But as an ordinary citizen of the United States,
11 you had some news-level knowledge of that situation, correct?

12 A. Yes.

13 Q. You saw the photographs that were published on the
14 front page of many papers?

15 A. Yes.

16 Q. Okay. And around that same time, in 2004 and into
17 2005, there was substantial coverage in newspapers regarding
18 aggressive or harsh or intense, whatever you want to say,
19 interrogation techniques that may be used by the United
20 States. Do you recall that?

21 A. I don't recall it specifically, but I accept your
22 characterization of it.

23 Q. Okay. You don't recall news coverage in 2004 and

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1 2005 about what was the United States doing to our prisoners?

2 TC [MR. GROHARING]: Objection, Your Honor.

3 MJ [Col COHEN]: Basis?

4 TC [MR. GROHARING]: Relevance.

5 MJ [Col COHEN]: Counsel?

6 LDC [MR. CONNELL]: I'm exploring the statement on direct
7 that he had knowledge of pre-2006 treatment. I'm just trying
8 to find out the basis for that knowledge.

9 MJ [Col COHEN]: Okay. How about we just ask him that
10 question, how he knew about it, what were the means, as
11 opposed to whether or not -- because now we're getting into an
12 argument as about -- as to whether or not he read -- what news
13 articles he read. But I think the question you started off
14 with was what did he know about the treatment of your client.

15 LDC [MR. CONNELL]: Right. And I -- he -- okay, I'll
16 phrase the question in the way the military commission has
17 advised.

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

19 Q. Other than the briefing, which we're going to get to
20 in a moment, did you have any knowledge from any -- or belief
21 from any source whatsoever about treatment of CIA detainees
22 prior to September 2006?

23 A. I am sure that I read the news and saw the news

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1 during that time. So I would expect that I saw the articles
2 or the news that you're referring to. I don't have a specific
3 recollection of what sort of treatment I saw or what article I
4 read at what time.

5 Q. Fair enough.

6 Now, let's talk about the briefing that you received.
7 When was that briefing?

8 A. I would estimate the fall of 2000 -- or 2006.

9 Q. Okay. And where was that briefing?

10 A. In Virginia.

11 Q. The -- if I were to ask you the specific location,
12 would you be prohibited from answering by the invocation of
13 national security privilege?

14 A. Likely, yes.

15 Q. The -- can you just describe the briefing for us?
16 And then if I have specific questions, I'll follow up.

17 A. The briefing that I'm thinking of and that I'm
18 referring to was one where EIT technique -- techniques were
19 described. But to the best of my recollection, I don't
20 believe I knew specifically who they were applied to.

21 Q. Other than high-value detainees generally?

22 A. Correct.

23 Q. Okay. You did know that the 14 men described by

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1 President Bush were the subjects of these EITs?

2 A. Yes, I did.

3 Q. Yes. And how long was the briefing?

4 A. I don't recall. I can estimate -- it wasn't very
5 long. I could estimate maybe an hour.

6 Q. What agency put on the briefing?

7 A. The CIA.

8 Q. If I were to ask you the specific person who put on
9 the briefing, would you be prohibited from answering by the
10 invocation of national security privilege?

11 A. I can answer the question and say I actually don't
12 recall what person said it.

13 Q. Were there any written materials with the briefing?

14 A. Not to my knowledge.

15 Q. Who else was present for the briefing?

16 A. Other members who were expected to go down and
17 interview the high-value detainees.

18 Q. And who were those, sir?

19 A. Going from memory -- I'm speculating at this point
20 because it would have been people like Special Agent Abigail
21 Perkins, myself; I know some of the Criminal Investigative
22 Task Force agents would have been there as well.

23 Q. Special Agent McClain, for example?

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1 A. Yes, I would have expected he was there. Special
2 Agent Elmer Mason, possibly Special Agent Pellegrino; I'm not
3 positive. Possibly Special Agent Merrilee Goodwin. My
4 recollection is that it was -- this briefing was for the
5 agents who were going to conduct those interviews.

6 Q. What do you recall from the substance of the
7 briefing? Like what -- when you say "enhanced interrogation
8 techniques," what do you mean? What were those?

9 A. I'm not certain if I can speak about them openly. If
10 someone could ----

11 Q. There's nothing classified about -- all -- both the
12 categorical and the application of the enhanced interrogation
13 techniques have been declassified, I'll represent to you.

14 A. Okay.

15 MJ [Col COHEN]: Counsel, do you concur?

16 TC [MR. GROHARING]: We do, Your Honor.

17 MJ [Col COHEN]: That was my understanding as well.

18 Sir, you may answer the question.

19 A. I remember specifically them describing walling as a
20 technique. I'm sure that they discussed waterboarding in
21 some -- in some sense. I don't recall specifically what they
22 said, but they were describing specific techniques.

23 Q. What do you -- what do you recall them saying about

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1 walling?

2 A. They would place a towel around someone's neck, and
3 then grab them and throw them against a board, for instance,
4 like a plywood, something -- a wall, but something, I was led
5 to believe, was designed to have some give to it. So they
6 would throw the person against the wall with a towel around
7 their neck to prevent injury to the neck.

8 Q. They would hit their head on a wall?

9 A. I -- I have no idea, sir. Like that's how it was
10 described to me. One could presume that; I try not to
11 presume.

12 Q. I'm really not asking you to presume. I'm asking you
13 what they told you.

14 A. I don't recall them saying their head would hit the
15 wall.

16 Q. So they wouldn't hit them against anything. They
17 would just move them around with the towel?

18 A. No. As I understood it, you grabbed someone --
19 essentially grab them by the lapels, is the way that I
20 understood it to be; there was a towel around someone's neck,
21 like a thick towel; and that person was ----

22 MJ [Col COHEN]: The witness is reflecting that -- with
23 his hands that something is being placed around his neck.

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1 A. ---- and that person would be, as I understood it,
2 grabbed by the lapel and thrown -- pushed or thrown against a
3 wall. Again, as to whether or not that towel would prevent
4 someone's head from hitting the wall, I don't know. I
5 certainly -- I would expect their back, specifically their
6 upper back, to slam against the wall.

7 MJ [Col COHEN]: The witness, when describing the lapel
8 and pushing up against the wall, or however he phrased it,
9 used his two fists as if he was grabbing something, and then
10 moved forward with both fists in a manner as if he was pushing
11 away or pushing towards something.

12 Q. In the briefing, was the walling demonstrated or
13 simply discussed?

14 TC [MR. GROHARING]: Objection, Your Honor. Relevance.

15 LDC [MR. CONNELL]: I'm finding out what he knows, Your
16 Honor. I'm just asking what information was conveyed during
17 this briefing.

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

19 A. I only recall it being discussed.

20 Q. All right. And what did they say about -- the other
21 specific technique you mentioned was waterboarding. What did
22 they say about waterboarding?

23 TC [MR. GROHARING]: Objection, relevance.

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1 MJ [Col COHEN]: Counsel, the objection is relevance.

2 LDC [MR. CONNELL]: Sir, first, the -- this is directly
3 exploratory of testimony on direct examination where the
4 witness testified that he had some knowledge of
5 Mr. al Baluchi's pre-2006 treatment. I'm finding out what
6 knowledge there was and what its basis was.

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

8 A. I don't recall specifically what they said about
9 waterboarding other than pouring water on someone's face.

10 Q. Sir, did something during your preparation for
11 today's -- or for this week's testimony refresh your
12 recollection with respect to that briefing?

13 A. I don't think so, but I'm not sure what you're
14 referring to.

15 Q. All right, sir. Do you recall in December of 2017
16 being asked, was it important to you to understand
17 Mr. al Hawsawi's or the high-value detainees' prior detention
18 history?

19 A. Yes.

20 Q. And do you recall answering with, "The problem was
21 regarding the -- any sort of prior detention is that, between
22 that time, between 2003 and 2006, to the best of my knowledge,
23 I had no information regarding Mr. Ali"?

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1 A. Yes, I recall that.

2 Q. Okay. And so I'll repeat my question.

3 Did something refresh your recollection over the past
4 time?

5 A. Certainly it -- number one, I'd ask you to re-read my
6 specific testimony, please.

7 Q. Yes, certainly. And there's one more sentence
8 afterward, which I will read for you for complete context.
9 Also, I'll refer to you the binder, if you see the one that
10 says "Fitzgerald Binder"?

11 A. Yes.

12 Q. If you turn in that to page 17823, you can read the
13 testimony along with me or see its full context.

14 A. Thank you.

15 MJ [Col COHEN]: Allow the witness a moment to get to that
16 page.

17 LDC [MR. CONNELL]: Yes. Thank you.

18 MJ [Col COHEN]: Counsel, you said that page was 17823?

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

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

21 LDC [MR. CONNELL]: And for the court's reference, I've
22 created a binder for the court as well. To your left,
23 perhaps, that might be -- or I see it's with the court

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1 reporters. There's an identical binder for the court.

2 MJ [Col COHEN]: I understand. Will you be using this
3 routinely throughout the day?

4 LDC [MR. CONNELL]: When ----

5 MJ [Col COHEN]: When needed?

6 LDC [MR. CONNELL]: Yes, when needed.

7 MJ [Col COHEN]: All right. Thank you. I appreciate it.
8 And I have a copy, thank you.

9 TC [MR. RYAN]: Excuse me, Your Honor. As yesterday, may
10 I have your permission to come in and out as I need to?

11 MJ [Col COHEN]: You may, sir.

12 WIT: Okay, sir. I have that testimony here.

13 LDC [MR. CONNELL]: All right.

14 Q. And so the actual question pending before you, sir,
15 is: Did something happen in the last -- in your preparation
16 for this testimony to refresh your recollection about that
17 briefing?

18 A. I would answer it differently, sir, in that when the
19 question was -- if I may re-read the question?

20 Q. Of course.

21 A. "Was it important for to you understand
22 Mr. al Hawsawi's or the high-value detainees' prior detention
23 history?"

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1 My interpretation of that question at that time was
2 knowing their whole history, sort of from start to finish,
3 from 2003 to 2006, so I wasn't specifically thinking of that
4 briefing that I had when I answered that question.

5 Certainly, I've had more time to prepare for this
6 testimony, but that simply wasn't the way that I interpreted
7 that question at that time.

8 LDC [MR. CONNELL]: The court's indulgence?

9 MJ [Col COHEN]: You may.

10 Q. Sir, I just -- I want to understand what your
11 testimony -- are you saying that in the context of the -- of
12 this interrogation -- and you have the full context in front
13 of you -- this testimony, you did not understand Mr. Ruiz to
14 be asking about whether you understood, for example, what kind
15 of treatment they may have received? I quote from a little
16 farther down on 17823.

17 A. I guess what I'm saying, sir, is in this example
18 here, I had no expectation that I was going to be testifying
19 to anything regarding my preparation for Mr. Ali's or
20 Mr. Hawsawi's treatment or my preparation for the interview or
21 anything. I had not reviewed any of these things, and I was
22 answering this question cold. I answered to the best of my
23 ability.

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1 When he stated, "Do you understand -- was it
2 important to you to understand Mr. al Hawsawi's or the
3 high-value detainees' prior detention history," he used the
4 word "history," and so was it important for me to understand,
5 right? And so I was looking at this as an investigator,
6 saying, basically, whatever that history was, it was. I'm
7 concentrating right now on preparing for an interrogation, and
8 what materials do I present.

9 So again, to -- "Was it important for you to
10 understand Mr. Hawsawi's or the high-value detainees' prior
11 detention history," I answered that question to the best of my
12 ability at that time, sir.

13 Q. I have no doubt, sir.

14 The actual question pending before you is: Did
15 something happen over your preparation for this testimony that
16 refreshed your recollection about this briefing?

17 A. Yes. Certainly, I recall that the meeting, the
18 briefing, as I just spoke of, which I clearly did not recall
19 at that time.

20 Q. Okay. And what is it that refreshed your
21 recollection?

22 A. Simply thinking about -- like going back in my mind,
23 going over the circumstances of what occurred in the fall of

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1 2006 to get ready.

2 Q. Okay. Was there any document that helped refresh
3 your recollection?

4 A. No.

5 Q. Other than some general news coverage and the
6 briefing that you have described, was there any other basis
7 for your testimony on direct examination that you had some
8 knowledge of Mr. al Baluchi's pre-2006 treatment?

9 A. I can't think of anything at this time, sir.

10 Q. All right. The next chapter we're going to talk
11 about is the High-Value Detainee Prosecution Task Force. Do
12 you understand?

13 A. Yes.

14 Q. You testified in December of 2017 in response to
15 questions from Mr. Ryan about having in approximately 2006
16 joined a task force. Do you recall that testimony?

17 A. Yes.

18 Q. And what was that task force?

19 A. It was a task force that was assembled to identify
20 personnel to prepare prosecutions of high-value detainees, if
21 they were practical.

22 Q. Okay. And its name was the High-Value Detainee
23 Prosecution Task Force; is that correct?

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1 A. Yes.

2 Q. And you said "was assembled." Who is the subject in
3 that sentence? Who assembled this task force?

4 A. I don't know precisely who was overall responsible
5 for it. I know certainly my FBI supervisor at the time likely
6 would have been knowledgeable of this, and I'm sure plenty of
7 other personnel.

8 Q. Who was your FBI supervisor at the time?

9 A. Joan-Marie Turchiano.

10 Q. And Turchiano is spelled T-U-R-C-H-I-A-N-O, correct?

11 A. Correct.

12 Q. The -- when did you first hear about the -- this
13 assignment?

14 A. It would have had to have been sometime between the
15 time that the detainees were transferred here, which I
16 understand to be September 2006, and certainly between that
17 time and October 2006 when I got access to the closed system.
18 So I would estimate sometime September-October of 2006.

19 Q. Okay. The -- why -- why is the left-hand limit early
20 September 2006? Are you saying that the HVD PTF was not stood
21 up before President Bush's speech on September 6, 2006?

22 A. I actually have no idea.

23 Q. Okay. Were you formally detailed -- you told me that

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1 the FBI works a little bit different from the DoD. What was
2 the manner of your assignment to the HVD PTF?

3 A. It was a temporary duty assignment.

4 Q. And that might mean something a little bit different
5 in the FBI than it does in the DoD. Could you explain to us
6 what that means?

7 A. At that time I was assigned to the New York Office,
8 so I was sent on temporary duty, which meant that my squad
9 responsibilities in New York were suspended, and I traveled
10 back and forth to Washington, D.C. or Northern Virginia to
11 assist on the -- with the -- to assist the High-Value Detainee
12 Prosecution Task Force.

13 Q. Okay. And just so we don't have to say that each
14 time, can we just say PTF?

15 A. Yes.

16 Q. Okay. The PTF brought together personnel from a
17 number of different agencies; is that fair to say?

18 A. Yes.

19 Q. So who else from the FBI at that time was assigned to
20 the PTF? And by that time, I mean fall/winter -- fall of
21 2006, winter of 2006-2007.

22 TC [MR. GROHARING]: Objection, Your Honor.

23 MJ [Col COHEN]: Basis?

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1 TC [MR. GROHARING]: Relevance.

2 MJ [Col COHEN]: Counsel?

3 LDC [MR. CONNELL]: Your Honor, the HVD PTF is one of the
4 primary mechanisms of coordination between the FBI, CIA, and
5 the DoD. It is, in fact -- the closed system that the witness
6 testified earlier about is, in fact, the sort of case system
7 used by that organization. It goes directly to our -- the
8 inquiry that's before the court, which is what is the level of
9 integration between DoD, CIA, and FBI.

10 MJ [Col COHEN]: Overruled.

11 A. So to understand your question, which I believe was
12 what or -- yeah, what FBI agents were assigned to the task
13 force?

14 Q. Yes, sir.

15 A. So I want to clarify with the word "assigned."

16 Q. Yes, sir. That's why I want you to use your word,
17 not my word. Your word.

18 A. I certainly went down on a TDY, temporary duty basis,
19 from New York down to Northern Virginia to assist on the
20 Prosecution Task Force. A number of other agents did as well.
21 In other words, they were assigned to different field offices,
22 but my assumption is based upon their training and
23 experiences. They came in temporary from their field offices

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1 as well to work on this, so ----

2 Q. With that in mind, let me revise my question for you,
3 and I want you to tell me if I'm using your vocabulary.

4 What other FBI agents had temporary duties with the
5 PTF between September 2006 and January 2007?

6 TC [MR. GROHARING]: Objection, Your Honor.

7 MJ [Col COHEN]: Counsel, basis?

8 TC [MR. GROHARING]: Relevance.

9 LDC [MR. CONNELL]: Same answer, sir. I can develop it at
10 more length, if you would like.

11 MJ [Col COHEN]: Overruled.

12 TC [MR. GROHARING]: Could I be heard briefly, Your Honor?

13 MJ [Col COHEN]: You may.

14 TC [MR. GROHARING]: The fact that there was a task force
15 is not really in dispute. What the government does not
16 believe is relevant is the name of every single agent that had
17 any involvement with this task force. They did many different
18 things and involved many different detainees, and their work
19 wouldn't be relevant to Mr. Ali's suppression motion.

20 MJ [Col COHEN]: Okay. Mr. Ali response?

21 LDC [MR. CONNELL]: Sir, the -- yes, now -- I mean, at
22 points in the past it was disputed whether there was a task
23 force or not, but apparently now it's not. But what there's

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1 zero information before the military commission about yet is
2 what were the scope, duties, powers, and communication among
3 that task force.

4 What I'm going to do is lay out the portions of --
5 and this is just the beginning of that questioning -- is going
6 to lay out the -- what the task force does, who was part of
7 it. Parts of that will be prohibited by national security
8 privilege, but parts of it are unclassified.

9 And this is not some far-afield question. This is at
10 the core of the primary argument of Mr. al Baluchi with
11 respect to the integration of the FBI, CIA, and DoD. It's
12 going to become very important when we get to the information
13 sharing part of -- portion of this discussion.

14 MJ [Col COHEN]: Okay. I'll allow you to ask questions
15 generally as to, for example, how many people were there and
16 then how many people may have had interaction with this
17 particular case. And if you want to then ask who those people
18 were, then I will allow you to ask questions.

19 LDC [MR. CONNELL]: Yes, sir. I understand the
20 instruction.

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

22 Q. How many FBI agents had temporary duties with the PTF
23 between September 2006 and January 2007?

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1 A. I would estimate maybe 15 personnel.

2 Q. Okay.

3 A. It's -- again, some of that might be outside the
4 scope of my knowledge because there were other things that
5 were happening that I'm unaware of. I would estimate maybe --
6 maybe 15 people.

7 Q. Okay. Of those approximately 15, were all those
8 special agents or were there other lines of duty as well, like
9 the IOSs and IAs?

10 A. There were analysts as well.

11 Q. Would it be fair to collectively call that group of
12 people FBI professionals?

13 A. Yes.

14 Q. Okay. So when I say "FBI professionals," I'm
15 including not merely special agents but the other
16 professionals who work within the FBI. Do you understand?

17 A. Yes.

18 Q. Of the 15 -- approximately 15 FBI professionals, how
19 many had responsibilities which included matters related to
20 these five defendants or Mr. al Qahtani?

21 A. By "had duties," can you define that, please, sir?
22 Like, in other words, the ones who were going to ----

23 Q. Work on the case. Work on the case of these five men

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1 or another six. If you have different vocabulary, I want to
2 use your vocabulary, sir.

3 A. I just want to make sure I'm answering. So the
4 number of FBI professionals, either support or agent, if I
5 understand correctly, who specifically were involved in the
6 January 2007 -- no?

7 Q. No, sir. Who were specifically involved in the
8 development of -- in the prosecution, right? It's a
9 Prosecution Task Force ----

10 A. Yes.

11 Q. ---- the investigation or prosecution or these five
12 men or Mr. al Qahtani?

13 A. I -- maybe eight.

14 Q. Okay. And who were those approximate eight?
15 Yourself, Special Agent Perkins?

16 A. Yes.

17 Q. Special Agent Pellegrino?

18 A. Yes.

19 Q. Special Agent -- excuse me, IA or IOS Antol?

20 A. Yes.

21 Q. Do you -- Special Agent Gaudin?

22 A. Gaudin.

23 Q. Gaudin, yes.

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1 A. Yes.

2 Q. Who else?

3 A. Special Agent Butsch.

4 Q. Butsch.

5 A. Investigative Analyst Kimberly Waltz.

6 Q. Waltz.

7 A. Special Agent Jacqueline Maguire, I believe. And
8 Naval Criminal Intelligence Service Special Agent Andrew
9 Emley.

10 Q. I'm sorry, what was the last name?

11 A. Emley, E-M-L-E-Y.

12 Q. Okay. And so when you include Special Agent Emley,
13 is that because he was detailed to the FBI? Why are you
14 counting him among the FBI professionals?

15 A. I was just -- in my head, I was trying to think of
16 who spoke to whom.

17 Q. Sure.

18 A. So I understand, not necessarily directly relevant to
19 the question, but he was one of the ones who -- he
20 specifically was with Special Agent Stephen Gaudin.

21 Q. Thank you.

22 And was Special Agent Emley under the purview of the
23 Criminal Investigative Task Force at the time, or was he pure

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1 NCIS without being part of the ----

2 A. I believe he was part of the Criminal Investigative
3 Task Force.

4 Q. So would that include Special Agent McClain as well?

5 A. Yes.

6 Q. And Special Agent Mason?

7 A. Yes.

8 Q. Okay. Another agency that was part of the PTF was
9 the Office of the Chief Prosecutor, correct?

10 A. Yes.

11 Q. Okay. And at that time, was Mr. Swann in charge of
12 the high-value detainee prosecution effort?

13 A. I believe he was, yes.

14 Q. What other persons from the Office of Chief
15 Prosecutor did you work with during the period September 2006
16 to January 2007 regarding the investigation or prosecution of
17 these five men or Mr. Qahtani?

18 A. I recall working with then-Major Jeffrey Groharing,
19 and I know I met a number of the other prosecutors at that
20 time; but I think regarding my responsibilities, he was the
21 prosecutor that I worked with the most.

22 Q. Okay. And were you assigned to a particular putative
23 defendant at that time?

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1 A. Yes.

2 Q. And who was that?

3 A. Mr. Ali.

4 Q. Okay. The -- another agency which contributed to the
5 PTF was the CIA, correct?

6 A. Yes.

7 Q. And if I were to ask you the specifics or names of
8 any of the officers of the CIA who contributed to the PTF,
9 would you be prohibited from answering by national security
10 privilege?

11 A. Yes, I would.

12 Q. Now, what other agencies contributed staff to the
13 PTF?

14 A. What I'm struggling with is what the -- what the
15 actual -- my definition of the PTF was FBI-centric. So there
16 were other agencies in -- I'll speak in general terms. I
17 don't know if -- I don't know if I would consider them part of
18 the PTF, the Prosecution Task Force, but again, my -- my
19 mindset is the -- I'm thinking of the FBI investigative
20 personnel. But there was an NSA person. Again, I don't know
21 if you would consider him part of the Prosecution Task Force,
22 but there was an NSA person available.

23 Q. Okay. And so let me -- with that clarification,

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1 which I appreciate, let me refine my question a bit.

2 In the course of your duties, your temporary duties
3 with the PTF between September 2006 and January 2007, were
4 there personnel from other agencies, other than the four that
5 you've named, who you worked with on a routine basis?

6 A. And the four would be Naval Criminal ----

7 Q. Oh, I'm sorry. You're right. I actually was putting
8 DoD as one.

9 A. Okay. DoD is fine.

10 Q. Yeah. FBI is one.

11 A. Yes.

12 Q. CIA is one.

13 A. Yes.

14 Q. And then on a limited basis, NSA.

15 A. Yes.

16 Q. Other than those four ----

17 A. I don't recall any others.

18 Q. Okay. If I were to ask you the identity of the
19 person that you had in mind who participated in the PTF from
20 NSA, would you be prohibited from answering on the basis of
21 national security privilege?

22 A. I would say support the PTF ----

23 Q. Support the PTF.

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1 A. ---- and I would say, yes, I would be prohibited.

2 TC [MR. GROHARING]: Your Honor?

3 MJ [Col COHEN]: Yes.

4 TC [MR. GROHARING]: I think he could answer the question
5 if he does know who it was. I don't think that person's name
6 is ----

7 MJ [Col COHEN]: Okay. All right. The government has
8 asserted that you may answer the question if you know the
9 answer.

10 A. I don't recall the name right now. I know that I
11 could find out the name. I can see the person's face, I just
12 forget what their name is.

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

14 Q. I hear we'll be here for a while, so maybe you'll
15 think of it tomorrow. If you do, feel free to just let us
16 know.

17 A. Very good.

18 Q. Thank you.

19 MJ [Col COHEN]: Counsel, I appreciate you letting us know
20 that. Thank you.

21 Q. Who was the -- so who was -- the one person that you
22 didn't mention was Special Agent Mendenhall. Was he part of
23 the PTF?

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1 A. Yes, he was.

2 Q. Okay. And did you -- did he just slip your mind?

3 A. Yes, he did.

4 Q. And what was the role of Special Agent Mendenhall?

5 A. He was also a supervisor.

6 Q. And would it be fair to say that his duties included
7 basically supervising the sort of FBI wing of the PTF?

8 A. Yes. He reported to Joan-Marie Turchiano.

9 Q. And Special Agent -- or Supervisory Special Agent
10 Turchiano was not, herself, a part of the PTF, she was simply
11 supervising that effort; is that right? She was in the chain
12 of command.

13 A. She was in the chain of command. That's ----

14 Q. But she was not part of PTF, or she was? You tell
15 me.

16 A. As the leader of it, I would consider her part of it,
17 yes. I mean, look, she didn't interview people, but I would
18 consider her part of the PTF.

19 Q. Okay. With those -- with those clarifications
20 refreshing your recollection, do you remember anybody else
21 from the FBI who had temporary duties with the PTF between
22 September 2006 and January 2007?

23 A. I -- the mention of Mr. Mendenhall reminded me of an

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1 analyst named Mark Conner who was also ----

2 Q. Connor.

3 A. ---- present.

4 Q. Okay.

5 LDC [MR. CONNELL]: The court's indulgence, sir?

6 MJ [Col COHEN]: You may.

7 Q. Earlier, you mentioned Special Agent Zebley. Was
8 Special Agent Zebley part of the PTF?

9 A. I would not consider him part of the PTF. I did see
10 him. He was not a special agent at that time.

11 Q. What was he?

12 A. He -- sometime circa 2006, he left the FBI and became
13 an Assistant U.S. Attorney.

14 Q. Ah.

15 A. I'm not exactly sure what his role or title was at
16 that specific time, but he was no longer a special agent.

17 Q. And that would be in the Eastern District of
18 Virginia?

19 A. Correct.

20 Q. Okay. And what about Special Agent Drucker?

21 A. Drucker was around, yes.

22 Q. And when you say he was around, you mean that he had
23 duties which involved the PTF?

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1 A. That's correct, and that's my understanding. When I
2 was describing people specifically before, I was thinking
3 those directly related to a particular detainee, so yes. But
4 Drucker was -- I would consider him part -- at least on a
5 temporary-duty basis, part of that team.

6 Q. Okay. And ----

7 MJ [Col COHEN]: Counsel, in light of that answer, my
8 instructions were related to this particular case and agents
9 that were involved in this case.

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

11 Q. And all of those people that we mentioned, those are
12 involved in this case, correct, sir?

13 A. Yes, they are.

14 MJ [Col COHEN]: Thank you. I just wanted to make sure.
15 Thank you.

16 Q. And with that clarification of scope, does that -- do
17 you recollect anyone else who was involved in this case, in
18 the manner of Special Agent Drucker or Zebley?

19 A. I don't recall anybody else, but if there are names,
20 you have to refresh my memory. There may be other people, but
21 I don't recall anyone.

22 Q. Okay. You've explained to us the chain of command
23 within the FBI portion. Was there someone who was overall in

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1 charge of the PTF?

2 A. Yes.

3 Q. And who was that?

4 A. Joan-Marie Turchiano.

5 Q. Okay. Was she in charge of the whole thing or just
6 the FBI portion?

7 A. I would say just the FBI portion.

8 Q. Okay. Is there a person who was in charge of the
9 overall PTF?

10 A. I -- the -- I would consider the overall PTF to be
11 run by Joan-Marie Turchiano. So like there were certainly
12 agents from the Criminal Investigative Task Force, as I
13 mentioned. It's not that they reported to her because they
14 were from different agencies, but I would consider her the
15 overall leader of the Prosecution Task Force, in my
16 estimation.

17 Q. Okay. And when you say "different agencies," those
18 are -- those are FBI plus the three you named before, or
19 something else?

20 A. No, what I'm specifically referring to is my concept
21 of the PTF are the FBI and CITF investigators tasked with the
22 interview/interrogation of the high-value detainees.

23 Q. Okay. And where does the Office of the Chief

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1 Prosecutor fit into the organizational scheme?

2 A. Certainly, we would report as a normal, what I would
3 consider a normal relationship between investigating agents
4 and prosecutors. Certainly, we would report to them. So like
5 you would interact with any prosecution office.

6 Q. And where does the CIA fit into the organizational
7 scheme?

8 A. Certainly, they were present. They had involvement
9 as far -- I'm trying to sort of -- there was always continued
10 contact that needed to be made regarding administrative
11 things. So whether it was classification review, it's -- they
12 were certainly a partner in this. I don't think that I would
13 consider them the leader of the Prosecution Task Force. In my
14 mind, that was Joan-Marie Turchiano, but they were certainly
15 part of this process.

16 Q. And one of the -- one of the parts of the process
17 that CIA was involved in is the information management aspect.
18 Would you agree?

19 A. Could you describe what you mean by "information
20 management"?

21 Q. Sure. So, for example, each of the prosecutors in
22 this case, their e-mail address is @ptf.org. Are you familiar
23 with that?

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1 A. I'm familiar with the PTF account. I'm not sure if
2 it's ptf.org or something else, but I'm familiar with ----

3 Q. Or maybe it's .gov. But a PTF account, correct?

4 A. Yes.

5 Q. And that stands for Prosecution Task Force, correct?

6 A. Yes.

7 Q. And that's hosted on CIA servers?

8 A. That may be, sir. I -- I accept that. I don't know
9 for sure. I don't have personal knowledge of that, but -- I'm
10 not surprised by that, but I don't know it for certain.

11 Q. Have you ever sent an e-mail to one of the
12 prosecutors and had the e-mail fail, got an error message?

13 A. I'm sure I did back in the beginning.

14 Q. Okay.

15 TC [MR. GROHARING]: Objection, Your Honor. Relevance.

16 MJ [Col COHEN]: Counsel?

17 LDC [MR. CONNELL]: Your Honor, the entire inquiry that
18 we're discussing is the integration between FBI, CIA, and DoD.
19 The information management aspect of it is one critical
20 element, especially since one of the subsidiary questions is
21 what information Special Agent Fitzgerald and Perkins had
22 access to.

23 MJ [Col COHEN]: All right. I -- I'll allow you a few

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1 brief questions, but let's not get too far down the road on
2 how the server is set up.

3 LDC [MR. CONNELL]: I'm not going far, sir.

4 MJ [Col COHEN]: All right. Thanks. Overruled for now.

5 Q. So I'll just jump to my final question, and it will
6 be just one question, which is: When you get an error message
7 from the PTF e-mail address, the error message comes from
8 cia.gov servers, right?

9 A. I will accept that, sir. I didn't recall it when you
10 asked the question. Again, when you specifically asked who
11 hosts the PTF accounts, in my head, I'm like I don't know for
12 certain. I'm not surprised that it is the CIA. When you
13 asked the question, I did not have a specific recollection.

14 LDC [MR. CONNELL]: Okay. That will just be my one
15 question, Your Honor, I'll move on from there.

16 MJ [Col COHEN]: Thank you. That's perfectly appropriate,
17 Counsel. Thank you.

18 Q. So on the information management aspect when you
19 testified earlier about a -- or testified yesterday about a
20 closed system to which you were granted access, that system is
21 for the use of the PTF, correct?

22 A. Correct.

23 Q. And that is why, for example, when you were trying to

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1 figure out exactly when you were TDY'd to the PTF, the
2 left-hand limit was the acknowledged transfer of detainees to
3 Guantanamo, and the right-hand limit was when you got access
4 to that closed system, correct?

5 A. In general terms, yes.

6 Q. Because that was -- at a high classification level,
7 that's the working system of the PTF, correct?

8 A. Yes.

9 Q. Okay. And that closed system -- when you say "closed
10 system," you mean it is essentially a standalone system which
11 is not accessible from other points on the Internet, correct?

12 A. That's my understanding of it, yes.

13 Q. You essentially have to go to a special terminal to
14 use it within some number of defined locations?

15 A. That's my understanding.

16 Q. And that's how you used it?

17 A. Yes.

18 Q. The -- that system is essentially a Windows network
19 that is closed to the outside, correct?

20 A. That's ----

21 MJ [Col COHEN]: Counsel one second. Objection.

22 TC [MR. GROHARING]: Relevance.

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

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1 MJ [Col COHEN]: Counsel, we ----

2 LDC [MR. CONNELL]: I'll show you where -- I can explain
3 where I'm going.

4 MJ [Col COHEN]: Okay.

5 LDC [MR. CONNELL]: Which is counsel talked -- it was a
6 little bit confusing yesterday. The witness' -- and I'm not
7 blaming the witness for this, but I was confused about the
8 testimony about requests and access, and it made it sound like
9 it was a database. But, in fact, it's a -- sort of ordinary
10 Windows environment with file folder structure and an e-mail
11 system. And that's the point that I'm going to because we're
12 going to talk about access to that file folder system which
13 included CIA reports of detainee reporting to which the
14 Special Agents Fitzgerald and Perkins had access prior to
15 their interrogation of Mr. al Baluchi.

16 MJ [Col COHEN]: Okay. Counsel.

17 TC [MR. GROHARING]: Your Honor, he can ask what
18 information Special Agent Fitzgerald had access to without
19 going to the details of CIA platforms and how they're
20 maintained. To the extent that he's going to do that, that
21 would be classified information and we would invoke the
22 privilege over that information.

23 MJ [Col COHEN]: Okay. Counsel, yeah, I think you can --

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1 let's just stick with, you know, it was a closed system. You
2 have made the point that may have gotten a response to say the
3 CIA maintained the system. The inner workings as to whether
4 it's a Windows operating system, those kinds of things, I
5 don't find that that would be extremely relevant to me, but
6 what he was able to access would be.

7 LDC [MR. CONNELL]: Okay.

8 MJ [Col COHEN]: So I'll sustain it on those grounds.

9 LDC [MR. CONNELL]: I understand and I will honor that. I
10 have a different question, and am going to give that a try and
11 see if that satisfies the military commission.

12 MJ [Col COHEN]: Okay.

13 Q. Which is that: Information on this closed system was
14 maintained in a sort of ordinary folder structure; is that
15 fair to say?

16 A. Yes.

17 MJ [Col COHEN]: Perfectly fine.

18 Q. And were they -- were -- was there a folder per
19 detainee?

20 A. Yes, there was.

21 Q. And is it accurate to say that within the folder for
22 Mr. al Baluchi, for example, would be a collection of
23 information about Mr. al Baluchi compiled from probably a

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1 number of sources?

2 A. Yes.

3 Q. It would include FBI records?

4 A. Yes. Presumably, yes.

5 Q. And it would include CIA records?

6 A. Yes.

7 Q. CIA cables?

8 A. Yes.

9 Q. And those cables would include, among others,
10 detainee reporting that was sent out to the wider intelligence
11 community, correct?

12 A. To the best of my understanding, yes.

13 Q. Yes. And so when you testified yesterday about
14 making requests -- filling out the form six to twelve times
15 to -- for action with respect to a particular document ----

16 A. Yes.

17 Q. ---- the -- that was not requesting access to the
18 document, correct?

19 A. It was not requesting access, no.

20 Q. Because you had access to the documents through the
21 file structure, the ones about Mr. al Baluchi?

22 A. Like -- yes. Yes, likely. I'm -- it's difficult to
23 recollect since it was so far back, but yes, that's likely

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1 correct.

2 Q. Well, you used the -- you used the system up through
3 2017, you testified yesterday, right?

4 A. I had access to it, but ----

5 Q. Okay.

6 A. ---- so ----

7 Q. The -- and so when you sent a request, one of these
8 six to twelve requests, it was a request for classification
9 review or action with respect to a particular document you had
10 identified within the file folder, correct?

11 A. It was request for declassification and use
12 authority ----

13 Q. Sure.

14 A. ---- for a tangible document. So in this case, not a
15 statement, but a tangible document is my recollection,
16 something that was recovered in a raid.

17 Q. In a raid. Okay.

18 A. Typically. I'm speaking in general terms.

19 Q. Got it.

20 Because you didn't have any reason to use prior
21 detainee reporting in -- to show Mr. al Baluchi, like a cable
22 that he had been featured in, right? You didn't have any use
23 for that?

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1 A. The emphasis was on providing documents so that we
2 would stay away from prior statements.

3 Q. Right. Okay. I'm moving now, sir, to your
4 particular -- new book.

5 A. Yes.

6 Q. Your particular investigation of 9/11.

7 A. Yes.

8 Q. At times it may include one of your relatively close
9 colleagues like Special Agent Perkins, but in general, I'm
10 really talking about what you personally did.

11 A. Yes.

12 Q. Do you understand?

13 So what was your first investigative assignment after
14 9/11?

15 A. Related to 9/11?

16 Q. Yes, sir.

17 A. I think the first thing -- one of the first things I
18 did, to the best of my recollection, is speak to a person down
19 in Florida who went to college with Mohamed Atta.

20 Q. All right. That was in Maitland, Florida?

21 A. Yes, I think so.

22 Q. The next item of which I have documentation is two
23 interviews of Abdul al-Azazi at the end of September 2001,

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1 just for guidance for you.

2 A. Okay.

3 Q. Do you recall any investigative activity between the
4 18 September 2001 Maitland, Florida interview and the
5 27 September 2001 al-Azazi interview?

6 A. I have no idea, sir. I mean, I'm sure I was doing
7 something. I have no idea.

8 Q. Okay. Ordinarily when you're doing things of
9 investigative significance, do you document them?

10 A. Typically.

11 Q. Okay. Is it possible that that gap is -- falls into
12 one of the hundred-plus thousands of 302s that we did not
13 receive in discovery?

14 A. You're implying a gap, and there's been nothing
15 that's been identified.

16 Q. The only gap is the gap in my knowledge. That's the
17 gap that I imply.

18 A. If you could advise if there's something -- I'm not
19 exactly sure what you're asking. You're saying between
20 talking to al-Azazi and talking to Atta's former roommate, was
21 there other investigative activity that I took? And I may
22 have.

23 Q. Okay.

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1 A. So I just -- I don't know specifically what you're
2 asking.

3 Q. Okay. All right. Let's move forward to al-Azazi
4 then.

5 On 27 September 2001, in New York, you were involved
6 in an interview of Abdul Kader, K-A-D-E-R, al-Azazi, A-L,
7 hyphen, A-Z-A-Z-I. Is that correct, sir?

8 A. Yes.

9 Q. And how did you know to interview al-Azazi?

10 A. I don't recall. If there are documents to refresh my
11 memory, I will read them, but ----

12 Q. Sure. You have a binder in front of you that is
13 labeled 628AA (AAA). It has within it a tab that is
14 Attachment H. I'll let you get to that binder.

15 TC [MR. GROHARING]: Objection, Your Honor. Relevance to
16 this line of questioning.

17 MJ [Col COHEN]: Counsel?

18 LDC [MR. CONNELL]: He asked to refresh his recollection,
19 that's all I was doing.

20 MJ [Col COHEN]: I think it's to the line of questioning
21 in general. The questions about this particular witness,
22 relevance.

23 LDC [MR. CONNELL]: Of -- okay. So I'm going to answer in

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1 a couple of different ways because I don't fully
2 understand ----

3 MJ [Col COHEN]: That's fine. Like I say, I mean, you
4 will always have the opportunity to answer. I just need you
5 to show me where you're going.

6 LDC [MR. CONNELL]: So the book is Special
7 Agent Fitzgerald's investigation. What I'm going to
8 demonstrate is how one item of investigation led to another
9 item of investigation led to another item of investigation,
10 and so on. The reporting from detainees from the CIA was a
11 critical part of that line of inquiry. And so, for example,
12 with respect to this, al-Azazi talks about Ramzi Binalshibh,
13 which goes into the team mix. And then the witness already
14 testified about the information that he receives in the fall
15 of 2002 about Binalshibh. It all weaves together into a
16 complicated mix.

17 The overall purpose here, Your Honor, is to
18 demonstrate that the -- this was a team effort, that it was a
19 CIA, FBI, multiple agency team effort. Their information
20 flowed together in a complex and integrated fashion. In order
21 to demonstrate that, it's going to be complicated, sir.

22 MJ [Col COHEN]: Okay.

23 LDC [MR. CONNELL]: There's a lot of documents, there's a

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1 lot of inquiries. If the objection is to the overall line of
2 questioning, that's the answer.

3 With respect to this particular interview for this
4 particular witness, this is the beginning of his involvement
5 with Mr. Binalshibh, which becomes important to Moussaoui.
6 This witness involves in -- is involved in interrogations of
7 Hamdan for the same purpose.

8 And so this is the -- and there was information flow
9 between CIA and FBI throughout this process. And so this is
10 the -- like this is step one of maybe 60, right? There's a
11 lot of steps to this flow.

12 And so that's my specific answer with respect to the
13 27 September 2001 interview of Mr. al-Azazi.

14 MJ [Col COHEN]: How long does it take us to get to Ali?

15 LDC [MR. CONNELL]: The -- so Mr. al Baluchi is not
16 arrested -- well, he -- Mr. al Baluchi is going to show up
17 very soon because the initial investigative lead with respect
18 to Mr. al Baluchi is the transfer to Adel Rafeea that was
19 handed off to Mr. al Nawaf.

20 So he appears on the landscape very early in the
21 system, and then there's -- you know, the FBI -- we've already
22 heard that 10,000 FBI agents are working on this. It is a
23 complicated web with constant interaction with the CIA. And

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1 what we're going to be talking about is that web. It's just
2 that it takes a while for this particular witness to intersect
3 with Mr. al Baluchi, but the FBI is -- has information about
4 that.

5 This is the precise area that the government spent
6 its first hour of direct examination on, trying to
7 demonstrate -- in the government's view was trying to
8 demonstrate independence of the FBI from the CIA
9 investigation. And this is to -- like the whole focus of the
10 rest of what we're going to be doing is discussing the tight
11 integration between the FBI and the CIA. In order to
12 demonstrate that, we have to trace the lines of investigation.

13 MJ [Col COHEN]: Okay. I understand, Counsel.

14 TC [MR. GROHARING]: Judge, the independence that the
15 government was trying to demonstrate was the independence of
16 the materials that Special Agent Fitzgerald showed Mr. Ali
17 that were obtained that had nothing to do with anything that
18 Mr. Ali had said. And that's what's relevant to the
19 suppression hearing.

20 To the extent materials were gathered before Mr. Ali
21 was even captured is completely irrelevant. That's -- and
22 frankly, not really at issue. The government doesn't dispute
23 that the CIA shared information with the FBI and the FBI

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1 shared information with the CIA. That's what they were
2 supposed to be doing. They were trying to stop the next
3 attacks on the United States.

4 That is not relevant to any inquiry before the court,
5 any issue before the court right now. So the questioning
6 should focus on what happened after Mr. Ali was captured.

7 LDC [MR. CONNELL]: Sir, the CIA involvement in
8 Mr. al Baluchi and the investigation of Mr. al Baluchi began
9 long before his capture, and involves not just Mr. al Baluchi,
10 but these other five men, Mr. al Qahtani, and others.

11 I can give a much more detailed answer if we can have
12 a closed session. I don't know how seriously you're
13 considering this objection, but this is going -- if the -- if
14 the military commission were to sustain this objection in a
15 large sense, it would rip the heart out of our presentation
16 because this -- this is our core point, that the FBI and CIA
17 were tightly integrated throughout the course of this
18 investigation.

19 Mr. al Baluchi plays a large part in that, but
20 Mr. al Hawsawi, for example, does before that. Mr. al Qahtani
21 does before that. This is a rolling system. It's like a
22 river that ultimately leads to the July -- the January 2007
23 interrogation, and the feeders to that river involve multiple

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1 defendants, a few people who are not defendants, and multiple
2 entry points from the CIA.

3 MJ [Col COHEN]: Mr. Groharing.

4 TC [MR. GROHARING]: Your Honor, Mr. Connell appears to
5 want to talk about the entire 9/11 investigation. This is a
6 suppression motion. That's why Special Agent Fitzgerald is
7 here. What's relevant is what happened with regard to that
8 interview of Mr. Ali; how Special Agent Fitzgerald prepared
9 for it.

10 I mean, the government doesn't dispute that that's
11 relevant, but the entire 9/11 investigation that happened
12 prior to Mr. Ali's capture is simply not relevant to this
13 issue, and to the issues before the commission right now.

14 MJ [Col COHEN]: All right. I'm only going to say this
15 once, so I want you to listen carefully, and it's primarily to
16 the government.

17 You specifically said we only want to bring these
18 witnesses down as few times as possible. That's what you
19 said. That's what you told me. And now you want to sit here
20 and object for relevance when you know I've discussed multiple
21 times already that the scope of this would also address issues
22 with respect to taint, derivative evidence and those kinds of
23 things to allow you to only bring down the witness one time.

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1 We talked about this. And, Mr. Trivett, you can
2 shake your head all day long. I know what I talked about. I
3 remember exactly what I said. And I talked about this
4 being an expanded scope. So to sit there now and sit there
5 and tell me, like this is not -- I mean, I understand what
6 he's doing. He's talking about the derivative evidence issues
7 right now. You're right.

8 So if that's what the government is telling me, you
9 know what? We'll bring him down every month if that's what
10 you want me to do.

11 TC [MR. GROHARING]: Could I be heard, Your Honor?

12 MJ [Col COHEN]: You may.

13 TC [MR. GROHARING]: Your Honor, the government does not
14 dispute that, and perhaps we're talking past each other and I
15 wasn't clear.

16 To the extent that derivative evidence is at issue,
17 it would be derivative from something Mr. Ali said, and that's
18 the only point I was trying to make. So the inquiry should be
19 the investigative steps after Mr. Ali was captured, what he
20 might have said that led to information that Special
21 Agent Fitzgerald ultimately showed him or discussed with
22 Mr. Ali. That's the only point the government was trying to
23 make.

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1 We don't dispute that at all, and we don't dispute
2 that the scope of the hearing should be appropriately wide.
3 But what we do dispute is these are acts that are taken
4 shortly after September 11th, 2001, long before Mr. Ali was
5 captured. And so we don't see the connection to that.

6 And a derivative objection -- or derivative evidence
7 claim by the defense as far as something that Mr. Ali said,
8 which would be their only basis to suppress evidence based on
9 derivative evidence, we don't see that connection. And that's
10 the objection to relevance, Your Honor, of this line of
11 inquiry.

12 MJ [Col COHEN]: Thank you.

13 Mr. Connell.

14 LDC [MR. CONNELL]: Sir ----

15 MJ [Col COHEN]: Other than derivative evidence, what does
16 this go to?

17 LDC [MR. CONNELL]: It goes to -- precisely to the
18 question of the integration of the FBI and CIA interrogations.

19 Now, I completely understand that the government
20 would like to have this much more narrow, but I'll also note
21 that my introduction to this material said we're going to talk
22 about this witness' investigative activity or people very
23 closely associated with them.

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1 This is not, you know, some random person who --
2 going far afield, as the government describes, into the entire
3 9/11 investigation. This is about this witness that the
4 government has called to testify about, for example, these
5 seizures of information -- have used a wide variety of
6 information as inculpatory against Mr. al Baluchi.

7 The core difference between the parties, which is how
8 does the integration of the CIA and FBI affect the
9 investigation -- and the government takes an extremely narrow
10 view of that, that there must be -- when the CIA says that the
11 FBI -- or provides information to the FBI, if they go out and
12 seize evidence on the basis of that. Neither 304(a)(5) nor
13 the Fifth Amendment authorities that we have cited are so
14 narrow.

15 But separate from the derivative evidence question,
16 which is what you asked me, the other piece of the core, which
17 the government has referred to many times, briefed in our
18 AE 628, is how closely did the CIA and the FBI work together?
19 Should they be considered, in Mr. Ryan's words, one long
20 interrogation? Should they be considered an integrative
21 investigative effort?

22 Because that affects the legal analysis, and the
23 legal analysis is either going to be the attenuation analysis

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1 that the government advocates or it is going to be the sort of
2 cleansing statement position that we advocate that because
3 it's all one investigative effort, the real question is: How
4 valuable were these cleansing statements? The -- so this is
5 the core of our motion to suppress, is the long-term
6 integration and the multiple feedback loops.

7 Without referring too much to a closed session, I
8 will note that last Wednesday, I -- I went through in the
9 505(h) session an example of a feedback loop where the FBI
10 learns information, sends that information to the CIA, gets
11 information back from the CIA, sends questions to the CIA.
12 The CIA goes to Mr. al Baluchi and others, gets the
13 information from them, sends it back to the FBI. The FBI
14 makes investigative decisions based on that. And this loop
15 goes again and again and again over multiple areas.

16 So primarily what I am doing is, number one,
17 establishing this witness' investigative activity and how it
18 led to, in this case, for example, Mr. Binalshibh, which
19 leads -- which feeds into Mr. al Hawsawi, and Mr. Moussaoui,
20 and ultimately Mr. al Baluchi. But the integration of this
21 investigative effort is primarily the -- what I will be doing,
22 you know, today.

23 Sir, I'll make one more representation to the extent

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1 that the tactical nature of this is important. The question
2 which is actually pending before the witness is: How did you
3 know to interview Mr. al-Azazi? And the very next question of
4 mine connects it to Mr. Binalshibh and launches on the
5 investigation that resulted in the prosecution of these men.

6 Like my fourth -- my third question was: How did you
7 know to interview Mr. al-Azazi? And my fourth question was:
8 Mr. al-Azazi told you he was a former coworker of
9 Mr. Binalshibh.

10 So this is not far afield. We're tying this to this
11 defendant -- these defendants and very soon to Mr. al Baluchi
12 awfully quickly.

13 MJ [Col COHEN]: I'm going to think about it for a minute.

14 We are exactly where I foresaw us being by the virtue
15 of -- I am not surprised that we are at a point where we are
16 providing evidence that may be tangentially relevant to one --
17 one particular accused but is extremely relevant to another
18 particular accused.

19 The issue really for me is, do I apply the rules
20 under this framework in such a way that I will -- telling
21 Mr. Connell and Mr. Ali's team that I will limit your
22 testimony to a very specific issue, even though I know that
23 some of this evidence may be potentially relevant to -- on a

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1 larger scale and directly relevant to some of these other
2 accused in this case, and we just keep calling the same
3 witness over and over and over again. Which may be where we
4 end up -- what we end up doing.

5 But either way, it's time for a comfort break anyway.
6 We're taking 15 minutes.

7 [The R.M.C. 803 session recessed at 1016, 18 September 2019.]

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1 [The R.M.C. 803 session was called to order at 1036,
2 18 September 2019.]

3 MJ [Col COHEN]: The commission is called to order.
4 Parties are present. Witness remains on the stand.

5 I've taken a look at the issue. My recollection of
6 what we discussed, at least back in July, generally, was the
7 idea that, although everyone would file their motions
8 individually, that one particular witness may have evidence
9 that is relevant to more than one accused.

10 And the discussion went -- and there were even some
11 concerns raised by some of the defense counsel along those
12 lines as well, what if I don't get the opportunity to recall
13 the witness or, you know, those kinds of things, what about
14 the discovery issues, all those kinds of things.

15 I specifically said that I would give the opportunity
16 to any defense counsel while the witness was on the stand
17 to -- or any counsel representing an individual accused to ask
18 questions of a witness while they were here. That would
19 include -- so -- for example, when the prosecution -- when the
20 prosecution is done with their redirect initially with respect
21 to any questions on cross or recross by Mr. Connell on behalf
22 of Mr. Ali, that I would then extend the opportunity to any
23 other defense counsel while the witness was here, which would

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1 naturally expand the scope of the testimony beyond just what
2 Mr. Connell may have had directly relevant to his client.

3 The other predicament that we find ourselves in is
4 that the government -- and really, that was at the -- at the
5 request of the government; that, you know, we'd like to
6 minimize the number of times that we have to bring people down
7 here, makes sense for judicial economy purposes. And that's
8 what I want to do.

9 It made sense to me. I thought under M.R.E. 611 I
10 could do it. The majority of the teams filed their motions to
11 suppress, but I wouldn't preclude a counsel from asking
12 questions relevant to a potential future motion to suppress
13 because, as a matter of judicial economy again, it just makes
14 sense. It's not easy to get down here, and we only come down
15 here for limited periods of time anyhow.

16 So within two questions counsel has posited that he
17 will immediately start talking about Ramzi Binalshibh in this
18 particular case. Whether that's directly relevant to Mr. Ali,
19 to be determined. On its face, not necessarily, but it would
20 clearly be evidence that would potentially be relevant and
21 which Mr. Harrington might find interesting with respect to
22 his client moving forward.

23 If I allow that line of questioning to proceed,

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1 perhaps -- and, like I said, I'm not holding Mr. Harrington to
2 anything, but Mr. Harrington may say, "Hmm, the witness has
3 already testified to that. Those are four or five questions
4 that I don't need to ask at this point, because I can just ask
5 the court to consider that sworn testimony of the witness
6 along those lines."

7 Once again, not saying that Mr. Harrington would be
8 bound by that. I'm just saying that is a possibility. It's
9 one of the things that I discussed with counsel, this idea
10 that a witness may have evidence that's related to more than
11 one counsel. And then counsel may decide at that point,
12 because the information's already in the record and is sworn
13 testimony, I don't need to do that portion. I can focus on a
14 different witness or I can focus on a different presentation
15 of evidence and all those things. That's what I was talking
16 about and thought that I had the agreement of everyone with
17 respect to the idea of what the broader scope was.

18 And there was some consternation -- not necessarily
19 wailing or gnashing of teeth, but there was some
20 consternation, you know, that was addressed with respect to
21 this process. Mr. Nevin, not to call him out, but rightfully
22 said, "You know, hey, I'm not really sure this is going to
23 work out."

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1 We're now at that first impasse where is this going
2 to work out or is it not going to work out? He was either
3 prophetic, or we're going to find a way to make this happen.

4 So the question before me is do I interpret a
5 relevance objection so narrowly with respect to Mr. Connell,
6 even though I know that it may be potentially relevant with
7 respect to another accused, and that accused may then elect to
8 use that evidence in some way, or do we just call the witness
9 back over and over and over again each and every time? That
10 would be contrary to what I was envisioning.

11 I understand what the rules of derivative evidence
12 are. I understand why the government takes the position that
13 they're taking with respect to that. I understand that,
14 Mr. Connell, you have a different view of the rules and the
15 law on this matter.

16 We're just taking evidence at this point. There are
17 no rulings. The scope was broad. I find that it is in the
18 interest of judicial economy to allow for a broader scope. I
19 would ask -- I will overrule the objection for now.

20 I do ask, Mr. Connell, that to the extent that it
21 addresses matters that are not directly related to Mr. Ali,
22 that you consider to what depth you need to go on a particular
23 matter. I'm not precluding you, per se, from anything, but

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1 just to consider what you really need to build particularly
2 your case and what you will need to argue.

3 But, then again, I'm also -- and I'm not going to ask
4 you to disclose this, but whether or not you've had a
5 discussion among the defense counsel and you're going to
6 gather as much information as you can on behalf of the other
7 defense counsel. I don't know, and it really doesn't matter
8 to me at this point, whether that's the case. Which also
9 wouldn't -- I mean, based on this evidentiary hearing, that
10 would be -- I'm not going to say that would be impermissible.
11 I mean, that would not -- that seems to be a matter of
12 judicial economy as well.

13 In addition, Mr. Connell, you cited multiple motions
14 that were out there, and the understanding -- or at least my
15 understanding based on my discussions with the counsel when we
16 were discussing about this, is that we would call these
17 witnesses to discuss not only current motions, but evidence
18 you would need to have for motions that you were already
19 contemplating. And everyone understood that as well.

20 So on certain things, I have said, for example, look,
21 we really don't need to talk about the inner workings of a
22 network. Those kinds of relevance objections make sense,
23 especially to the extent that it might go to -- whether it's

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1 classified or not, irrelevant -- just the very issue of
2 sometimes going too far down the rabbit hole really doesn't
3 help me as the judge, like I said, whether it was Windows or
4 Linux or whatever it was, that would not really have any
5 bearing on me. I'd probably have to have expert testimony on
6 it; the intricacies of it and those kinds of things. But what
7 people had access to would make sense. So those kinds of
8 relevancy objections I understand.

9 And I ask that counsel keep those -- whether it's the
10 government or any of the defense counsel, just keep those
11 things in mind. Remember that at the end of the day the
12 evidence you're getting is for me to make a decision. So
13 things that you think might be helpful to me in making those
14 decisions, I want you to do.

15 So I will allow you to proceed down this line of
16 questioning with the guidance of determine the depth that you
17 need to go into on any particular issue that's not directly
18 related to your client, and to the extent that you can get
19 there sooner rather than later, that would be beneficial.

20 All right. You may proceed.

21 LDC [MR. CONNELL]: Thank you, sir. Guidance accepted.

22 **[END OF PAGE]**

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1 CROSS-EXAMINATION CONTINUED

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

3 Q. Special Agent, the actual questioning which is
4 pending before you is: How did you know to interview
5 Mr. al-Azazi?

6 A. Yes. And my answer is right now, I don't recall
7 specifically. I have an idea. I was asking to review the
8 FD-302 to see if that would refresh my memory. I was unable
9 to locate it in here. Could you advise again its location?

10 Q. Sure. Just one second.

11 Sir, in what may seem a ridiculous anticlimax,
12 actually, I'm going to actually withdraw that question, the --
13 and move to the substance so we can move through this quicker,
14 which is that: The fundamental information that you obtained
15 from the interview with Mr. al-Azazi was that he and Ramzi
16 Binalshibh had simultaneously applied for visas in Yemen in
17 1995; is that correct?

18 A. To the best of my recollection, sir. Again, I
19 haven't reviewed that 302, but that sounds consistent, yes.

20 Q. Okay. Taking the guidance, skipping a whole bunch of
21 stuff, the next chapter that I'd like to talk about is the
22 raid on the apartment that you testified on direct examination
23 was attributed with Mr. al Hawsawi.

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1 A. Yes.

2 Q. Do you understand?

3 A. Yes.

4 Q. So on direct examination you testified about some
5 items that were found that you described as being found in an
6 apartment associated with Mr. al Hawsawi. Do you recall your
7 direct testimony on that topic?

8 A. Yes, I do.

9 Q. The -- and we'll get into a little more detail about
10 this later, but in general, you should -- you used some of
11 those items in your interview with Mr. al Baluchi, correct?

12 A. I did use some of those items, yes.

13 Q. And I'll identify them with more specificity and
14 allow you to do so.

15 When did you first learn that a foreign partner had
16 searched a location purporting to be Mr. al Hawsawi's
17 apartment?

18 A. I don't recall specifically. I can estimate sometime
19 in 2002.

20 LDC [MR. CONNELL]: The court's indulgence, please.

21 MJ [Col COHEN]: You may.

22 LDC [MR. CONNELL]: I might be able to assist.

23 Q. Sir, do you have before you a binder that says

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1 AE 628DD to MM or 00?

2 MJ [Col COHEN]: It's right in front -- the black one
3 right in front of you.

4 A. Yes. DD to 00, yes.

5 Q. Yes. If you -- do you see a tab on there that says
6 LL?

7 A. Yes, I do.

8 Q. All right. Would you flip to LL, sir?

9 A. Yes.

10 Q. All right. Without identifying -- without reciting
11 the substance of the document, do you recognize that document?

12 A. If you will give me a moment, sir.

13 Q. Of course.

14 TC [MR. GROHARING]: Your Honor, could we just have a
15 moment? We're trying to locate that particular item.

16 MJ [Col COHEN]: Okay.

17 TC [MR. GROHARING]: I think Mr. Connell has provided it
18 to us but I just don't have it at my fingertips. If I could
19 just have a moment?

20 MJ [Col COHEN]: Yes, absolutely.

21 LDC [MR. CONNELL]: I can also help with its Bates number
22 is RAD-1735, if that's better. I can also walk a copy over to
23 counsel, if that's okay.

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1 MJ [Col COHEN]: That would be fine, if you're willing to
2 do that.

3 [Pause.]

4 WIT: I just scanned the document.

5 LDC [MR. CONNELL]: I don't know if the government is done
6 or not.

7 WIT: I understand.

8 MJ [Col COHEN]: Counselor, have you had enough time to
9 locate it?

10 TC [MR. GROHARING]: We're trying to load a disc. We just
11 got this disc during the break.

12 MJ [Col COHEN]: Okay.

13 TC [MR. GROHARING]: It's taking some time to load to the
14 computer.

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

16 [Pause.]

17 TC [MR. GROHARING]: We have the document, Your Honor.

18 MJ [Col COHEN]: All right. Thank you. Counsel, you may
19 proceed.

20 LDC [MR. CONNELL]: Very good. Thank you.

21 **CROSS-EXAMINATION CONTINUED**

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

23 Q. Sir, does that refresh your recollection as to when

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1 you first learned that a foreign partner had searched a
2 location purporting to be Mr. al Hawsawi's apartment?

3 A. Yes, it would have been sometime, obviously, after
4 that time, but yes.

5 Q. Okay. And when was that?

6 A. I don't know precisely, sir.

7 Q. So let me repeat my question because maybe I'm not
8 asking with sufficient precision.

9 Can you advise when you learned of the -- that a
10 foreign government had searched a location purporting to be
11 Mr. al Hawsawi's apartment?

12 A. My estimation would be it's sometime shortly on or
13 after this time. I don't know precisely when.

14 Q. Okay. The -- all right. Let me think of a different
15 way to do it.

16 Special Agent Piro learned of a search by a foreign
17 partner, correct?

18 A. Yes.

19 Q. On or about 23 March 2002?

20 A. Yes.

21 Q. And your testimony is you learned about that shortly
22 thereafter?

23 A. I'm estimating, yes. That's ----

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1 Q. Okay.

2 A. Sounds about right.

3 Q. Okay. Okay. And am I right that, if I were to ask
4 you when the location was actually searched, you would not be
5 able to answer because of the invocation of the national
6 security privilege?

7 A. That's likely the case.

8 Q. If I were to ask you which foreign government
9 searched the location, you would not be able to answer because
10 of invocation of the national security privilege; is that
11 correct? Paragraph 21, sir.

12 MJ [Col COHEN]: Counsel.

13 TC [MR. GROHARING]: Your Honor, it's permissible to ask
14 the date. That part would not disclose classified
15 information.

16 MJ [Col COHEN]: That part would not?

17 TC [MR. GROHARING]: That part would not, Your Honor.

18 MJ [Col COHEN]: Okay. Sir, do you know the date that the
19 initial search was done?

20 WIT: I'd have to review this, sir.

21 MJ [Col COHEN]: Okay. You may do so.

22 Counsel, thank you for the clarification.

23 LDC [MR. CONNELL]: May I have a second?

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1 [Counsel conferred.]

2 LDC [MR. CONNELL]: All right. Sir, I'm going to ask you
3 a slightly different question.

4 MJ [Col COHEN]: All right. The question was treated as
5 withdrawn.

6 Q. Does the document that you have reviewed at 628LL,
7 does it reveal the date of the search?

8 A. As I review it, I see the date that the United States
9 authorities were notified, but I have not seen the date of the
10 actual search.

11 Q. All right. Yes, sir.

12 To your best -- to the best of your knowledge, the
13 date of the actual search either does not appear in this
14 document or has been redacted from this document. Would that
15 be fair to say?

16 A. To the best of my knowledge, correct, yes.

17 Q. Okay. The -- all right. Now, back to my other
18 question that was pending, which is: If I were to ask you
19 which foreign government conducted the search, you would not
20 be able to answer because of the invocation of national
21 security privilege, correct?

22 A. Correct.

23 Q. Okay. So if I were to ask you whether any foreign

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1 government actually did conduct such a search, you don't have
2 any personal knowledge of that, do you?

3 A. Whether any foreign government conducted a search
4 regarding this specifically?

5 Q. Right. Right.

6 A. Well, I -- I know that it's -- that it occurred
7 because it's represented here that -- if I may read this?

8 Q. No. I'm sorry, you may not.

9 A. Okay. So ----

10 MJ [Col COHEN]: Yeah. Yeah. You can't read all of it.
11 Thanks.

12 Q. In fact, the document just says that a foreign
13 government told Special Agent Piro that they had conducted a
14 search, correct?

15 A. That's correct.

16 Q. Okay. Not that -- but of your personal knowledge,
17 you don't actually know where this evidence -- where the
18 evidence reflected in this document came from, do you?

19 A. I -- I do now, but not -- certainly not reading this
20 document.

21 Q. Okay. The -- it's -- there is no person, would you
22 agree as an experienced investigator, there is no person that
23 within -- without violating the national security privilege

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1 who participated in this search that I could interview?

2 A. That's likely true.

3 Q. Okay. There is no person who supervised the person
4 who conducted the search that I would be able to interview
5 consistent with national security privilege, correct?

6 A. That is likely true.

7 Q. Okay. The -- there is no person in the chain of
8 custody of this purported evidence prior to it reaching the
9 FBI that I could interview to find out how the evidence was
10 handled consistent with national security privilege; is that
11 correct?

12 A. Yes.

13 Q. The -- sir, if you will turn -- oh, wait. Excuse me.
14 Actually, I have a few other questions.

15 So based on being advised of this alleged search, the
16 FBI sought access to the same location; is that fair to say?

17 A. Yes.

18 Q. And the FBI was given access to a location, correct?

19 A. Yes.

20 Q. That is the purported place that the items of
21 evidence discussed in AE 628LL were taken from by a foreign
22 partner, correct?

23 A. Yes.

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1 Q. FBI was -- so when was the FBI given access to the
2 location that we're discussing?

3 A. To conduct its own search?

4 Q. Yes, to conduct its own search.

5 A. To the best of my recollection, it was June of 2002,
6 but to be more precise, I would have to refer. But I would
7 estimate June of 2002.

8 Q. Sir, you -- can I refer you to in that same exhibit,
9 AE 628LL, there's another -- the next page, RAD-1739.

10 A. Yes, I have it here.

11 Q. All right. If you would review that document and see
12 if that refreshes your recollection in any way.

13 A. Yes.

14 TC [MR. GROHARING]: I'm sorry, Your Honor. I didn't
15 catch where that document is.

16 MJ [Col COHEN]: Counsel, would you please repeat the
17 number, please?

18 LDC [MR. CONNELL]: Of course. 628LL, same exhibit, at
19 RAD-1739.

20 MJ [Col COHEN]: Thank you.

21 LDC [MR. CONNELL]: It's the fourth page of the exhibit --
22 fifth page.

23 WIT: Okay. I have reviewed 1739.

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1 Q. Does that help at all?

2 A. Not to your specific question as to when the FBI
3 conducted a search. In general terms, this is talking about
4 another government providing information as a result of their
5 search, and it is at this time Special Agent Piro requesting
6 agents of the FBI be given access as well, but this is not the
7 date that the FBI accessed this location.

8 Q. All right. The -- with respect to that second
9 document, 17 -- RAD-1739 where an agent of a foreign
10 government provided information, there is no person -- the --
11 I could not ask you the name of that person who provided
12 information consistent with national security privilege,
13 correct?

14 A. Correct.

15 Q. Okay. And there's no person from that foreign
16 government that I could interview with information about the
17 portion of the investigation reflected on RAD-1739 without
18 violating national security privilege; is that correct?

19 A. That's my belief, yes.

20 Q. And essentially, I -- with respect to that document,
21 I cannot obtain any information about what happened to the
22 evidence described in the document prior to its entry into FBI
23 custody consistent with national security privilege; is that

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1 correct?

2 A. That -- that may well be the case, yes.

3 Q. Sir, if I may have one more -- I'm going to try one
4 more document to refresh your recollection.

5 A. Yes.

6 Q. Do you see Tab DD, AE 628DD?

7 A. Yes.

8 Q. All right. If I could refer you within DD to the
9 document -- FBI-20499 is the relevant page, but FBI-20495 is
10 the first page, if you need to orient yourself.

11 TC [MR. GROHARING]: Your Honor, 20495 -- I just ask for a
12 moment again.

13 MJ [Col COHEN]: Okay.

14 TC [MR. GROHARING]: It's taking a while for this document
15 to load on the discs.

16 MJ [Col COHEN]: Okay.

17 LDC [MR. CONNELL]: Sir, to relieve any tension on that, I
18 will say I have nothing but sympathy with the IT problems.

19 MJ [Col COHEN]: I understand.

20 TC [MR. GROHARING]: Could I just ask counsel to provide
21 the Bates number again?

22 LDC [MR. CONNELL]: Sure. The first page of the document
23 is FBI-20495, and the relevant page to which I'm directing the

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1 witness' attention is FBI-20499.

2 TC [MR. GROHARING]: Thank you.

3 MJ [Col COHEN]: Thank you.

4 LDC [MR. CONNELL]: I can also just show it to you, if
5 that's more helpful.

6 MJ [Col COHEN]: I have it. Thank you.

7 LDC [MR. CONNELL]: You're good?

8 Q. Sir, does that refresh your recollection?

9 A. Yes. I'm reviewing the document right now.

10 Q. Oh, I'm sorry. I didn't mean to rush you.

11 A. Okay. It's a long document, but I believe I've
12 reviewed the relevant portion.

13 Q. Thank you. And does that refresh your recollection
14 as to the date of the search by the FBI?

15 A. I see the date, and I think we might be talking about
16 two separate things. I see a date there.

17 Q. All right. Well, actually, it's from an unclassified
18 paragraph, so can I read you a sentence and see if you agree
19 with it?

20 A. Okay. Yes, sir. The paragraph I'm looking at is
21 classified, but ----

22 Q. Well, I have an unclassified paragraph. Maybe I can
23 help. At page 20499, FBI, within 628DD.

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1 "Following a request by the FBI to the" --
2 redacted -- "a subsequent search of the AL-HAWSAWI apartment
3 was conducted by FBI/ERT in the UAE on 6/16/2002. All items
4 obtained by ERT were also sent to the FBI Lab."

5 Does that refresh your recollection, sir?

6 A. Yes. Yes.

7 Q. Okay, and would 16 June 2002 be the relevant date?

8 A. Yes. Again, I think my estimate was June of 2002, so
9 this is certainly in accordance with that.

10 Q. Very good. All right.

11 So would you agree, sir, that there is no foreign
12 partner witness that I can interview to find out what custody
13 or control they maintained of the location between the
14 17 April -- sorry, between the unknown date search by the
15 foreign partner and between the 16 June 2002 search by the
16 FBI?

17 MJ [Col COHEN]: Counsel?

18 TC [MR. GROHARING]: Objection, Your Honor. This question
19 is beyond the knowledge of the witness.

20 LDC [MR. CONNELL]: Sorry. I thought this was the
21 convention that we had agreed on for the national security
22 privilege invocations.

23 TC [MR. GROHARING]: This wouldn't be the witness who

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1 could testify to that, Your Honor.

2 LDC [MR. CONNELL]: Your Honor, this witness -- I don't
3 think it's the right witness either, but the government used
4 this witness to introduce a bunch of the -- the fruit of these
5 searches in his direct examination, so I think I'm entitled to
6 explore that.

7 TC [MR. GROHARING]: If I could just, Your Honor?

8 MJ [Col COHEN]: You may.

9 TC [MR. GROHARING]: Whether or not this witness is
10 allowed to provide the information is a different question.
11 Whether or not any witness or any person could provide
12 information to Mr. Connell is a different question.

13 LDC [MR. CONNELL]: I'm not tracking, sir.

14 TC [MR. GROHARING]: The agent knows what he can or can't
15 tell Mr. Connell, but it doesn't necessarily mean there's not
16 another means that Mr. Connell -- to provide the information
17 or there's no other way that he could get the information. So
18 I would just say it's beyond his knowledge.

19 MJ [Col COHEN]: Okay. I'll sustain to the form of the
20 question, but I will allow you to rephrase questions, because
21 I could think of a few ways you could ask this witness and
22 still stay within this.

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

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1 MJ [Col COHEN]: So just the form of the question.

2 LDC [MR. CONNELL]: Yes, sir. I know another way to come
3 at it.

4 Q. Sir, I'll refer you back to AE 628LL. The third
5 document in AE 628LL has -- bears a Bates stamp of RAD-2373.

6 A. Okay. So I turned to LL. Is that -- that document
7 is further on in this tab?

8 Q. That's right. So each tab refers to a certain Bates
9 trigram and a certain classification, so the Secret RAD
10 documents are in AE 628LL.

11 A. Okay, sir. So I'm in LL, and which -- am I looking
12 at the same document as I did before, or ----

13 Q. No, sir. 2373.

14 A. One moment, please.

15 Yes, I have this here.

16 Q. All right. And, in fact, you are the drafter of this
17 document, correct?

18 A. Yes.

19 Q. And you can tell that because it says "Drafted by"?

20 A. Yes.

21 Q. The -- on 3 February 2010, did you conduct an
22 interview of a foreign government official?

23 A. Yes.

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1 Q. Okay. And I take it because you're the drafter, you
2 were present in person for an in-person interview?

3 A. Yes.

4 Q. And you documented the results of that interview in
5 this document which begins at AE 628LL, 2373, correct?

6 A. Yes, I did.

7 Q. Okay. And the person that you interviewed is
8 redacted from this document. Would you agree?

9 A. Yes.

10 Q. Because the government has invoked national security
11 privilege over their identity?

12 A. Yes.

13 Q. And so if I were to ask you who you interviewed about
14 the -- about this evidence, you would not be able to tell me
15 because of national security privilege; is that right?

16 A. Yes.

17 Q. Okay. The -- if I were to ask you of the
18 governmental affiliation of the witness, you would not be able
19 to answer because of national security privilege?

20 A. Yes.

21 Q. If I were to ask you what documentation ----

22 TC [MR. GROHARING]: Your Honor.

23 MJ [Col COHEN]: Counsel.

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1 TC [MR. GROHARING]: Counsel could ask that question, but
2 it would need to be in a closed session. As far as the
3 affiliation, I believe that's reflected in the document.

4 LDC [MR. CONNELL]: Great.

5 MJ [Col COHEN]: Okay. All right. Then, we'll -- let's
6 table that issue until the 806.

7 LDC [MR. CONNELL]: It's the government's information
8 privilege.

9 MJ [Col COHEN]: Absolutely.

10 Q. The -- if I were to ask you for, say, the contact
11 information for this witness, you would not be able to provide
12 it because of national security privilege, correct?

13 A. Again, going by the same logic, I'm assuming that I
14 could probably provide that in a closed session, but not --
15 the reason why I'm answering the way I'm answering is I
16 obviously cannot answer that in a public forum. But whether
17 or not you are entitled to or can have access to these things,
18 I -- I think is something that perhaps you could in a closed
19 session.

20 I -- what I'm saying is I don't know.

21 TC [MR. GROHARING]: [Microphone button not pushed; no
22 audio.]

23 LDC [MR. CONNELL]: Sure. Contact information for the

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1 witness. Counsel asked me to repeat the question.

2 TC [MR. GROHARING]: To the extent it would be referring
3 to his identity, then, yes, we would invoke over that.

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

5 Q. The -- so, sir, when you did this interview in 2010,
6 what was the purpose of this interview?

7 A. Would you give me a moment to read this and refresh?

8 Q. Of course, sir.

9 [Pause.]

10 A. Thank you, sir. I reviewed it.

11 My recollection, the purpose at that time was to see
12 if we could find a witness or establish a basis for the
13 authentication of the items that were seized.

14 Q. Okay. And that's because authentication of items
15 that are seized is important, right?

16 A. Yes.

17 Q. Okay. It's important in a criminal case to know if
18 the items are what they purport to be?

19 A. Yes.

20 Q. It's important to know whether they were seized at
21 some different time or different place, correct?

22 A. Yes.

23 Q. It's important to know if they were faked-up by some

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1 intelligence agency?

2 A. Yes.

3 Q. Or faked-up by a U.S. intelligence agency and
4 provided to that -- a different agency to provide back to you,
5 right?

6 A. In general terms, sir, I would say it's important to
7 maintain the integrity of the evidence.

8 Q. Yeah. And without knowing where evidence was seized,
9 it's much more difficult to assess the integrity of the
10 evidence. Would you agree?

11 A. It can be, yes.

12 Q. Okay. And so as a result of that, you found a
13 witness to interview, correct?

14 A. Yes.

15 Q. Okay. And in general terms, how did you find that
16 witness?

17 A. I don't recall, sir, specifically, by reviewing this.
18 It would have been through liaison with a foreign government.

19 Q. Okay. And, in fact, in -- if I could point you to
20 the bottom of page RAD-2373, you see where it lists the people
21 who were present?

22 A. Yes.

23 Q. Okay. The -- there is a -- do you see that it lists,

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1 for example, a couple of U.S. Attorneys and then Kimberly
2 Waltz, Intelligence Analyst?

3 A. Yes, I do.

4 Q. And James Fitzgerald, of course, you?

5 A. Yes.

6 Q. Yes. And then it has a redacted line and a half or
7 so about -- which is the -- identity of another person who was
8 present at the meeting; is that right?

9 A. Yes.

10 Q. And am I correct that -- well, actually, the
11 government has invoked national security privilege over this,
12 the identity of that U.S. person who was present?

13 A. Yes.

14 Q. Okay. And then there's another foreign -- if I'm
15 correctly understanding the notation, another foreign
16 individual who was redacted as well, correct?

17 A. That's how I -- I did not redact this, but that's how
18 I read that, yes.

19 Q. Okay. And the interview took place in a foreign
20 country?

21 A. Yes, it did.

22 Q. Okay. And so back to the question of how you found
23 the witness. It was probably through some sort of official

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1 channels; is that fair to say?

2 A. Liaison, yes, some ----

3 Q. Liaison.

4 A. Yes.

5 Q. And you would agree that with the -- with this
6 information under national security privilege, the -- it would
7 be exceptionally difficult, if not impossible for me, as an
8 attorney, to replicate this investigation, to find this person
9 and interview them?

10 A. I don't know that to be the case. It may be, but I
11 don't know it to be the case.

12 Q. Well, sir, how should I find them if I don't know who
13 they are?

14 A. Well, I'm confident that you could conduct liaison in
15 foreign countries. I'm under the belief that defense teams
16 have conducted liaison in foreign countries.

17 So I don't know how -- like once you conducted that
18 liaison, how you would go about doing that, but whether it's
19 through a Defense attaché or traveling and speaking with
20 people from that foreign government. I don't know -- I don't
21 know what the capabilities are.

22 But again, I -- I understand that the defense teams
23 likely have traveled overseas. So to the best of my

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1 estimation, you may be able to speak to members of a foreign
2 government and see if they're willing to work with you.

3 That's supposition, but I -- other than that, I don't know.

4 Q. How would I find this witness?

5 TC [MR. GROHARING]: Objection, Your Honor. It's ----

6 MJ [Col COHEN]: Basis?

7 TC [MR. GROHARING]: Relevance and argumentative and
8 speculative -- calls for speculation.

9 LDC [MR. CONNELL]: Sir, if I can respond.

10 MJ [Col COHEN]: If you may.

11 LDC [MR. CONNELL]: Sir, with respect to relevance, part
12 of the scope of this hearing is the interference with defense
13 investigation by initially Protective Order #4, but more
14 recently, in the past week, an invocation of numerous
15 additional elements of national security privilege, including
16 the revelation that the government believes that anything that
17 it redacted from a document in a 505 process -- not that this
18 document went through a 505 process, I don't think -- but is
19 an invocation of national security privilege.

20 Last week, counsel expressed shock and surprise that
21 I would believe that the orders limiting discovery would do --
22 would not also limit -- would -- that I didn't understand
23 those to be a blanket assertion of national security privilege

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1 over everything that was under redactions.

2 The -- what I am trying to -- we have like an actual,
3 super-experienced investigator here on the stand. My
4 questions are aimed at what effect does the government
5 limitations on defense information and investigation have.

6 With respect to argumentative, it was a question. I
7 wasn't arguing with the witness. I'm just asking my
8 questions.

9 MJ [Col COHEN]: I'll overrule it, Counsel. I'll allow
10 you a little leeway along these lines. To the extent of --
11 yeah. I'll allow it. You may rephrase the question. You're
12 also welcome to lead the witness, if you choose to do so.

13 LDC [MR. CONNELL]: Sure.

14 MJ [Col COHEN]: Given the colloquy, why don't you go
15 ahead and at least re-ask a question or at least a similar
16 question.

17 LDC [MR. CONNELL]: Yes, sir. I'll rephrase the question
18 as the court instructs.

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

20 **CROSS-EXAMINATION CONTINUED**

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

22 Q. Sir, would you agree that it is easier to locate a
23 known witness than an unknown witness?

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1 A. Yes.

2 Q. Okay. And why is that?

3 A. A known witness, you can look up, presumably, on the
4 Internet, domestically, try to find their address and go talk
5 to them.

6 Q. It's much more -- it is possible to find unknown
7 witnesses, but it's much more resource intensive, wouldn't you
8 agree?

9 A. I would agree.

10 Q. It requires a sort of blanket search for any person
11 who, you know, might have a particular sort of information,
12 correct?

13 A. It could. It would depend on the circumstances.

14 Q. Sure. All right. I'd like to move on to the use
15 that you made of this information from this search.

16 The -- we have talked about -- you talked about
17 yesterday 1B numbers, right?

18 A. Yes.

19 Q. And you made reference to K numbers, although you
20 didn't completely explain them. But K numbers are numbers
21 assigned by the laboratory in addition to 1B numbers, correct?

22 A. 1B numbers, to the best of my knowledge, would not be
23 assigned by the lab.

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1 Q. That's probably a poor question.

2 1B numbers are assigned serially?

3 A. Yes.

4 Q. And K numbers are assigned by the lab?

5 A. That's -- at least initially -- if there's a
6 correction that I need to make, I'll advise you, sir, but
7 that's a good description of it, at least for now.

8 Q. Okay. And so yesterday -- Monday and yesterday you
9 testified about the ComTech Certificate of Achievement?

10 A. I did.

11 LDC [MR. CONNELL]: The Court's indulgence.

12 Sir, I'm going to be referring to AE 502SS
13 Attachment XX. But you don't have to look it up. I'm going
14 to show it to you, Special Agent. That's just for the benefit
15 of counsel. Which includes -- which is the letterhead
16 memorandum for Mr. al Baluchi as well as its attachments. So
17 if I can just move my paper. And I'm at page 547 for counsel.

18 May I have access to the document camera, Your Honor?

19 MJ [Col COHEN]: You may.

20 LDC [MR. CONNELL]: Although this document is marked LES,
21 this is the same document that has already been approved for
22 counsel to show yesterday.

23 MJ [Col COHEN]: All right. Trial Counsel, are we good?

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1 TC [MR. GROHARING]: We have it, sir.

2 MJ [Col COHEN]: Okay. Thank you. Please proceed.

3 LDC [MR. CONNELL]: May I have permission to display it to
4 the gallery?

5 MJ [Col COHEN]: You may.

6 Q. All right. So, sir, at LHM-547 within AE 628SS
7 Attachment XX, that's the ComTech certificate that you
8 testified about earlier?

9 A. Yes, it is.

10 Q. All right. And it has a 1B number of 2280?

11 A. I would have to verify, sir, but ----

12 Q. Okay.

13 A. I don't recall it being 2280, but -- I just don't
14 have it in front of me.

15 Q. That's okay.

16 You testified earlier to its K number, 3311?

17 A. Yes.

18 Q. Okay. This -- this document was seized, allegedly,
19 by foreign partners in the raid of the location purportedly
20 associated with Mr. Hawsawi's house; is that correct?

21 A. Yes.

22 Q. This wasn't found by the FBI in the later search?

23 A. No, it was not.

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1 Q. And this is a document that you showed to
2 Mr. al Baluchi during your interrogation; is that fair?

3 A. Yes.

4 Q. Sir, I'd now like to show you at -- same exhibit, but
5 LHM-548, a letter from Lucent Technologies. Do you remember
6 this, testifying about this document?

7 A. Yes, I do.

8 Q. And the -- this is a document that you showed to
9 Mr. al Baluchi in the interrogation?

10 A. Yes, it is.

11 Q. And this is a document that was delivered to the FBI,
12 not one that they found -- that the FBI found in its search,
13 correct?

14 A. My understanding of this document is it -- again, my
15 understanding is it came into the possession of Special
16 Agent Piro, and was not a result of the later FBI search.

17 Q. It's, in fact, listed on one of those raid documents
18 we referred to earlier, correct?

19 A. Yes.

20 Q. Okay. And at the same exhibit, LHM-550, is a
21 document which you previously testified about as a CV of
22 Mr. al Baluchi. Do you recall that?

23 A. Yes, I do.

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1 Q. And you showed that document to Mr. al Baluchi as
2 part of his interrogation?

3 A. Yes, I did.

4 Q. And the -- there are two documents that were called
5 CV, right, that you showed Mr. al Baluchi?

6 A. I think there were two copies. I don't recall if I
7 showed both to him.

8 Q. Okay.

9 A. But I believe there were two copies.

10 Q. Two copies of the same document?

11 A. That's my understanding, sir, yes.

12 Q. All right. And this document was delivered to the
13 FBI, not seized by the FBI; is that fair to say?

14 A. Again, regarding how the actual evidence went from
15 the foreign government to Special Agent Piro, I would leave it
16 to Special Agent Piro, but this was not the June 2002 FBI
17 search.

18 Q. Okay. There was also a receipt from the
19 U.A.E. Exchange Centre that was seized in that search or --
20 excuse me. Let me ask the question a different way.

21 Is there any other evidence that you used during your
22 interrogation that was obtained by Special Agent Piro in the
23 way that you've described?

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1 A. I believe the item you're talking about is the ID
2 card, the employment card.

3 Q. And that is found at LHM-551. Is that the document
4 you're referring to, sir?

5 A. Yes, it is.

6 Q. The Jebel Ali Free Trade Zone Authority employment
7 card?

8 A. Yes.

9 Q. And that was a document that you showed to
10 Mr. al Baluchi during your interrogation of him, right?

11 A. Yes.

12 Q. And that was a document that was obtained by a
13 foreign partner by Special Agent Piro, correct?

14 A. Yes.

15 Q. And not a document that the FBI obtained in any
16 search, correct?

17 A. Correct.

18 Q. The -- are there any other documents that you showed
19 Mr. al Baluchi during the interrogation that were obtained by
20 Special Agent Piro?

21 A. I believe there's also a copy of the passport.

22 Q. A copy of the passport, which is found at LHM-553.

23 I'll show you this document, sir.

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1 A. Yes.

2 Q. Is that the document to which you're referring?

3 A. Yes.

4 Q. And I think it has another -- at 554, it has another
5 piece to it, correct?

6 A. Yes.

7 Q. The -- that is a document that you showed to
8 Mr. al Baluchi?

9 A. Yes, it is.

10 Q. It's a document that was obtained by Special
11 Agent Piro?

12 A. Yes.

13 Q. And it's not a document that was obtained by the FBI
14 in a search?

15 A. In the -- in the June 2002 search, correct.

16 Q. All right. Sir, done with that chapter, moving on to
17 the next chapter.

18 In -- on or about 28 March 2002, a man named Zayn
19 Husayn, or Abu Zubaydah, was captured. Are you familiar with
20 that?

21 A. Yes.

22 Q. When did you personally hear of Abu Zubaydah's
23 capture?

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1 A. I -- it was some time -- I -- maybe I'll estimate,
2 maybe six months or more after that. It was a significant
3 amount of time, in my mind.

4 Q. All right. Done with that chapter. Now I'd like to
5 move forward to the period of time around 10 to 12
6 September 2002.

7 A. Okay.

8 Q. Okay. Where were you physically during that period
9 of time?

10 A. To the best of my recollection, I was on a temporary
11 duty assignment down in -- either in D.C. or in Virginia, but
12 likely having something to do with preparing for the
13 prosecution of Moussaoui.

14 Q. Okay. And you testified previously that when
15 Mr. Binalshibh was taken into custody on or about
16 11 September 2002, you knew right away?

17 A. Yes.

18 Q. How did you know right away?

19 A. One of my colleagues related it to me.

20 Q. And what colleague was that?

21 A. I don't recall, sir.

22 Q. Okay.

23 A. An FBI colleague.

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1 Q. Okay. And the -- in a general sense -- and this will
2 mostly come from another witness, but in a general sense, the
3 FBI participated in collecting or transporting evidence in
4 Karachi; is that right -- related to these raids?

5 A. Although I was not involved in that, that is my
6 understanding, yes.

7 Q. Okay. And you've seen the green sheets from that
8 collection?

9 A. Yes.

10 Q. Okay. The -- in addition to Mr. Binalshibh, is it
11 your understanding that Abdul Rahim Rabbani was taken into
12 custody?

13 A. I know that now. I don't know when I learned that.

14 Q. Okay. And same question with respect to Ahmed
15 Rabbani.

16 A. Again, I know that now. I'm not exactly sure when I
17 learned that.

18 Q. Okay. And same question with respect to
19 Mr. Mohammad's children.

20 A. Khalid Shaikh Mohammad's children?

21 Q. Yes.

22 A. Again, I learned that at some point. I don't know
23 when.

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1 Q. Okay.

2 A. I shouldn't say taken into custody. I heard about
3 them. I don't know precisely what their disposition was, but
4 I heard that his children were present at the time of arrest.

5 Q. Okay. And what did you hear about -- what did you
6 hear about it?

7 A. I -- I'm trying to recall. His children were there.
8 I don't know -- I really don't know. I just -- the main thing
9 that I sort of took away from it was there were kids there,
10 and I don't know precisely what happened, like what their
11 disposition was, but I heard there were children present.

12 Q. Okay. And you told us both on Monday and yesterday
13 that you had access to detainee reporting regarding
14 Mr. Binalshibh, from this period of time?

15 A. In roughly late 2002, yes.

16 Q. The -- and you explained to us that's because certain
17 Secret level reporting was uploaded into the ACS system?

18 A. Yes.

19 Q. Without giving any specifics, what was the general
20 topics of the reporting?

21 A. I -- other than my recollection of them being
22 interviews, interrogations of Mr. Binalshibh, I don't -- I
23 don't recall the substance of them.

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1 LDC [MR. CONNELL]: Okay. The court's indulgence for one
2 moment?

3 MJ [Col COHEN]: You may.

4 LDC [MR. CONNELL]: Your Honor, the -- the paralegals were
5 so efficient that they got the stuff into my binder without me
6 even knowing about it, so ----

7 MJ [Col COHEN]: Okay. No problem.

8 LDC [MR. CONNELL]: ---- just a shout-out to them.

9 Q. And into your binder, too, sir. May I direct your
10 attention to AE 628NN?

11 A. Yes, sir. One moment.

12 LDC [MR. CONNELL]: Sir, may I have a moment to show this
13 to Mr. Harrington before I display it?

14 MJ [Col COHEN]: You may.

15 Q. Sir, have you had the opportunity to look at 628NN?

16 A. I found it. I have not reviewed it. It's Bates
17 stamp ending in 460?

18 Q. Yes, sir.

19 A. If you will give me a moment to read it, sir?

20 Q. Of course.

21 A. Okay. I've read that, sir.

22 Q. Without asking you whether you sought this precise
23 document, is this the sort of reporting that you obtained in

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1 late 2002?

2 A. I would expect so, yes.

3 Q. And some of it related to connections -- alleged
4 connections between Mr. Binalshibh and Mr. Moussaoui?

5 A. Yes.

6 Q. And this is an example of that?

7 A. Yes, it is.

8 Q. Okay. So when you received reports like this -- and
9 I understand maybe not this specific report, but when you
10 received reports like this in ACS, is this what they looked
11 like?

12 A. They may have, sir, yes.

13 Q. So a similarity between what you saw and this
14 document is that it has -- that it's in all caps, for example?

15 A. Yes.

16 Q. Okay. Did the documents that you saw also have dates
17 on them?

18 A. I expect that they did.

19 Q. And so -- and they had header information, like
20 distribution information?

21 A. Yes. I would expect so, yes.

22 Q. Including the -- the agency who was doing the
23 reporting?

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1 A. Yes.

2 Q. And the agencies to whom the documents were
3 distributed?

4 A. Yes.

5 Q. And because this is Secret level reporting, these are
6 analytical products as you've described which are intended for
7 wider distribution within the intelligence community, correct?

8 A. I don't know that I would describe it as an
9 analytical product. It may well be one. I don't know
10 precisely how they were created. So I would -- I would simply
11 say that I don't know if I would term it as an analytical
12 product, but these are -- something like this would be
13 disseminated within the intelligence community.

14 Q. Okay. And the -- when disseminated within the
15 intelligence community, these were, for example, not being
16 sent just to you?

17 A. No.

18 Q. No. These are distributed to a wide variety of
19 consumers of intelligence within the intelligence community,
20 correct?

21 A. That's fair to say, yes.

22 Q. And the header information of those different
23 agencies who are consumers would typically appear on the

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1 cable, correct?

2 A. To the best of my recollection, yes.

3 Q. Okay. And in addition to the date of the report,
4 there's often a line for DOI, or date of information, to
5 orient the reader, correct?

6 A. Yes.

7 Q. Okay. And it would also generally provide, maybe
8 within -- within a time period within a month, information
9 about when the underlying detainee reporting was obtained,
10 correct?

11 A. I sort of look at that as the same as the date of
12 information, but I may have misinterpreted that.

13 Q. Okay. All right. So after September 2002, you were
14 detailed to Guantanamo Bay; is that right?

15 A. Yes.

16 Q. Okay. And when did you travel to Guantanamo Bay?

17 A. Approximately October 2002.

18 Q. Okay. When in October? Early, late, middle?

19 A. I don't exactly know. I'd say middle, but I don't
20 exactly know.

21 Q. Okay. So let me orient you a little bit.

22 On or about 26 September 2002, there was a big
23 distinguished visitor meeting at -- at Guantanamo -- or

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1 distinguished visitor visit, I suppose. Was that over by the
2 time you arrived?

3 A. I'm not sure what you're referring to, sir.

4 Q. All right. So Alberto Gonzales, David Addington, Jim
5 Haynes, John Rizzo, and Michael Chertoff all came to
6 Guantanamo at the end of September 2002 to discuss
7 interrogations at Guantanamo. Was that event over by the time
8 you arrived?

9 A. Yeah. That's the first time I'm aware of that.

10 Q. Okay. So at the time you went to Guantanamo, you
11 were still part of the PENTTBOM team?

12 A. Yes.

13 Q. And you were still working on the Moussaoui
14 prosecution, correct?

15 A. Yes.

16 Q. And there was one major detainee at Guantanamo at
17 that time who was suspected of direct involvement in the 9/11
18 conspiracy, correct?

19 A. I know who you're referring to, I believe, yes.

20 Q. Muhammad al Qahtani?

21 A. Yes.

22 Q. Is it fair to say that Muhammad al Qahtani was a
23 focus of your work while you were here?

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1 A. Yes.

2 Q. Now, there was a period of time prior to your arrival
3 at Guantanamo when the FBI had primary custody of Muhammad al
4 Qahtani. Do you know that?

5 A. I'm aware of that, yes.

6 Q. And would the dates between 27 July 2002 and
7 19 September 2002 sound accurate to you?

8 A. I really have no idea of the dates, sir. I know the
9 FBI had primacy in interviewing/interrogating him, I don't
10 know the dates.

11 Q. All right. Let me help you out.

12 Sir, you know that the Office of the Inspector
13 General of the Department of Justice did an investigation of
14 the situation with Mr. Qahtani in the fall of 2002, correct?

15 A. Yes.

16 Q. Okay. And have you ever read that document?

17 A. I have not. I -- let me correct that. I may have
18 seen it, I may have read parts of it. I don't think I've read
19 the entire document.

20 Q. There's a couple of paragraphs that are about the FBI
21 and the time that you were there. That's probably the part
22 that you read, right?

23 A. I don't recall, sir. I'd have to see the document.

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1 Q. Oh, okay. Sure. Let me get you some.

2 If I could direct your attention, sir, in the binder
3 to AE 628FF.

4 A. I have it here.

5 Q. All right. The -- sir, I'll represent to you that's
6 FBI -- that's Chapter 5 of the OIG investigation report.

7 A. Okay.

8 Q. The public, unclassified version.

9 A. Yes.

10 Q. And Chapter 5 is entitled "FBI Concerns About
11 Military Interrogation At Guantanamo Bay"?

12 A. Yes.

13 Q. Yes. Okay.

14 I'm not going to ask -- it's a substantial document.
15 I'm not going to ask you to review all of it, but if you have
16 a specific question or need orientation, I can maybe point to
17 you a specific piece.

18 A. Okay.

19 Q. In -- I can point you to page 80 for the question
20 that you asked.

21 A. Okay.

22 Q. "The OIG concludes that the FBI learned in mid July
23 of 2002 about al Qahtani's connection to the September 11

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1 attacks."

2 Do you agree with that statement?

3 A. I think that's fair, yes.

4 Q. And that's because an INS agent who had refused
5 al Qaeda entry into Orlando sent information to the FBI; is
6 that correct?

7 A. The way I understood it, sir -- and this may be
8 incorrect, but the way that I understood it was Mr. al Qaeda
9 attempted to come to the United States in roughly August of
10 2001. He was interviewed by the INS inspector. The INS
11 inspector denied him entry. He took fingerprints and
12 photographs of him. Mr. Qaeda was then removed from the
13 United States, sent back home.

14 The September 11 attacks occur, and this part is -- I
15 don't know for certain -- I understand that fingerprints --
16 the fingerprints that were taken back in August of 2001, were
17 during -- sometime during the summer of 2002, matched with the
18 Guantanamo-taken fingerprints of Mr. al Qaeda.

19 That's how I understood that to happen. That may not
20 be correct. That's how I understood that identification to
21 begin to be made.

22 Q. That makes sense.

23 Okay. And so in -- they have the date here, July

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1 27th, of his transfer, sort of change of custody. And it was
2 Special Agent Soufan who had the primary lead on the
3 interrogation in -- before you got there in that period of
4 time; is that fair to say?

5 A. Okay. I knew that Mr. Soufan spoke with him, but,
6 yes, that's fair.

7 Q. Okay. And just to bring us up to date, the --
8 Mr. al Qahtani had been captured -- after he was deported, as
9 you explained, or removed, he was captured in December 2001
10 and transferred to Guantanamo. Does that sound right to you?

11 A. That sounds right, yes.

12 Q. And when you arrived in October of 2002, where was
13 Mr. al Qahtani being held?

14 A. I don't know if I know specifically or I don't recall
15 where he was being held. I understood that he was in military
16 custody, meaning the FBI no longer was the primary
17 interrogation agency of Mr. al Qahtani.

18 Q. Okay. And what was -- what was your role? What was
19 your assignment?

20 A. I went down there to speak to Mr. al Qahtani. When I
21 got there, it was made clear that the military was
22 interrogating him, so I did not interrogate him. I believe I
23 later spoke with him, I'm estimating now, in roughly November

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1 of 2001; but when I initially got there in October -- excuse
2 me, it must have been November of 2002. I think I misspoke.

3 Q. Yes, November 2002.

4 A. So, but when I originally got there in October of
5 2002, because the military was interrogating him, I was not
6 able to speak with him.

7 Q. Okay. So when you arrived in October 2002, on --
8 I'll represent to you on 2 October 2002 is when the -- is when
9 CIA Counterterrorism Center Chief Counsel Jonathan Fredman,
10 was meeting with DoD regarding the interrogation of
11 Mr. al Qahtani. Were you a part of that meeting?

12 A. No.

13 Q. That's the meeting at which it was famously said, "If
14 the detainee dies, you're doing it wrong"?

15 A. I did not participate that and did not hear that.

16 Q. Okay. And then from the 2nd to the 10th of 2002, JTF
17 170 personnel interrogated Mr. al Qahtani. Is that the period
18 during which you arrived?

19 A. Again, sir, my recollection is when I got to
20 Guantanamo, he was in -- the Department of Defense was the
21 primary agency interrogating him, so I did not have access to
22 him.

23 Q. Okay.

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1 A. So I -- when precisely that was, I don't know. If
2 there's a document to refresh my recollection, I'm happy to
3 take a look.

4 Q. Okay. I do have some documents. They're not as
5 precise as that. So when I get -- that's why I'm kind of
6 trying to figure this out. Once I get to a precise date, I'll
7 orient you as to that.

8 A. Thank you.

9 Q. In addition to the Office of Inspector General
10 Report, there's -- there was an Armed Services -- Senate Armed
11 Services Committee inquiry into this series of events in 2009.
12 Are you familiar in a general way with that?

13 A. In a general way, yes.

14 Q. The Senate Armed Services Committee Report has
15 references to a number of FBI e-mails that were exchanged by
16 agents who were on Guantanamo at that time.

17 A. Okay.

18 Q. I'll represent that to you.

19 What FBI agents were on Guantanamo at the same time
20 as you who had some relationship to Mr. al Qahtani? I'm not
21 asking about people who had nothing to do with al Qahtani,
22 they were doing something else, but other people who had --
23 whose duties included Mr. al Qahtani.

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1 A. I don't know of agents like -- I'm trying to explain
2 this specifically. So my role when -- I understood when I
3 went down there, I was going to speak to al Qahtani. When I
4 arrived on island, essentially I found out that was bad
5 information, military was going to -- or was interrogating him
6 and that I don't have access to him.

7 So I don't know that other agents at that time were
8 specifically assigned to al Qahtani. I do recall speaking
9 with James Clemente and Thomas Neer, they were both FBI
10 agents. They were there as part of the Behavioral Analysis
11 Unit. So to the best of my understanding, they're not there
12 to interview or interrogate Mr. al Qahtani. I know I spoke
13 with them during that time.

14 To answer your specific question, sir, I don't know
15 any other agents who were specifically designated at that time
16 to interview Mr. al Qahtani. Now, there may have been someone
17 that either I'm not recalling or I don't know, but that's the
18 best of my recollection.

19 Q. I understand, sir. And just so I can make sure that
20 I understand, what would be the proper form of address for
21 Mr. Clemente and Mr. Neer, if it's not special agent?

22 A. Well, they are special agents.

23 Q. They are special agents. All right.

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1 A. That's correct.

2 Q. So Special Agent Clemente and Special Agent Neer were
3 there with the behavioral analysis unit to support
4 interrogation, not to conduct it themselves; is that right?

5 A. That's probably fair to say.

6 Q. Okay.

7 A. And that's -- I would say that not necessarily of
8 Qahtani, but in general terms.

9 Q. In general, sure. Okay.

10 So was there a -- did you have a supervisor on
11 island? Was there a supervisory special agent?

12 A. There was an FBI supervisor.

13 Q. And who was that?

14 A. I don't recall, sir. They rotated in and out fairly
15 frequently.

16 Q. Okay. Were you a part of any -- so I'll represent to
17 you on 2 October 2002, a thing which is generally described as
18 the BSCT Memo came out, which was the Behavioral Sciences
19 Consulting Team and their initial plan for interrogation of
20 Mr. al Qahtani. Does that sound familiar?

21 A. I've heard of BSCT from back in those days. I don't
22 believe I was on island on 2 October ----

23 Q. Okay.

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1 A. ---- again.

2 Q. And then throughout the course of October, there's a
3 series of meetings to discuss the military side interrogation
4 of Mr. al Qahtani. Were you a part of any of those meetings?

5 A. I'm trying to recall. I know I was at a meeting with
6 Special Agent Clemente and Special Agent Neer, with members of
7 the Department of Defense. It was a large meeting. And
8 trying to -- it's even difficult to remember exactly what was
9 discussed, but in general terms, it would be al Qahtani.

10 Q. Okay.

11 A. So like I don't know -- I know that there was -- in
12 speaking with Special Agents Clemente and Neer, there was
13 reluctance on their part to have the FBI involved in the
14 military interrogation.

15 Q. All right. And that's because in sort of the
16 institutional view of the FBI and of CITF, the military
17 investigation was both overly harsh and not effective. Is
18 that a fair summary?

19 A. I don't know if effectiveness was assessed at that
20 time. I know that FBI and the Criminal Investigative Task
21 Force disagreed with the interrogation techniques.

22 Q. Okay. So, sir, if I could direct your attention to
23 the binder which is in front of you labeled 628S.

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1 A. Yes.

2 Q. And if I could direct your attention to Tab G,
3 Attachment G.

4 A. One moment, sir.

5 Okay, sir. I'm at AE 628S. I see tabs A, B, C, D,
6 and E, Echo, and then the next tab I have is K.

7 Q. Okay. I will make that easier by ----

8 LDC [MR. CONNELL]: May I have access to the document
9 camera, please?

10 MJ [Col COHEN]: You may.

11 Q. Sir, this is a document released under the Freedom of
12 Information Act relating to a memorandum regarding -- dated
13 31 October 2002, regarding the relationship between CITF and
14 FBI at Guantanamo Bay.

15 A. Okay.

16 Q. Have you seen this memo before?

17 A. I may have, sir. I'd have to review.

18 Q. Sure. Take a moment. Can you read it at all? I can
19 zoom in a little bit.

20 A. No. Yes, sir, I can read it. Thank you.

21 Sir, I've read this. I may have read it before, but
22 I don't think so. I don't have a specific recollection of it.

23 Q. Okay. All right. The -- how long were you at

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1 Guantanamo?

2 A. Roughly about two months, and this is in the 2002
3 time frame. Roughly from October, and I left before
4 Christmas.

5 Q. Okay. So October to December?

6 A. Yes.

7 Q. Okay. The -- at any of those times was -- so you
8 said when you got there, you were the only special agent who
9 was detailed to work on Mr. Qahtani's case -- or assigned to
10 work on Mr. Qahtani's case, is that right? Because you
11 expected ----

12 A. I'm the only one that I know of. Like, as maybe
13 better context, there were a number of agents who were also
14 down there at Guantanamo -- or down here at that time at
15 Guantanamo interviewing other detainees.

16 Q. Right.

17 A. So there may have been another agent on island who
18 had been -- and again, at this time I understand that the
19 Department of Defense was the primary agency interrogating
20 Mr. al Qahtani. What I'm trying to say is there were other
21 agents. I don't know if anyone of them were assigned to Mr.
22 al Qahtani. I know that I was specifically looking to speak
23 with him.

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1 Q. Okay. The -- when at that point -- when did the --
2 so you said that when you got there, you couldn't interview
3 Mr. al Qahtani because he was being interviewed by the
4 military. When did the military stop interviewing him?

5 A. I'm not precisely sure.

6 Q. Uh-huh.

7 A. I know that I -- as I previously mentioned, I
8 interviewed him in roughly November 2002 at the Navy brig. So
9 that interrogation was done by that time, but I'm not sure
10 exactly how long they interrogated him.

11 Q. Wait a minute. You interviewed him at the brig?

12 A. Yes.

13 Q. When did you interview him at the brig?

14 A. My recollection is November 2002.

15 Q. Okay. So after he was done at Camp X-Ray or wherever
16 he was before, he was transferred back to the brig?

17 A. All I can say, sir, is my recollection is I spoke to
18 him at the Navy brig here at Guantanamo in, rough estimate,
19 November of 2002.

20 Q. Okay. Now, is it fair to say that at this time in
21 October of 2002 there was a difference of opinion among those
22 concerned at Guantanamo over what approach to take with
23 Mr. al Qahtani?

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1 A. Yes.

2 Q. Okay. And in general, how would you describe the --
3 that difference of opinion? I mean, what were the sides?

4 A. The FBI endorsed a -- what we would call a
5 rapport-building approach, where you go in there and talk to
6 the detainee, see if you can find common ground and see what
7 traditional law enforcement approaches worked.

8 The military at that time, as I understand it, had a
9 different program where it involved things like sleep
10 deprivation, so you keep up -- a person up for 18 or 20 hours
11 and speak to them. But I don't know all of the details of the
12 military, but obviously there's a significant distinction in
13 the two styles.

14 Q. Right. And at the very beginning of November of
15 2002, there was a change of command of JTF 170. Do you recall
16 that? It went from Major General Dunlavey to Major
17 General Miller.

18 A. That sounds about right, sir. I don't have -- I
19 recall there being Dunlavey there and I recall Miller being
20 there, so that sounds about right.

21 Q. And Major General Miller sided with the harsher side
22 of that debate; would you agree?

23 A. I presume so, sir. I have no direct knowledge of

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1 that.

2 Q. Okay. And so at some point, the -- and so at that
3 time, early November 2001, who was the supervisory
4 special agent?

5 A. Again, we're talking 2002, sir?

6 Q. 2002, excuse me.

7 A. So again, as I think I previously testified,
8 supervisory special agents for the FBI presence at Guantanamo
9 changed. They came in and out. I don't recall who was there
10 at that time. If you have names to refresh my memory, maybe
11 that will spark something.

12 Q. Okay. Do you remember any of the supervisory special
13 agents during your time there?

14 A. In 2002?

15 Q. Yes.

16 A. In general terms possibly a guy named Thomas, but
17 again, if you had names, I might be able to refresh my memory.

18 Q. Is that first name or last name Thomas?

19 A. I believe first name.

20 Q. Okay. At some point during this time, in November of
21 2002, you had access to reporting from -- or you and other FBI
22 special agents had access to the reporting from -- detainee
23 reporting from Mr. Binalshibh for some couple of months by

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1 that point, right, month and a half, six weeks?

2 A. Yes. That's probably fair, yes.

3 Q. And that detainee reporting seemed to be of fairly
4 high quality. It had good information -- or had valuable
5 information in it?

6 A. It appeared to be valuable.

7 Q. Okay. And at some point an idea came up regarding
8 possibly transferring Mr. al Qahtani to the custody of the
9 people who were holding Mr. Binalshibh. Do you recall that?

10 A. I -- that may have occurred, sir. That's not
11 something I had any direct involvement in.

12 Q. Okay. You're the special agent for Qahtani. Who
13 would it have been, if it wasn't you, sir?

14 A. I was the special agent for Qahtani in a very
15 transitory sense. When I traveled down to Guantanamo for my
16 assignment on the Moussaoui prosecution team or PENTTBOM team,
17 however you want to term that, the words -- the understanding
18 was, "Hey, Qahtani's talking. Go down and talk to him." So
19 my role when I got to Guantanamo was to attempt to interview
20 Mr. al Qahtani.

21 It became apparent as soon as I got on the ground he
22 was not in FBI control. The Department of Defense was doing
23 their interrogation against him. So to imply that I had like

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1 a level of ownership over the Qahtani case at that time is
2 probably not accurate.

3 Q. All right. Let me ask the question a different way.

4 I'm going to read you this. If you want to read the
5 full context, it's in AE 628FF. I'm at page 93.

6 "The FBIHQ GTMO Task Force has discussed the
7 following proposed strategy with representatives of the
8 Department of Justice, FBI investigators, FBI-BAU, with" --
9 redacted -- "and with DoD-OASD (SOLIC). Additional further
10 debriefings of AL-QATANI at GTMO are unlikely to result in
11 actual intelligence. As long as AL-QATANI remains in law
12 enforcement or military custody, he does not at this time pose
13 a continued threat to U.S. interests."

14 If the -- and I'll represent to you the plan that is
15 being discussed is possible transfer to a different agency.
16 If the "FBI investigators" doesn't refer to you, to whom does
17 it refer?

18 A. I don't know, sir. May I read the area that you just
19 spoke of?

20 Q. Of course. It's page 93. The relevant part starts
21 on 92.

22 A. Thank you.

23 Sir, I don't know who they're referring to. And in

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1 looking at this, I don't -- it's -- it is inconsistent with my
2 recollection.

3 Q. All right. Sir, I'm going to ask you another
4 question, but -- and I'm drawing from information which is on
5 page 94 ----

6 A. Yes.

7 Q. ---- beginning of the first full paragraph. An
8 e-mail -- it refers to an e-mail dated 14 November 2002, sent
9 by the commander of CITF to Major General Miller. Do you see
10 that?

11 A. One moment, sir.

12 MJ [Col COHEN]: Where are you at on the page, Counsel?

13 LDC [MR. CONNELL]: Right -- I'm sorry. Right in the
14 middle, first full paragraph, "An e-mail dated November 14,
15 2002."

16 A. One moment, sir.

17 Okay, sir. I read that paragraph.

18 Q. Okay. And here's -- my first question is: Did you
19 interview al Qahtani before or after 14 November 2002?

20 A. I -- I'd have to look at the 302, sir. I have no
21 idea.

22 Q. Did you prepare a 302?

23 A. I believe so.

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1 Q. Okay. The e-mail states, "... FBI in particular has
2 made several requests thru DoJ to allow them to execute a plan
3 where #63 would be taken to alternate locations..."

4 Were you familiar with that plan, sir?

5 A. No.

6 Q. I've moved to page 95. I am in the third full
7 paragraph. The paragraph begins, "However, both." Do you see
8 it?

9 A. Yes, I do.

10 Q. Okay. Sorry. You're fixed on the microphone, I
11 think, now.

12 Do you see where I am, sir?

13 A. Yes, I do.

14 Q. Okay. Reading the third full sentence, "Both the FBI
15 Unit Chief and Nahmias" -- which is an alias -- "told the OIG
16 that their belief that" -- redacted -- "approach would greatly
17 enhance al Qahtani's productivity was based not on any
18 familiarity with the specific interrogation techniques that
19 had been used on Zubaydah, but instead on the quality of the
20 intelligence the CIA was providing to the FBI and DoJ from
21 high value detainees in CIA custody."

22 Do you see that?

23 A. Yes. I'm just going to re-read that again for my

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1 benefit, sir, if you ----

2 Q. Of course.

3 A. ---- will allow me.

4 Okay, sir. I've read that.

5 Q. Okay. To your knowledge, the only reporting which is
6 being provided to the FBI and DoJ from high-value detainees in
7 CIA custody at this time, fall of 2002, is that with respect
8 to Mr. Binalshibh; is that correct?

9 A. That's my recollection, yes.

10 Q. Okay. And when the reference -- when the OIG Report
11 refers to the FBI Unit Chief, who would they be talking about?

12 A. I can speculate. They could be talking about -- we
13 had a Military Liaison Detainee Unit, MLDU. That could be the
14 unit chief. That's -- that would be my best guess.

15 Q. Okay. And who -- who was the unit chief. What was
16 their identity?

17 A. I have no idea, sir.

18 Q. Okay. The -- I'm farther down on the page. I'm on
19 the last sentence.

20 A. Yes.

21 Q. "The FBI Unit Chief said he wanted Al-Qahtani to be
22 in an environment " -- redacted -- "with native Arabic
23 speakers, where he would be 'drinking tea' instead of eating

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1 'MREs,' and where he would let his guard down," which
2 continues on to page 96. Do you see that?

3 A. Yes, I do.

4 Q. Did you ever hear any person express an opinion like
5 that?

6 A. I'm just going to re-read this, sir, to make sure I
7 understand it accurately.

8 In general terms, sir, I think what that is
9 representing is what I would call a softer rapport-building
10 approach. So in that sense, I -- I understand that. I don't
11 know that I have -- and I don't believe I have specific
12 knowledge of this conversation or of this statement; but to
13 characterize it, it appears to be a rapport-building approach.

14 Q. All right. In a different location with native
15 Arabic speakers?

16 A. That's what is stated here, yes. Let me see here.

17 "In an environment," so I don't know if that means in
18 a different place of Guantanamo or off Guantanamo.

19 Q. Okay. Well, I can help out there, but -- I'm not
20 going to ask you to characterize this document.

21 What my real question is: Did you hear anyone who
22 might be described as unit chief or another person ever
23 express a similar idea? Not we should be using softer

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1 techniques, but rather that a different custodian would be
2 able to get better intelligence?

3 A. I don't recall that, sir. What I can advise is
4 around that time, October of 2002, there were lots of
5 different -- there's FBI, specifically in the person of me. I
6 went down there to interview Mr. al Qahtani. I know that the
7 Department of Defense obviously was doing their interrogation
8 program.

9 I had heard, in sort of like a general sense, people
10 had the idea of moving al Qahtani, and I don't know if they
11 were intending moving within Guantanamo or off. So I am aware
12 that conversations were being had. I don't recall the
13 substance of who made them and specifically what they were
14 advocating.

15 Q. Okay. What did you hear about the idea of moving
16 Mr. al Qahtani?

17 A. In general terms, I -- my understanding of the
18 military interrogation was they wanted to move him someplace
19 within Guantanamo, but I don't really understand more than
20 that.

21 Q. All right. I'm going to move forward in time, but I
22 just want to finish up the information about Mr. al Qahtani,
23 and then we'll come back chronologically.

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1 In December of 2017, you testified as to when you
2 became aware that Mr. al Hawsawi had been captured. Do you
3 recall that?

4 A. I know I was asked that question, but yes.

5 Q. So I can orient you specifically. You have the
6 Fitzgerald binder in front of you, and it's at page 17797.

7 A. Yes, sir. One moment, please.

8 Okay. I have page 17797 in front of me.

9 Q. Okay. And do you see at the -- close to the bottom
10 of the page where there is -- excuse me just a moment.

11 Do you see where Mr. Ruiz asked, "In terms of
12 Mr. al Hawsawi's capture, at what point did you become aware
13 that Mr. al Hawsawi had been captured?"

14 A. One moment, please, sir. "In terms of
15 Mr. al Hawsawi's capture." Yes, I have that, sir.

16 Q. Okay. And at that time you answered, "I would
17 speculate to say sometimes within a couple of months after his
18 capture." Do you recall that?

19 A. Yes. And then I say, "I don't think I knew
20 contemporaneous but I have no specific recollection."

21 Q. Right. And then you're asked again, "No specific
22 recollection of the specific date?"

23 A. Yes, I see that.

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1 Q. Okay. And then after that, you answered, "Correct.
2 I'm guessing sometime like -- as a contrast, when
3 Mr. Binalshibh was captured in 2002, I knew almost right away.
4 I don't recall when I learned that Mr. al Hawsawi was
5 captured."

6 Yes, that was your answer?

7 A. Yes, correct.

8 Q. And then you were asked, "I think you said it was
9 maybe within a few months afterward?"

10 A. Yes.

11 Q. And you answered, "I'm speculating to say sometime
12 within that time frame. I don't recall when I learned he was
13 captured."

14 A. Yes.

15 Q. All right. And then after that testimony, Mr. -- and
16 I'll direct you to page 17809. All right. The -- you gave
17 the answer at 17809, "At some point, I became aware that U.S.
18 authorities were speaking with him, but I was unclear as to
19 exactly who was detaining him or what the circumstances of his
20 detention were."

21 Do you recall that answer?

22 A. Yes.

23 Q. Okay. Is that answer -- was that answer accurate?

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1 A. It was accurate to the best of my ability at that
2 time, sir. As I think I mentioned before, I had no
3 preparation for any of these questions, and these were outside
4 the scope of my direct testimony, so I was answering the best
5 that I could at that time from the stand, cold. So it's ----

6 Q. Okay.

7 A. ---- the best I could do.

8 Q. I'm not impugning your integrity at the time of your
9 answer. I'm actually asking: Is it accurate now? Is that
10 true?

11 A. I don't know, sir, because I didn't research as to
12 when I actually knew when Mr. ----

13 Q. This question is not about when. This question is
14 whether you knew who was detaining Mr. al Hawsawi or what the
15 circumstances of his detention were.

16 A. At some point, I knew, sir.

17 Q. Okay. And how long after -- so you can agree that
18 Mr. al Hawsawi was captured on 1 March 2003, correct?

19 A. Yes. That sounds right, yes.

20 Q. How long after that -- now that you've had an
21 opportunity to reflect, how long after that did you know of
22 Mr. al Hawsawi's detention by the CIA?

23 A. I don't know, sir.

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1 Q. Okay. So you just testified that at some point you
2 became aware who was detaining him?

3 A. Yes.

4 Q. And how long after, a year, three years ----

5 A. What I'm trying to say, sir, is I don't know. I had
6 difficulty before I was trying to estimate. I simply didn't
7 know. And if you're asking me when after Mr. al Hawsawi was
8 detained, when I knew he was in detention by the CIA, I don't
9 know specifically.

10 Q. Okay. In the next question you were asked, "Did you
11 at any point seek access to Mr. al Hawsawi?"

12 A. Yes, I see that.

13 Q. Do you recall that question?

14 And did you answer, "I believe in general terms --
15 and I'm speaking now in context of being on the PENTTBOM team,
16 that the team sought to -- access to pass questions to
17 Mr. al Hawsawi, but I don't know that they were ever passed."

18 Do you recall that?

19 A. Yes, I see that.

20 Q. Okay. Now, is that statement true?

21 A. That statement was true at the time. I know from my
22 preparation since then, that the PENTTBOM team had, in fact,
23 passed questions regarding Mr. Hawsawi.

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1 MJ [Col COHEN]: Did you use the word "had not"?

2 WIT: No, Your Honor. I -- in my preparation for this
3 testimony, I understand that the PENTTBOM team had passed
4 questions regarding Mr. Hawsawi.

5 MJ [Col COHEN]: All right. Thank you. I just wanted to
6 make sure that ----

7 Q. In fact, you did so yourself, right?

8 A. Yes, I did.

9 Q. I'd like to draw your attention to AE 628DD.

10 A. One moment, sir.

11 Yes.

12 Q. All right. And specifically page FBI-23519.

13 A. Yes.

14 Q. All right. Do you see that document?

15 A. Yes, I do.

16 Q. All right. And surely that's a document
17 Mr. Groharing went over with you in your preparation for
18 testimony?

19 A. I don't believe we reviewed this in our preparation
20 for testimony.

21 Q. Okay. Well, so the first question that I have is --
22 all right.

23 So this document is dated -- and we have very

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1 specific classification guidance on this, so -- this document
2 is dated 3 April 2002. Do you see that?

3 A. Yes, I do.

4 Q. Okay. So that's essentially one month and two days
5 after Mr. al Hawsawi's capture, would you agree?

6 A. Yes.

7 Q. Okay. This document appears on what is labeled a
8 Communication Message Form. Do you see that?

9 A. Umm.

10 Q. Look at the letterhead.

11 A. Yes, I see that.

12 Q. Okay. And you told us yesterday that you weren't
13 familiar with an organizational or Communication Message Form?

14 A. That's -- that's not a term that I have seen for this
15 document.

16 Q. You haven't seen it for this document?

17 A. No. Like -- I call this a cable. So when you called
18 it a Communication Message Form, that was -- it was just not a
19 term that I was used to.

20 Q. Okay.

21 A. Not a term I was familiar with.

22 Q. All right. If you wouldn't mind flipping to the
23 second-to-the-last page of the document, which is

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1 MEA-FBI-23527.

2 A. Yes.

3 Q. All right. And do you see it says "Drafted by"?

4 A. Yes.

5 Q. Whose name appears there?

6 A. That's my name.

7 Q. And then after that it has a colon?

8 A. Yes.

9 Q. And some initials?

10 A. Yes.

11 Q. Whose initials are those?

12 A. Those are my initials.

13 Q. Okay. Does that mean that you were the drafter of
14 this document?

15 A. Yes.

16 Q. Now, the -- there's a "from" line -- if you turn back
17 to the beginning of the document at 23519, there's a "from"
18 line that says from director of the FBI or "DIR FBI." Do you
19 see that?

20 A. Yes.

21 Q. And that's because this document was sent from --
22 organizationally from the FBI, correct?

23 A. Yes.

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1 Q. And then underneath that, it has another line where
2 it says, "To: CIA, Washington, D.C.," right?

3 A. Yes.

4 Q. Okay. And that's because this document is being sent
5 to Washington, D.C.

6 A. Correct.

7 Q. I mean, to the CIA?

8 A. Yes.

9 Q. Yes. Okay. And then after "DIR FBI" is a redaction.
10 Do you see that?

11 A. Yes.

12 Q. Okay. Now, without telling me specifically for this
13 document, in general, what would follow the "to" line of --
14 from FBI -- the "from" line, rather?

15 A. I'm actually not sure, sir.

16 Q. Okay. Do you see that above the date -- do you see
17 the date on the page?

18 A. Yes.

19 Q. There's a redaction box in the upper left-hand corner
20 of the page. Do you see that?

21 A. Yes.

22 Q. What would ordinarily -- what sort of information
23 would appear on one of these forms above the date?

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1 A. Possibly a code word.

2 Q. Code word for the classification or code word for the
3 investigation?

4 A. I would term it as a code word for the investigation.

5 Q. All right.

6 A. But I -- I don't have a specific recollection, but
7 it's likely it would have been something like that.

8 Q. And investigations get code words to allow the
9 analysts or the people receiving the information to associate
10 information together when it comes; is that right?

11 A. That may be the case, sir. It's -- this is --
12 it's -- that's not something that I would do, but, I mean,
13 that -- that -- it may well be the case.

14 Q. All right. But if -- are you saying that someone
15 else would have put the code word on here?

16 A. No.

17 Q. Okay.

18 A. I guess what I'm saying, sir, is like how other
19 people use it, I'm not exactly sure.

20 Q. I'm really just asking about you, sir.

21 A. Okay.

22 Q. So you might put a code word on such a document so
23 that, when there were an answer, for example, or other

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1 information related to it, you could associate that -- those
2 pieces of information together?

3 A. In this case, sir, it was simply like the form of the
4 cable that was sent. My understanding of it was I had to
5 include that code word to get it to the right people.

6 Q. Okay. And who were the right people?

7 A. In this case, the CIA.

8 Q. And the right people were, in fact, the people
9 holding Mr. al Hawsawi, not just anybody in the CIA?

10 A. Yes.

11 Q. Okay. There's a redaction box at the top of the page
12 in the middle.

13 A. Yes.

14 Q. What sort of information would appear there? Not the
15 specific information here, but what sort of information would
16 appear?

17 A. I don't know, sir. I'd have to see the original.

18 Q. You and me both.

19 The -- and there's a box to the right, in the upper
20 right-hand corner. What sort of information would appear
21 under that redaction?

22 A. Again, sir, I don't know. I'd have to see the
23 original.

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1 Q. Okay. Now, you testified earlier about the "to" line
2 to the CIA. Right under that is a redaction. What sort of
3 information would normally appear under the "to" line but
4 above the classification?

5 A. Uncertain, sir. Obviously, it's a small redaction.
6 I would expect there to be additional distribution there, but
7 I don't know what that's for.

8 Q. Okay. And under the classification is the line
9 "cite." Do you see that?

10 A. Yes.

11 Q. Okay. Now, without telling us what's under this
12 particular redaction, what in general goes in the "cite" line
13 of one of these forms?

14 A. A number.

15 Q. A number. And what kind of number is that -- what
16 does that number represent?

17 A. Typically, as I recall, a number and a date, to give
18 the document specificity.

19 Q. All right. And that's serialized. So, for example,
20 in these cables it's -- there's frequently a six-digit number,
21 right, which gives the two day -- a two-digit date, the exact
22 time that it was sent, a month, and then a year, which allows
23 it to be distinguished from other documents, correct?

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1 A. That's a fair representation, sir. I haven't seen it
2 in a long time. That seems in accordance with my
3 recollection, but I don't have specific knowledge as to
4 precisely how they create those numbers. But that seems to be
5 a fair recollection of it.

6 Q. Okay. And then under the "cite" line is the "pass"
7 line?

8 A. Yes.

9 Q. And what does the "pass" line represent, in general
10 terms?

11 A. Who it should go to.

12 Q. Okay. Who it should go to.

13 So on this example we have "CTC," which stands for
14 Counterterrorism Center, right?

15 A. Yes.

16 Q. And then we have a slash and "UBL," right?

17 A. Yes.

18 Q. And that stands for the Usama bin Laden Unit within
19 the Counterterrorism Center, right?

20 A. Yes.

21 Q. And then there's the word "for"?

22 A. Yes.

23 Q. And then there's a redaction?

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1 A. Yes.

2 Q. And typically what would appear under that redaction
3 is the -- some individual or perhaps a smaller administrative
4 subsection; is that right?

5 A. To the best of my recollection, yes.

6 Q. Yes. And if I were to ask you to whom you addressed
7 this document, who you wanted it passed, you would not be able
8 to answer because of classified -- because of national
9 security privilege; is that correct?

10 A. Mostly because I don't remember. But if I did
11 remember, it would likely be protected in a public forum, yes.

12 Q. In a public forum only?

13 A. Well, I ----

14 Q. Wouldn't this be a CIA -- sir, let me ask it a
15 different way. Wouldn't this be a CIA officer, right? CIA
16 officers work at the UBL Unit at the Counterterrorism Center?

17 A. Yes, sir, that's my presumption. I guess what I'm
18 saying is, as far as the definition of national security
19 privilege, what I am unclear of from right now is whether or
20 not you can't know that at all or you can know it in a
21 classified setting. I don't know.

22 Q. Okay. So in your meetings with Mr. Groharing, he
23 didn't brief you on the system that the court had set up to --

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1 for invocation of national security privilege?

2 A. He did provide a classification guidance thing, I
3 just don't have a specific recollection of that.

4 Q. Okay. All right. In general -- because the general
5 subject of this is unclassified, though not, perhaps, not the
6 specific words, but in general, the subject of this cable
7 is -- or this requirement is request to ask questions of
8 Mr. al Hawsawi about Mr. al Qahtani. Would you agree with
9 that?

10 A. Yes. Yes.

11 Q. And so there are paragraph marking within this
12 document, some are unclassified and some are not; fair to say?

13 A. Yes.

14 Q. Okay. At this point I'm only going to be asking you
15 about the unclassified paragraphs. Do you understand?

16 A. I understand.

17 Q. Okay. So in the first -- bottom paragraph of
18 page 23519, you wrote that, "Saudi National Maad Muhammad
19 Al-Qatani, A.K.A." -- different spelling of Al-Kahtani --
20 "attempted to interview -- attempted the enter the U.S.
21 through Orlando International Airport on 8/4/2001."

22 A. Yes.

23 Q. Okay. And so there you're providing information --

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1 background information to the CIA about Mr. al Qahtani, the
2 subject of your inquiry?

3 A. Yes.

4 Q. And then skipping to the bottom paragraph on
5 page 23520 ----

6 A. Yes.

7 Q. ---- so the next page, you provide information about
8 calling card activity that you believed linked Mr. al Qahtani
9 to Mr. al Hawsawi, correct?

10 A. In general terms, yes.

11 Q. And then if you'll turn two pages to page 23522.

12 A. Yes.

13 Q. The first full paragraph begins with the word
14 "Finally"?

15 A. Yes.

16 Q. Okay. And you provide additional information about
17 physical evidence that the FBI had regarding an itinerary
18 of -- that Mr. al Qahtani had with them, right?

19 A. Yes.

20 Q. Okay. Now, if you'll turn to the next page, which is
21 23523.

22 A. Yes.

23 Q. At the bottom of the page, you write, "FBI requests

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1 that the following questions be posed." Correct?

2 A. Yes.

3 Q. And then the first question that you asked is
4 classified?

5 A. Yes.

6 Q. But then the -- on the next page, you write -- and
7 I'm right in the middle of the page -- as a proposed question,
8 "What is your procedure/policy for making operational
9 telephone calls? (Use of payphones, use of pre-paid calling
10 cards, use of cell phones, etc.)"

11 A. Yes, I see that.

12 Q. Just so we're 100-percent clear, that was a question
13 that you wanted the CIA to pose to Mr. al Hawsawi to -- to
14 assist in your investigation of Mr. al Qahtani?

15 A. Yes.

16 Q. The next question that you posed is: "Where did
17 Al-Kahtani purchase his ticket to travel to the U.S.? (DNATA,
18 D-N-A-T-A, Travel, Sharjah, U.A.E.)"

19 A. Yes.

20 Q. That's another question that you wanted the CIA to
21 pose to Mr. al Hawsawi?

22 A. Yes, I did.

23 Q. The next question is: "Why did Al-Kahtani use DNATA

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1 Travel to purchase his ticket to the U.S.?"

2 A. Yes.

3 Q. And that's another question you wanted the CIA to
4 pose to Mr. al Hawsawi, correct?

5 A. Yes.

6 Q. Underneath that: "Who is 'Mustafa B' at DNATA
7 Travel?" Do you see that?

8 A. Yes.

9 Q. That's another question you wanted posed?

10 A. Yes.

11 Q. If you will turn to the next page, which is 25 --
12 excuse me, 23525.

13 You asked the question: "Who is Cedric at" -- I
14 think it was supposed to be DNATA Travel?

15 A. I think that's a separate travel agency.

16 Q. Oh, I'm sorry. Then let me be clear about that.

17 "Who is Cedric at S-N-T-T-A Travel?"

18 A. Yes.

19 Q. And you asked the question, "Did Muhammad al Qahtani
20 get visas to any other countries other than the U.S.?"

21 A. Yes, I see that.

22 Q. And in that situation, you actually provide the
23 answer, right? You provide ----

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1 A. Yes, I do.

2 Q. ---- the answer, "al Qahtani got a German visa at the
3 German embassy in Riyadh."

4 A. Correct.

5 Q. So in that situation, you weren't actually seeking
6 information, necessarily, you were providing a confirmation
7 question by which the CIA could tell if Mr. al Hawsawi was
8 giving truthful answers to your questions, correct?

9 A. And seeking information and also providing context,
10 yes.

11 Q. So then you asked: "Why did al Qahtani travel to the
12 U.S. on August 4th, 2001?"

13 A. Yes.

14 Q. And then you asked: "Who did al Qahtani travel
15 with?"

16 A. Yes.

17 Q. You asked: "Who was to meet al Qahtani in the U.S.?"

18 A. Yes.

19 Q. You asked: "Why were they meeting?"

20 A. Yes.

21 Q. You asked: "Why did al Qahtani get a German visa?"

22 A. Yes.

23 Q. You asked: "Who helped and advised al Qahtani how to

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1 fill out a U.S. visa application?"

2 A. Yes.

3 Q. You asked: "Who got al Qahtani's U.S. visa for him
4 and how?"

5 A. Yes.

6 Q. You asked: "Why did Muhammad al Qahtani get a new
7 Saudi passport?"

8 A. Yes.

9 Q. And then you provided orienting information prior to
10 getting his U.S. visa?

11 A. Yes.

12 Q. And then you asked: "What was al Qahtani supposed to
13 do in the United States?"

14 A. Yes.

15 Q. Turning the page to 23526 ----

16 A. Yes.

17 Q. ---- you asked the CIA to interrogate Mr. al Hawsawi
18 to, quote, describe all contact you had with al Qahtani?

19 A. Yes, I asked them to ask that question.

20 Q. And then you asked them to ask the question, "When
21 was the last time you saw Muhammad al Qahtani?"

22 A. Yes.

23 Q. You asked: "Who did al Qahtani associate with?"

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- 1 A. Yes.
- 2 Q. "Where did al Qahtani train?"
- 3 A. Yes.
- 4 Q. "What courses did he take?"
- 5 A. Yes.
- 6 Q. "What do you know about the following phone numbers?"
- 7 A. Yes.
- 8 Q. And then you give a specific phone number?
- 9 A. Yes.
- 10 Q. 5456877?
- 11 A. Yes.
- 12 Q. Another phone number, 054270727?
- 13 A. Yes.
- 14 Q. 4424418 and 44209655?
- 15 A. Yes.
- 16 Q. And you asked: "Who else applied with al Qahtani for
- 17 a U.S. visa?"
- 18 A. Yes.
- 19 Q. And "Who else knows al Qahtani?"
- 20 A. Yes.
- 21 Q. In these questions, you outline a comprehensive
- 22 series of information that you suspected Mr. al Hawsawi might
- 23 have about Mr. al Qahtani?

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1 A. Yes.

2 Q. And your expectation was that -- at this time you
3 knew that the CIA was holding Mr. al Hawsawi, right?

4 A. Yes.

5 Q. And your expectation was that the CIA was going to
6 interrogate Mr. al Hawsawi and obtain answers to your
7 questions?

8 A. Maybe not obtain answers, but ask the questions.

9 Q. Okay. How did you expect to find the answers?

10 A. It was always difficult for me to get responses from
11 the CIA. I -- I didn't consider them very responsive. So I
12 may get a reply. I may not.

13 Q. I know. But if you got a reply, how would you get
14 it?

15 A. I can't recall getting many replies. Other people
16 who had better access to the system -- and when I say that,
17 like, I have people who are able to access cables, CIA cables,
18 statements of the detainees, if they recognized it and got it
19 to me, but it was a very much informal process. In many of
20 these cases, I don't recall receiving answers.

21 Q. Okay. Did you receive an answer in this case?

22 A. I don't recall. I may have. I don't recall.

23 Q. Okay. Let me refresh your recollection.

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1 LDC [MR. CONNELL]: Sir, Your Honor, I have -- I'll point
2 you to AE 628GG. And I'm conscious of the time, sir.

3 MJ [Co] COHEN]: Okay. I just don't want to cut you off.

4 LDC [MR. CONNELL]: I have about five more minutes and I
5 think we'll be at a great stopping place.

6 MJ [Co] COHEN]: Okay. Thank you.

7 LDC [MR. CONNELL]: Sir, I have -- I will tell you that
8 when I reviewed AE 628GG, I realized that its instructions
9 stated that it should be read in conjunction with a different
10 Bates number. So for purpose of completeness, I would like to
11 add those -- put those two Bates numbers together so that
12 we're giving a complete document.

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

14 LDC [MR. CONNELL]: I'll hand a copy to the government,
15 just so they're -- and I'll take care of the administrative
16 part of that at the break.

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

18 Q. All right. Sir, do you see AE 628GG?

19 A. Yes, I do. It appears to be a memo?

20 Q. Okay. And -- I'm sorry, a memo?

21 A. Okay. I was looking at a different one. Okay.

22 That's Bates number ending in 1143?

23 Q. Yes, sir.

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1 A. Yes, all right.

2 Q. You told us earlier that these kind of all-caps
3 cables are the sort of material that you are familiar with
4 with detainee reporting?

5 A. Yes.

6 Q. The -- at 628GG, the -- skipping over the information
7 about being read in conjunction, but the first clause states,
8 "During a custodial interview conducted in early 2003." Do
9 you see that?

10 A. Yes.

11 Q. Now, when you saw that, you told us earlier that
12 normally it would have more date information than that, but
13 that's the way that we have it. Do you understand?

14 A. I understand.

15 Q. All right. And this cable, read in conjunction with
16 its colleague, provides answers to your questions, wouldn't
17 you agree?

18 A. Would you let me review the rest of the ----

19 Q. Take all the time you need.

20 A. Thank you.

21 MJ [Col COHEN]: Mr. Connell, and counsel in general, just
22 a reminder: When you are moving back and forth, which you may
23 do, please try not to speak when you're not near a microphone

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1 that is hot. It will make the court reporters -- I just want
2 to make sure they can capture everything that we say.

3 LDC [MR. CONNELL]: Thank you.

4 MJ [Col COHEN]: You're welcome.

5 LDC [MR. CONNELL]: Your Honor, in fairness to the
6 witness, there are about three pages that he might want to
7 read. If you are inclined to break, that would be fine and we
8 can just pick up here when we get back.

9 MJ [Col COHEN]: That will be fine.

10 Sir, if you would like to take that, those documents
11 with you and review, I don't think counsel will have an
12 objection to that. You're welcome to take those with you
13 during the lunchtime.

14 We'll be in recess until 1400.

15 [The R.M.C. 803 session recessed at 1239, 18 September 2019.]

16 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1408,
2 18 September 2019.]

3 MJ [Col COHEN]: The commission is called to order. I
4 apologize to the parties for my tardiness. It was beyond my
5 control.

6 Mr. Connell, before we proceed, I need to address
7 with respect to Ms. Bormann. Mr. Bin'Attash is currently not
8 present. Is that a voluntary decision on his part?

9 LDC [MS. BORMANN]: Of course. He wouldn't be able to get
10 out of here without it, so yes.

11 MJ [Col COHEN]: I understand. Any objection to me
12 finding that he has knowingly and voluntarily waived his right
13 to be present this afternoon?

14 LDC [MS. BORMANN]: We would stipulate to it.

15 MJ [Col COHEN]: All right. Thank you. I will make that
16 finding, then, at this point.

17 LDC [MR. HARRINGTON]: Excuse me, Judge?

18 MJ [Col COHEN]: Mr. Harrington.

19 LDC [MR. HARRINGTON]: Unfortunately at lunchtime,
20 Ms. Cline was attacked by a stairway and hurt her knee, so she
21 has gone to the hospital, so she will not be joining us today.

22 MJ [Col COHEN]: Thank you, sir, I appreciate it. I hope
23 she gets well soon. Feel free to keep me updated as to any

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1 impact that will have on your team.

2 Any other modifications? Otherwise, it appears that
3 we have Mr. Binalshibh, Mr. Mohammad here in the courtroom,
4 and the teams appear to be present as were previously present.

5 All right, Mr. Connell, your witness. Thank you.

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

7 I have two housekeeping matters for the record. The
8 first one is, Your Honor, I was advised that mistakenly
9 earlier I may have confused 502SS with 628S and combined them
10 into 628SS. So earlier when I said 628SS, I meant single S.

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

12 LDC [MR. CONNELL]: And the second is with respect to
13 AE 628GG, I had proposed before the break that we add two
14 pages to it. I am informed by the court reporters that those
15 additional two pages have been labeled
16 AE 628GG (AAA Supplement). I have provided a copy of the
17 remarked document to the witness, and will proceed according
18 to that new numbering scheme.

19 MJ [Col COHEN]: Excellent. Thank you for your updates.

20 LDC [MR. CONNELL]: Thank you.

21 **CROSS-EXAMINATION CONTINUED**

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

23 Q. And, sir, just so we can get this on the record so

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1 there's no question about it, over the break you asked me if
2 it was permissible to review the earlier cable with the
3 questions in it, and I pointed you to where that is in the
4 record; is that right?

5 A. Correct.

6 Q. Okay. And that's, in fact, where we left off is
7 talking about the relationship between the cable from the CIA,
8 and your cable. The cable from the CIA that we're talking
9 about, just so we're both clear, is now marked, the short
10 document, AE 628GG, and then the longer document is AE 628GG
11 (AAA Supplement).

12 Are you with me, sir?

13 A. I have that. Yes.

14 Q. Okay, so the -- and these are both unclassified
15 documents?

16 A. Yes.

17 Q. Yes. So referring to AE 628G [sic], the opening mark
18 is during custodial interviews in early 2003. Do you see
19 that?

20 A. Yes.

21 Q. Yes. Now, as we talked about before, this is not
22 what the documents look like when they come to the FBI
23 exactly. They have this all-caps type, but they also have

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1 headers and dates on other things similar, correct?

2 A. Yes.

3 Q. Yes. And this early 2003 is a convention applied by
4 the government to blur the dates rather than the way that you
5 would have seen the document. Do you understand?

6 A. Yes, I do.

7 Q. Okay. So what I'd like to do is to go through
8 AE 628GG with you, and I know that you had the opportunity
9 just for a few minutes there to do the same, and talk about
10 the relationship between the answers that you receive from the
11 CIA and your original questions. Do you understand?

12 A. Yes.

13 Q. Okay. So the first part of AE 628GG, following the
14 explanation of the custodial interview rough timing, is a
15 subject matter that the -- Mr. al Hawsawi made following
16 statements regarding Mr. al Qahtani, correct?

17 A. Yes, it is.

18 Q. And then the following section after that is an
19 identification of Mr. Qahtani by Mr. al Hawsawi, correct?

20 A. Yes.

21 Q. Okay. And I know that these paragraphs are not
22 broken up the way we might all wish, but after that is a
23 discussion of the procedure for telephone calls. Do you see

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1 that?

2 A. Yes.

3 Q. How he received a certain number?

4 A. Yes.

5 Q. And that's in relationship to your question about
6 what is the procedure and policy for making operational
7 telephone calls. Do you agree?

8 You ask about telephone calls; they provide the
9 answers.

10 A. It may be responsive to my cable or a different
11 cable.

12 Q. Sure. And so the next item is you -- so on your
13 cable on FBI-23524, which is AE 628 -- AE 628DD. I'll make
14 this a little easier.

15 You asked the question: "Where did Mr. al Qahtani
16 purchase his ticket for travel to the U.S.?" And then the
17 next element in the CIA cable is information about the
18 purchase of the ticket. Do you see that?

19 A. Yes, I do.

20 Q. Okay. And then moving down to the second full
21 paragraph, the -- you asked a question in your cable: "Did
22 Muhammad al Qahtani get visas to any other countries?" Do you
23 recall?

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1 A. Yes, I do.

2 Q. Okay. And the second full paragraph is -- describes
3 what visas that al Qahtani had. Do you see that?

4 A. Yes.

5 Q. Okay. And then moving down to the fourth paragraph,
6 you had asked the question -- or the questions: "Where did
7 al Qahtani train and what courses did he take?" Do you recall
8 that?

9 A. Yes.

10 Q. And the responsive information comes regarding the
11 locations of training of Mr. al Qahtani and the courses -- the
12 topics of the courses on which Mr. al Qahtani trained. Do you
13 see that?

14 A. Yes.

15 Q. So moving to page 2 of the AE 628GG (AAA Supplement),
16 the -- which is STA-357, the first full paragraph, there's
17 more discussion of training. Do you see that?

18 A. Yes, I do.

19 Q. And then you ask the question in your original cable:
20 "What was al Qahtani supposed to do in the United States?" Do
21 you see that?

22 A. Yes, I do.

23 Q. And the cable from the CIA then describes -- and this

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1 is the second half of the first full paragraph -- describes
2 what Mr. Qahtani was supposed to do in the United States with
3 respect to Mohamed Atta?

4 A. Yes.

5 Q. And then you asked the question of: "When was the
6 last time that you saw Muhammad al Qahtani? And please
7 describe all contact you had with Muhammad al Qahtani." And
8 in the second full paragraph on STA-357, it describes
9 additional contact with Mr. al Qahtani, do you see that, after
10 Mr. al Qahtani's return to Dubai?

11 A. Yes.

12 Q. And you asked the question in your cable "With
13 whom" -- or, "Who did al Qahtani travel with?" And then the
14 second -- the last part of the second full paragraph describes
15 that al Qahtani traveled alone and the circumstances behind
16 that. Do you see that?

17 A. The second full paragraph on 357?

18 Q. So -- yes. The second full paragraph begins,
19 "Hawsawi said," and then I can help you. One, two, three,
20 four, five, six, seven. And then beginning in the eighth line
21 from the bottom, "Hawsawi claimed that Qahtani went alone when
22 he traveled to the U.S."

23 Can I read you the relevant sentence, would that

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1 help, sir?

2 A. Yes, please. Thank you.

3 Q. "Hawsawi claimed that Qahtani went alone when he
4 traveled to the U.S., stating that Mukhtar and 'Ubaydah,'
5 a/k/a Ramzi Bin Al-Shibh told him Qahtani was 'the last one'
6 and was sent to 'complete the group.'"

7 A. What I have here, sir, is a little bit different.
8 This states that "Hawsawi stated that Qahtani was to
9 contact" ----

10 Q. You're in the wrong place, then. May I approach?

11 A. Yes.

12 MJ [Col COHEN]: Yes, you may.

13 WIT: Pardon me, Your Honor.

14 LDC [MR. CONNELL]: Sorry. As long as it's okay with
15 everybody.

16 WIT: Very good. Thank you.

17 MJ [Col COHEN]: Sir, have you been oriented now to where
18 counsel is referring?

19 WIT: Yes, Your Honor. I apologize.

20 MJ [Col COHEN]: No, that's fine. No need to apologize.

21 Q. And do you see now where it describes that Qahtani
22 traveled alone?

23 A. Yes, I do.

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1 Q. And then one of the questions that you asked in your
2 cable was -- the last question was: "Who else knows
3 al Qahtani?"

4 A. Yes.

5 Q. And in the bottom paragraph of STA-357, it describes
6 another person that might be familiar with Qahtani?

7 A. Yes.

8 Q. Okay. And then if you would move with me to the
9 original -- the shorter document, AE 628GG.

10 A. Yes.

11 Q. The -- one of the questions that you asked in your
12 cable was what associates -- I'm trying -- I'm looking for the
13 exact -- your exact phrasing. Ah -- "Who did al Qahtani
14 associate with?"

15 A. Yes, I see that.

16 Q. And then do you see on AE 628GG in which the cable
17 back from the CIA describes associates of al Qahtani?

18 A. Yes, I do.

19 Q. And it includes, for example, their description of
20 what they look like and their names?

21 A. Yes.

22 Q. Moving on to the next area, the -- that -- you had
23 sent that cable on 3 April 2003; is that right?

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1 A. I believe that's right. That's correct.

2 Q. Okay. I'd like to draw your attention to another
3 document which is found in AE 628DD and is numbered FBI-23540.

4 A. Sir, I don't seem to have it. 23540?

5 Q. Yes.

6 A. I have 23528 and 23573.

7 Q. Are you in DD, sir?

8 A. Yes, I am.

9 Q. Okay. I ----

10 MJ [Col COHEN]: Counsel?

11 TC [MR. GROHARING]: Mine is the same, Your Honor, if that
12 helps.

13 LDC [MR. CONNELL]: Okay. Okay. What I'll do is approach
14 counsel, show him this document, and then I'll have it marked,
15 and we'll do it that way, sir.

16 MJ [Col COHEN]: That will be sufficient. Thank you.

17 LDC [MR. CONNELL]: May I approach the court reporter?

18 MJ [Col COHEN]: You may.

19 Trial Counsel, having seen this document, any
20 objection to the use of this document?

21 TC [MR. GROHARING]: No, Your Honor.

22 MJ [Col COHEN]: All right. Counsel, you may proceed.

23 LDC [MR. CONNELL]: Thank you.

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1 MJ [Col COHEN]: You're welcome. What has it been marked
2 as, please?

3 LDC [MR. CONNELL]: Sir, it has been marked as AE 628PP.

4 MJ [Col COHEN]: Thank you.

5 LDC [MR. CONNELL]: Just for the record, one of the things
6 we've learned over the course of this is that the discovery as
7 provided by the government has improper margins for the way
8 the court reporters need it, so we will follow up with an
9 electronic version re-margined for the court reporters.

10 MJ [Col COHEN]: Perfect. Thank you.

11 LDC [MR. CONNELL]: And last thing, knowing that I usually
12 have had to do it this way, does the court want to see the
13 document before I show the witness?

14 MJ [Col COHEN]: I would appreciate the opportunity, thank
15 you. I don't have a copy either. That way at least I'm
16 oriented as well. Thank you. That's fine.

17 Thank you, Counsel.

18 Q. Sir, we talked earlier about your prior testimony in
19 December when you were asked the question whether at any time
20 you had sought access to Mr. al Hawsawi. Do you recall that?

21 A. Yes.

22 Q. Okay. And your answer was you wasn't sure, you may
23 have -- actually, let me just read it to you.

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1 "I believe in general terms, and I'm speaking now in
2 the context of being on the PENTTBOM team, that the team
3 sought access to pass questions to Mr. al Hawsawi, but I don't
4 know that they were ever passed."

5 Do you recall that?

6 A. Yes.

7 Q. Okay. Now, in fact, the situation is that the
8 PENTTBOM team sought, not merely to pass questions, but
9 actually sought physical access to Mr. al Hawsawi; isn't that
10 correct?

11 A. That may be, sir. It's not something I don't believe
12 that I was personally involved in, so it may be the case.

13 Q. Okay. You have before you AE 628PP. Would you flip
14 that document over, please?

15 A. Yes.

16 Q. Do you need a minute to review it?

17 A. Yes, I do.

18 I just skimmed it, so I may need additional access to
19 it, but I understand it.

20 Q. Sure. Sure. So that document is dated 23 April
21 2003, correct, sir?

22 A. Yes, it is.

23 Q. And like the previous document, it has a "to" line to

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1 the CIA; is that right?

2 A. Yes, it does.

3 Q. And a "from" line from FBI?

4 A. Yes, it does.

5 Q. And you testified earlier that two of the -- two of
6 the other core members of the PENTTBOM team were Special
7 Agent Perkins and Special Agent Drucker; is that right?

8 A. Yes, I did.

9 Q. Okay. Would you please flip to the last page of that
10 document, and tell me who's listed under the "drafted by"?

11 A. Yes. It states Adam Drucker and Abigail Perkins.

12 Q. Okay. And those are the special agents that you
13 mentioned earlier?

14 A. Yes.

15 Q. Without reading specific detail, that document is a
16 request for personal access by the FBI to Mr. al Hawsawi;
17 isn't that right?

18 A. Yes.

19 Q. So at that time, at least other core members of the
20 PENTTBOM team, including Special Agent Perkins, knew not only
21 where Mr. Hawsawi was being detained but also how to request
22 access to him; is that right?

23 A. Yes, it does.

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1 Q. Now, we're done with that specific document, although
2 I'll leave it there for your reference, if you choose.

3 What happened in early 2003 that you and Special
4 Agent Drucker and Special Agent Perkins now knew that you
5 could submit questions or requests to the CIA for access to
6 Mr. al Hawsawi?

7 A. What do you mean, what happened?

8 Q. I mean, how did you know? How did you know you could
9 do that?

10 A. Well, clearly, there was some sort of liaison.
11 Again, I'm talking about a point a good deal of time ago, so I
12 don't know how that was determined.

13 Again, based upon the cable that I wrote in April of
14 2003, certainly, I found out in -- I would have found out
15 probably through speaking with my colleagues how to pass
16 questions.

17 Q. So was there ever a policy?

18 A. I'm not aware of one.

19 Q. Okay. Well, let me -- let me make my answer [sic]
20 more specific, then.

21 In 2003, was there a policy?

22 A. There may have been, sir. I'm not recalling one
23 specifically right now.

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1 Q. Okay.

2 A. And again, back to your original question, how did I
3 know how to pass questions, I -- I don't recall, and it's
4 my -- my presumption would be learning from my colleagues.

5 Q. Knew how to pass questions to the CIA?

6 A. Well, obviously, after having reviewed this, I would
7 assume Perkins and Drucker. But at some point I would have
8 become aware how to submit a cable, although clearly more
9 knowledge is required what, you know, questions to ask and who
10 to direct it to and things like that.

11 So in order for me to know like who to direct it to,
12 I would have had to have talked to my colleagues, either
13 likely Perkins, Drucker, possibly Aaron Zebley.

14 Q. Okay. Sir, in December of 2017, you were asked the
15 question: "With respect to Mr. al Hawsawi, you personally did
16 not pass any of those questions?" Do you recall that?

17 A. Yes.

18 Q. And do you recall answering, "I did not"?

19 A. I'd like to read that full context, please.

20 Q. Sure. If you have that Fitzgerald binder in front of
21 you ----

22 A. Yes.

23 Q. ---- I can direct you to pages 17810 and 11, so 17810

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1 and 811?

2 A. Yes.

3 MJ [Col COHEN]: Mr. Connell, to the extent that you can,
4 can you turn your mic a little bit more towards the center?
5 That way when you are going back and forth it's more likely to
6 catch you.

7 LDC [MR. CONNELL]: Yes.

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

9 A. So I can see that part there. I would simply direct
10 you to line 6 for the question -- or even to line 3, to the
11 initial question, and my response to that to provide context
12 to this.

13 Q. All right. So let's do that. So the initial
14 question was: "But you were aware that at least some elements
15 of the PENTTBOM team had sought access or at least had sought
16 to pass questions to the team" -- excuse me, "to the people
17 who had Mr. al Hawsawi in custody, correct?"

18 I think it's on the page -- the previous page, 810.

19 A. Okay. Yes. All right. Please continue.

20 Q. And you answered to that: "Yes."

21 A. All right, sir. I was going up a little bit further
22 to -- the question was: "Okay. Let me back up a little bit."

23 Q. Okay.

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1 A. "So do you know if the FBI, your PENTTBOM team,
2 sought physical access to Mr. Hawsawi, in other words, to see
3 him in person?"

4 My response was: "That's not something I was
5 directly involved in. When he was captured, I was working
6 different matters. I know we had an interest in him, but we
7 did -- like I did not have access to him, so to the best of my
8 knowledge" ----

9 Q. Special Agent?

10 A. Yes.

11 Q. You have the same problem I do. Can you slow down a
12 little bit?

13 A. Yes.

14 I guess what I'm trying to -- to say here, sir, is I
15 was trying to answer to the best of my ability to a subject
16 that was completely cold, and not within the scope of my
17 direct examination.

18 And I stated, "No, I did not, without the benefit of
19 any review prior to this."

20 Q. Okay.

21 A. Because I can see from reviewing some of these
22 things, there are cables that I sent. But all I can advise
23 you at this point is I was answering to the best I could in

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1 December of 2017.

2 Q. I'm sure that's true, sir. It does surprise me that
3 you didn't prepare with the prosecution at all? You prepared
4 45 hours this time and didn't prepare for this testimony at
5 all?

6 A. The testimony there was specifically hijacker
7 information as it related to the enemy combatant designation.
8 I did not testify and was not intending to testify regarding
9 my participation in Mr. al Hawsawi's interrogation or my
10 preparation for Mr. al Hawsawi's interrogation, or Mr. Ali's.

11 It was raised as a question by Mr. Ruiz, if I
12 remember correctly. I believe that Mr. Ryan objected and
13 advised that was outside the scope of direct testimony, and
14 also noted that defense had not sought me as a witness.

15 So one of the issues -- one of the difficulties with
16 my December 2017 cross-examination is that it far exceeded
17 anything that I was prepared for.

18 Q. Okay. And you don't recall testifying on direct
19 examination about your interrogation of Mr. al Hawsawi and
20 what you learned from him?

21 A. Yes, I do recall that, sir. Yes.

22 Q. Okay. All right. We'll move on to the next subject.

23 So during that deployment to -- which is -- and the

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1 topic is your interrogation of Salim Hamdan on 13
2 November 2002.

3 A. Okay.

4 Q. So while you were at Guantanamo, in addition to
5 interrogating Mr. al Qahtani, you interrogated Mr. Hamdan,
6 correct?

7 A. Yes.

8 Q. And was your interrogation of Mr. al Qahtani before
9 or after Mr. Hamdan?

10 A. I'd have to look at the dates, sir. I don't recall.

11 Q. Okay. See, unfortunately, we have a date for the
12 Hamdan interrogation. We have no discovery on your Qahtani
13 interrogation, so I don't know. I can't help you to the date.
14 But I can tell you that the date of your Hamdan interrogation
15 was 13 November 2002.

16 A. Okay.

17 Q. Okay. And just a brief orientation. Mr. Hamdan was
18 taken into custody by the Army in November of 2001, near
19 Takhta Pul with -- with some others, including Sajid -- excuse
20 me Said Boujaadia, correct?

21 A. Yes.

22 Q. And at that time certain material was gathered from
23 both the people who had died in a fire fight, pocket litter

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1 from Mr. Boujaadia and Mr. Hamdan, and that material was
2 gathered, correct?

3 A. Yes.

4 Q. And there was a field interrogation of Mr. Hamdan,
5 which had been recorded by the CIA, correct?

6 A. I'm not aware of that, sir.

7 Q. Okay. The -- after that, Mr. Hamdan was transferred
8 to Guantanamo?

9 A. I know -- he certainly came to Guantanamo at some
10 point. I don't know precisely when, but.

11 Q. Sure.

12 A. Obviously, he's here.

13 Q. Before November of 2002?

14 A. Of course.

15 Q. Yeah. And so you weren't the first FBI special agent
16 to interrogate Mr. Hamdan, correct?

17 A. Correct.

18 Q. And, in fact, yours was fairly narrow. You were
19 really only interested in how it related to the 9/11
20 investigation, correct?

21 A. That's fair.

22 Q. And specifically, you were interested in the pocket
23 litter which had been gathered at the time of Mr. Hamdan's

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1 arrest, correct?

2 A. Yes.

3 Q. Specifically, there was a letter which was addressed
4 in such a way that you thought it might relate to 9/11
5 co-conspirators?

6 A. Yes.

7 Q. At that time where did you meet Mr. Hamdan?

8 A. To the best of the my knowledge -- it was one of
9 the -- I don't know if I can state it here, but one of the
10 camps here at Guantanamo.

11 Q. Okay. Was it Echo I?

12 A. It was not. If I can say, it was Camp Delta.

13 Q. Okay.

14 A. To the best of my recollection, it was in Camp Delta.

15 Q. Okay. That's all I need right there. Following your
16 guidance, that's all I need about Mr. Hamdan right there. I'm
17 going to skip some stuff and move on to the next topic.

18 And the next topic is the Moussaoui case. The -- so
19 in December of 2002, I understand that you went back to your
20 ordinary duties -- excuse me -- which at that time included
21 being one of the people responsible for the successful
22 prosecution or resolution of the Moussaoui case, correct?

23 A. Resolution, yes, whatever that happened to be.

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1 Q. Yes. The Moussaoui investigation and the -- began
2 before the 9/11 investigation, obviously?

3 A. Yes.

4 Q. All right. Because Mr. Moussaoui was arrested on
5 15 August 2001, in advance of September 11th?

6 A. I believe it was 16 August, but I could be wrong.

7 Q. Okay. And -- but after 9/11, the Moussaoui
8 investigation pretty much merged into the PENTTBOM
9 investigation, would you agree?

10 A. I would consider that a fair characterization.

11 Q. Okay. And so while you were case agent on Moussaoui,
12 that was part of your duties on the PENTTBOM team?

13 A. That's fair, yes.

14 Q. The -- so we already talked, and I'm not going to
15 talk again, about the capture of Mr. Binalshibh on -- on or
16 about 11 September 2002, that the -- you had access to some
17 reporting. But at the same time, it was fairly common
18 knowledge -- it became fairly common knowledge that
19 Mr. Binalshibh had been captured, correct? President Bush
20 mentioned it in the Rose Garden, for example.

21 A. Okay. I was not aware of that, but common knowledge
22 where I worked.

23 Q. Yeah. Okay. Well, it was common enough knowledge

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1 that, at some point, Mr. Moussaoui moved for access to the
2 witnesses -- to the witnesses that were being held by the
3 United States, correct?

4 A. Well, at some point -- looking at the case, I'm sure
5 that would have been discoverable, so -- how defense found out
6 about that, I'm not aware. But clearly some of it was public.

7 Q. Okay. And so it was in September of 2002, actually,
8 that Mr. Moussaoui moved for access to the members -- alleged
9 members of al Qaeda who were being held by the United States,
10 correct?

11 A. I don't have a specific recollection. I'm sure
12 you're referring to a document.

13 Q. Yes. I can show you the document, if you want,
14 but -- but I can also -- if you're willing to accept my
15 representation on the date ----

16 A. I am, yes.

17 Q. ---- the -- at that time Mr. Mohammad had not been
18 taken into custody, correct?

19 A. Correct.

20 Q. So the people who -- the people of investigative
21 significance who were in custody at that time were possibly --
22 at least they thought Mr. Abu Zubaydah ----

23 A. Yes.

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1 Q. ---- right, whether he actually was that significant
2 or not.

3 Mr. Binalshibh?

4 A. Yes.

5 Q. And Mr. al Qahtani?

6 A. Yes.

7 Q. At later times, after the -- after Mr. al Hawsawi and
8 Mr. Mohammad were taken into custody, they sort of got merged
9 into that litigation, correct?

10 A. Into the Moussaoui litigation.

11 Q. Into the Moussaoui litigation.

12 A. Yes.

13 Q. All right. So I'm not going to deal with them
14 separately, if that's okay, so -- but I do -- I do want to
15 walk through what happened because it's important to the
16 question of access to cables and their use in crafting
17 substitutions.

18 A. Okay.

19 Q. All right. So in -- in January of 2003, and I'll
20 represent to you it was on 31 January 2003, the Eastern
21 District of Virginia issues an order granting partial pretrial
22 access to what they called the enemy combatant witnesses.

23 A. Enemy combatant what?

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1 Q. Witnesses.

2 A. Okay.

3 Q. That's not the important part of it. The access is
4 the important part of it.

5 A. I understand. I just didn't hear that word.

6 MJ [Col COHEN]: Is your answer that you're familiar that
7 that access was granted or that -- I just want to make sure I
8 understand your answer.

9 WIT: I was not familiar that it was granted, I simply
10 accepted that fact.

11 Q. I'm sorry, that it was ordered.

12 A. Okay. I accept that fact.

13 Q. Okay. And as a case agent on the Moussaoui case,
14 that must have been a big deal. I mean, a court has ordered
15 access to people, one of whom is in Guantanamo, but the other
16 two are, you know, in places unknown to you, you've said.

17 A. Yes. That's correct.

18 Q. Okay.

19 A. Correct, that they're in places unknown to me. And
20 while I had no specific recollection of that date, obviously
21 it's been a long time, but it is a significant thing.

22 Q. Yeah. It was a significant event in the life of the
23 case?

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1 A. Yes.

2 Q. All right. And would have fallen under the purview
3 of your responsibilities to -- you know, as a person
4 responsible for successful resolution of the case, how are we
5 going to, among other -- along with the attorneys and others,
6 you would have to deal with this question of what are we going
7 to do about an order for access to witnesses, correct?

8 A. I think that overstates my role at that time. At
9 that time, again, I was an agent assigned to the Moussaoui
10 prosecution, one of, as I think I mentioned, eight, nine
11 others, and with a supervisor on the case. So an important
12 thing, but I don't think I occupied the role that you are --
13 that you're describing right now.

14 Q. Okay. Well, let's figure out, so -- there's
15 substantial -- well, I won't characterize it. There's eight
16 or nine FBI agents who are assigned to the Moussaoui
17 prosecution?

18 A. Yes.

19 Q. All right. And with significant over -- I mean, a
20 significant portion of the PENTTBOM team at that point, maybe
21 the whole PENTTBOM team?

22 A. Certainly a significant portion, yes.

23 Q. And you're the lead, you're the supervisor?

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1 A. I'm -- was not the supervisor.

2 Q. Okay. The -- who was the supervisor?

3 A. To the best of my knowledge at that time, it was
4 Joan-Marie Turchiano.

5 Q. You're not trying to tell us that you didn't have
6 anything to do with the question of access to witnesses in the
7 Moussaoui case, are you?

8 A. I'm trying to recall what my role was, if any. I
9 know the things that you're talking about.

10 Q. Okay. I'll be more specific, then.

11 A. Okay.

12 Q. So the government appeals the decision of the
13 district court. Does that sound familiar?

14 A. Yes.

15 Q. Okay. And in a sort of complicated back-and-forth,
16 eventually the Fourth Circuit orders the district court to
17 consider proposed substitutions. Does that sound right?

18 A. Yes.

19 Q. And the district court does that, finds them
20 inadequate, strikes the death penalty. Do you recall that?

21 A. Yes.

22 Q. Significant event in the life of the case?

23 A. Yes.

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1 Q. Government takes another appeal to the
2 Fourth Circuit, and while that's going on, the -- the question
3 arises of do the agents, special agents like you, and the
4 government prosecutors have any access to these witnesses. Do
5 you recall that?

6 A. In general terms, yes. I don't have a specific
7 recollection, but -- I may need additional information.

8 Q. Do you recall that, after the Fourth Circuit issued
9 its initial opinion, that Mr. Raskin had to write a letter to
10 the Fourth Circuit saying, you all think that we don't have
11 access to these witnesses but, in fact, we do?

12 A. I'm unaware of that letter.

13 Q. Okay. Did -- I will direct your attention to
14 AE 628CC -- so it's one of the binders we haven't been to in a
15 while ----

16 A. Okay. I have that binder.

17 Q. All right. And it's Attachment S.

18 LDC [MR. CONNELL]: Sir, for the convenience of the
19 military commission, I'll explain that, while it's unusual to
20 put a legal case as part of the record, the slip opinion shows
21 the size of the redactions and gives much better sense of the
22 relationship of the case than, say, a WESTLAW version which
23 just has the word "redacted" even if it's an entire page

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1 redacted.

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

3 Q. Are you there, sir?

4 A. I believe I am, yes.

5 Q. Okay. So I will turn your attention to page 8. And
6 on this slip opinion, the page numbers are in the upper left
7 hand.

8 A. Okay. I believe I'm on the right page.

9 Q. All right. And you see the letter C, "Events leading
10 to the issuance of this amended opinion"?

11 A. I do not. This is S?

12 Q. Yes, S.

13 A. AE 828CC [sic] Attachment S?

14 Q. Yes.

15 MJ [Col COHEN]: Counsel, if you would like to, if you
16 could come forward and just help him to ----

17 LDC [MR. CONNELL]: Oh, sure. Absolutely.

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

19 LDC [MR. CONNELL]: You know what? I can do this on
20 the -- I'll -- I can do it on the document camera because it's
21 an unclassified document and then I will ----

22 MJ [Col COHEN]: Good point. That will probably be best.

23 Yeah, let's go ahead and do that.

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1 LDC [MR. CONNELL]: If I can have access to the document
2 camera?

3 MJ [Col COHEN]: Put it on the screen and you may publish
4 to the gallery.

5 LDC [MR. CONNELL]: Thank you.

6 MJ [Col COHEN]: The highlighting is yours, Counsel?

7 LDC [MR. CONNELL]: The highlighting is all mine.

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

9 **CROSS-EXAMINATION CONTINUED**

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

11 Q. All right. Sir, do you see the reference to, "On
12 May 12, the government submitted a letter to the court
13 purporting to clarify certain factual matters"?

14 A. Yes.

15 Q. Okay. Do you recall the drafting of that letter?

16 A. I don't have a specific recollection of it.

17 Q. Okay. And on the next page, page 9, there's a lot of
18 redacted material, but then there's a quote from the letter.

19 LDC [MR. CONNELL]: And I'll just let the military
20 commission know, we don't have any access to this area of
21 secret law any more than anybody else. We're working off of
22 this version.

23 Q. And the letter, a portion of the quote says that,

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1 "members of the prosecution team, including FBI special agents
2 assigned to the September 11 and other related
3 investigations," and then on the top of page 10, "have
4 provided information consistent with the desire to maximize
5 their own efforts to obtain actual information." All right.

6 Does that sound familiar?

7 A. Again, the letter does not sound familiar to me. I
8 do not have a specific recollection of it.

9 Q. All right. But at this point, having reviewed at
10 least one of your cables providing information to the CIA, you
11 would agree that this is an accurate statement, that FBI
12 special agents and the attorneys who are involved have
13 provided information consistent with the desire to maximize
14 their own efforts to obtain actual information?

15 A. Yes, I would say that's consistent.

16 Q. All right. And then -- just one second.

17 At page 17?

18 MJ [Col COHEN]: Is that 17 of the exhibit, Counsel?

19 LDC [MR. CONNELL]: 17 of the exhibit.

20 MJ [Col COHEN]: Thank you.

21 Q. The court writes that -- blank -- "does not create
22 special reports for use by the prosecution; rather, the
23 prosecution and the PENTTBOM team received the same reports

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1 that are distributed to the intelligence community at large."

2 Would you agree with that statement?

3 A. Yes.

4 LDC [MR. CONNELL]: I'm done with the document camera.

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

6 Q. All right, sir. And then as a result of that
7 process, certain substitutions were created for the testimony
8 of certain absent witnesses; is that right?

9 A. Yes.

10 Q. And that was at the direction of the Fourth Circuit?

11 A. That's correct.

12 Q. The -- and those witnesses included Mr. al Hawsawi?

13 A. Yes.

14 Q. Mr. Binalshibh?

15 A. Yes.

16 Q. And Mr. Mohammad?

17 A. Yes.

18 Q. Would you agree with me, sir, that the text of the
19 substitution for Mr. Binalshibh is taken almost word for word
20 from CIA cables?

21 A. I'd have to review it and compare it, sir.

22 Certainly ----

23 Q. I can do that.

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1 A. ---- there was a relationship between ----

2 Q. I might skip over some part.

3 MJ [Col COHEN]: Okay.

4 Q. So ----

5 A. To the point, sir, it makes sense that they would
6 come from CIA cables because he was in CIA custody. So I'm
7 not disputing that.

8 I guess what I'm trying to say is I don't have an
9 immediate recollection of exactly what it said. I just wanted
10 to be clear what my recollection was.

11 Q. That makes sense. So if I understand your testimony,
12 you're saying that it would make sense that the substitutions
13 would be crafted from CIA cables because he's in CIA custody?

14 A. That's correct.

15 Q. And we're talking about Mr. Binalshibh now?

16 A. That's correct.

17 Q. Okay. And so the -- these documents, these
18 substitutions, consistent with what we just read from the
19 Fourth Circuit, are put together by the PENTTBOM team and the
20 prosecutors as substitutions for the testimony -- the
21 classified testimony; is that fair to say?

22 A. I don't know the level of involvement of the PENTTBOM
23 team. Possibly Special Agent Zebley at that time, but

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1 possibly not. I don't know.

2 My -- my belief was it was mostly by the prosecutors,
3 but I may be wrong about that.

4 Q. Okay. So the prosecutors had access to the
5 classified reporting?

6 A. I believe that they did. Again, I'm not entirely
7 sure who created those substitutions.

8 Q. Well ----

9 A. Like ----

10 Q. ---- who do you think created them?

11 A. ---- what I'm trying to say, I don't know what person
12 wrote those. I don't know. I don't know who did that.

13 Q. Okay. Who do you think did it?

14 A. I don't know. It's tough for me to speculate because
15 I just -- I don't know.

16 MJ [Col COHEN]: And, Counsel, please avoid speculation.

17 LDC [MR. CONNELL]: I ----

18 MJ [Col COHEN]: Understand. A fair question, just ----

19 Q. Would you agree, sir, that the same is true for the
20 substitutions of Mr. Mohammad; that they were -- the
21 substitutions were crafted almost word for word from CIA
22 cables?

23 A. Again, my answer would be the same. It would make

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1 sense that they come from CIA cables because he was in CIA
2 custody.

3 LDC [MR. CONNELL]: The court's indulgence for just one
4 moment.

5 MJ [Col COHEN]: You may, Counsel.

6 LDC [MR. CONNELL]: Sir -- and I'm addressing the military
7 commission here.

8 MJ [Col COHEN]: Yes, sir.

9 LDC [MR. CONNELL]: I am willing to accept that answer.
10 It seems like a decent answer. I'm prepared to go through
11 paragraph by paragraph through the substitutions to show how
12 they were drawn from the cables. If the military commission
13 wants that as a matter of proof, I'm perfectly happy to do
14 that. I'm also happy to accept your earlier guidance and move
15 forward where we seem to have substantial agreement.

16 MJ [Col COHEN]: Yeah. No, just ----

17 LDC [MR. CONNELL]: I can also do it on paper.

18 MJ [Col COHEN]: Just in general, anything you all submit
19 to me, I will -- I'll consider it. So it's very easy for me
20 to look at two documents, especially if asked by counsel,
21 and -- and compare. So I'm more than happy to just take
22 hard-copy exhibits or electronic exhibits that are submitted
23 and ask me to do just -- do that very thing.

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1 LDC [MR. CONNELL]: Yes, sir. All right. I'll move on,
2 then.

3 MJ [Col COHEN]: The other thing I'll note is that due to
4 classification, the parties will have -- not that you can't do
5 things in an unclassified setting, but in a classified filing,
6 you will have full liberty to -- to address these matters and
7 point out things and compare and contrast that you may not
8 have here in court. And sometimes having the actual document
9 in that type of a filing would assist me significantly from
10 either side.

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

12 **CROSS-EXAMINATION CONTINUED**

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

14 Q. All right, sir. I'd like to move forward to the --
15 to when Mr. al Baluchi was taken into custody.

16 A. I understand.

17 Q. Okay. Do you know when that was?

18 A. I believe end of April 2003.

19 Q. Into whose custody was he taken?

20 A. I believe he was taken into ----

21 Q. I can lead you, if you want.

22 He was taken into the custody of Pakistani
23 authorities?

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1 A. Yes.

2 Q. And if I were to ask you with more specificity about
3 the Pakistani authorities, would you have to decline to answer
4 on the basis of national security privilege?

5 A. Yes.

6 Q. The -- when did you, sir, learn of the arrest of
7 Mr. al Baluchi?

8 A. I think last time in my December 2017 testimony, I
9 estimated it was on the order of months afterwards. I
10 don't -- I don't think it was that long. I think it was not
11 long after he was -- within the first month after he was
12 captured.

13 Q. Okay.

14 A. I think the last time I estimated summer of 2003, and
15 I think it was before then.

16 Q. All right. Sir, I'd like to direct your attention to
17 a document found at AE 628CC Attachment H -- negative. I'm
18 sorry. Belay that. It is actually AE 628DD.

19 A. Okay. I have 628DD in front of me.

20 Q. And it's FBI-23753.

21 A. Okay. I have 23753 in front of me.

22 Q. All right. What is this document?

23 A. It's an electronic communication.

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1 Q. Okay. And it is -- the document as a whole is at the
2 Secret level, right?

3 A. Yes.

4 Q. And -- but there's certain unclassified elements of
5 it, and one of those is the date. What is the date of this
6 document?

7 A. The date is May 12th, 2003.

8 Q. Okay. Now, the -- this document -- the subject of
9 this document is to provide background information on and
10 questions for Abdul Aziz Ali al Baluchi as described here; is
11 that right?

12 A. I see that, yes.

13 Q. Okay. There is only one unredacted person listed
14 under the "attention" tab. Do you see that?

15 A. Yes, I do.

16 Q. And who is that person?

17 A. That's IOS Brian Antol.

18 Q. Okay. Why is the "to" line -- and this is a document
19 to the CIA, right?

20 A. I actually -- I don't know. It would ----

21 Q. Okay.

22 A. I would not expect it to be, simply because it's an
23 internal FBI document, but I would have to see the original.

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1 Q. Okay. So the -- let's review what facts we know. So
2 you've just told us end of April 2003, Mr. al Baluchi is taken
3 into custody?

4 A. Yes.

5 Q. All right. Now, when he's initially taken into
6 custody, he's interrogated by FBI, right?

7 A. I know now that an FBI agent was involved. I didn't
8 know that until much later.

9 LDC [MR. CONNELL]: May I have one quick moment?

10 MJ [Col COHEN]: You may.

11 [Conferred with counsel.]

12 LDC [MR. CONNELL]: Your Honor, I was just taking
13 advantage of your earlier invitation to consult with the
14 government.

15 MJ [Col COHEN]: Thank you.

16 Q. So I'll lead you there for a moment. Shortly after
17 his arrest ----

18 A. Yes.

19 Q. ---- in Karachi, Pakistan ----

20 A. Yes.

21 Q. ---- Mr. al Baluchi was interrogated by Special Agent
22 James Fitzsimmons, as opposed to Fitzgerald, correct?

23 A. That's my understanding.

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1 Q. And at some point in early May, he was transferred to
2 the custody of the CIA, correct?

3 A. That is consistent. I don't know that I have
4 specific information as to when he was transferred, but that
5 sounds consistent.

6 Q. But you -- you said earlier that at least by -- it
7 was a month after you ----

8 A. I think like -- as I was trying to recall, I think it
9 was fairly soon after he was captured. Again, I'm mindful of
10 my testimony in December of 2017 when I -- I knew that it was
11 some time obviously thereafter, I just couldn't recall when.
12 I think it was -- it was within a relatively short time,
13 weeks, that I was aware, possibly less.

14 Q. Would it be helpful at all to know that the
15 2 May 2003 issue of *Time* magazine included a full-page article
16 on Mr. al Baluchi's capture?

17 A. I'm sure that's helpful.

18 Q. So actually, you knew immediately?

19 A. Well, I -- you're tendering that, sir. I was giving
20 you my best recollection, and I didn't recall that news
21 article.

22 Q. Okay. But you say it was weeks before you knew?

23 A. I said -- sir, before you brought up the news

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1 article, I said to the best of my -- I was trying to nail down
2 precisely when I knew, and I knew it was fairly early on; I
3 tried to articulate that. If you're saying there was a news
4 article, then I believe you there was a news article.

5 Q. Okay. If that's accurate, would you have known? I
6 mean, you don't know less than the average reader of *Time*
7 magazine. I'm not trying to be flippant there, I'm just --
8 that's true, right?

9 A. I'm merely saying, sir, you're advising me that the
10 article came out on May 2nd. I believe you. So I would have
11 known then.

12 Q. Okay. All right. So by May 12th, the FBI is sending
13 questions for Mr. al Baluchi, right?

14 A. If you will ----

15 Q. Yes, please take a moment to review the document.

16 A. Thank you.

17 MJ [Col COHEN]: Counsel, could you remind me, I had that
18 it was AE 628DD, but I missed the attachment number. What
19 number is the attachment?

20 LDC [MR. CONNELL]: Within 628DD, it is 23753.

21 MJ [Col COHEN]: 23753. Thank you. Was there an
22 attachment that's listed, too?

23 LDC [MR. CONNELL]: No, sir.

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1 MJ [Col COHEN]: Okay. Which is fine. Like I say, mine
2 did not have, so I wanted to make sure I wasn't missing ----

3 LDC [MR. CONNELL]: Yours doesn't have this either?

4 MJ [Col COHEN]: No, I have the document. I just didn't
5 have it listed as a specific attachment.

6 LDC [MR. CONNELL]: Very good. Yes, that's right.

7 And while he's looking, I'll just tell you that
8 AE 628DD is all of the relevant FBI documents that are at the
9 Secret level.

10 MJ [Col COHEN]: Copy. Thank you.

11 LDC [MR. CONNELL]: When we get to the 802, I have a
12 solution for all of this. I have a suggestion how we could do
13 this better -- or how I could do it better, at least.

14 MJ [Col COHEN]: All right. Thank you, Counsel.

15 A. Yes, sir. It's a long document. I can see what you
16 say is correct. It is obviously from the FBI, and it does
17 pass questions.

18 Q. Okay. So since we're on the topic of whether it's
19 from the FBI, why is the "from" element of this redacted?

20 A. I have no idea.

21 Q. Okay. You told us earlier that you had some
22 involvement in the production of discovery in your time on the
23 High-Value Detainee Prosecution Task Force. Why would to/from

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1 information be redacted out of documents provided to the
2 defense in discovery?

3 A. I have no idea.

4 Q. But you can recognize this clearly as a document from
5 the FBI?

6 A. Yes, it is.

7 Q. Okay. And given that it's passing questions to the
8 CIA, or -- for the questioning of Mr. al Baluchi, who at this
9 time is in the custody of the CIA, it -- the "to" is obviously
10 to the CIA?

11 A. If you'll allow me a moment, maybe I can look through
12 the rest of the document and see exactly. There might be
13 indications who it is to other than the "to" line.

14 Q. Sure.

15 A. Okay, sir. I took a quick look, not only at the face
16 page, 23753, but also the last page, 23760, the lead page. I
17 was looking for additional information.

18 Q. Yes.

19 A. I did not see additional information regarding the
20 lead. But based upon the context of when this was written,
21 and based upon the synopsis, I can see that it was likely
22 intended for passage. So if not -- I guess what I'm saying is
23 this probably didn't go directly to the CIA, but to someone

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1 within the FBI for passage to the CIA.

2 Q. Ah, I see. I think -- I think that may crack the
3 code for me. Thank you.

4 The -- so on this, the "drafted by" is redacted. Do
5 you know, in fact, who drafted this document?

6 A. I do not.

7 Q. Okay. And the "approved by" is redacted. Who was
8 approving ECs from the PENTTBOM team in May of 2003?

9 A. It's not clear to me that this is from the PENTTBOM
10 team. It may be. Here's why I say that: Under the 00 --
11 again, some of this is still portion marked, so I'm
12 hesitant ----

13 Q. Right. I see the 00 is not ----

14 A. That strikes me as inconsistent. So if it was on the
15 PENTTBOM team, I would say it's likely either Mary Galligan or
16 Joan-Marie Turchiano.

17 Q. Okay.

18 A. Because I see that 00 is different. It could be
19 someone different.

20 Q. Okay. And with that -- you can count if you wish,
21 but would you accept my representation that this includes 73
22 separate questions intended to be put to Mr. al Baluchi?

23 A. I -- I accept that, yes.

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1 Q. Okay. And, sir, I'll turn your attention now, same
2 attachment, but this time 23855. And this is why I say you
3 may have helped us crack the code.

4 A. I see MEA-FBI-23855.

5 Q. All right. And so this document, the whole -- the
6 whole sort of top third of the page is redacted. Do you see
7 that?

8 A. Yes.

9 Q. But then right under it, it has a time and date stamp
10 in the manner that we described earlier.

11 A. Yes.

12 Q. And so it has a two-digit date code. It has
13 four-digit time. Then it has the May and 2003. Do you see
14 that?

15 A. Yes.

16 Q. Okay. And when you were talking earlier about the
17 way that these sort of things are normally time stamped,
18 that's what you mean, right?

19 A. Yes.

20 Q. And so we can tell that this document was date and
21 time stamped 21 May 2003, correct?

22 A. Yes.

23 Q. Okay. And this does have a "from" line?

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1 A. Yes, I see.

2 Q. From the FBI?

3 A. Yes.

4 Q. And then it has a "to" line?

5 A. Yes.

6 Q. Which says "R-U-E-A-I-I-A." Do you see that?

7 A. Yes.

8 Q. Do you know what that means?

9 A. I do not.

10 Q. Okay. And then after that, it says, "CIA

11 Washington, D.C."

12 A. Yes.

13 Q. Okay. So ----

14 TC [MR. GROHARING]: Objection. Judge, I just note this

15 is a classified document. I'd just like to remind

16 everyone ----

17 LDC [MR. CONNELL]: I'm not reading from anything that's

18 portion marked SECRET.

19 TC [MR. GROHARING]: Well, some of the documents don't

20 have portion -- or some of the portions are not marked.

21 LDC [MR. CONNELL]: It's also true that the government has

22 specifically told us that the to/from lines and date are

23 unclassified, and that the -- a general subject description is

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1 unclassified.

2 MJ [Col COHEN]: Counsel, is that true?

3 TC [MR. GROHARING]: Yes. I just want to remind the
4 parties. I don't know where this is going ----

5 MJ [Col COHEN]: Okay. It's not so much an objection to
6 say, hey, don't stray too far.

7 TC [MR. GROHARING]: Exactly, Your Honor.

8 MJ [Col COHEN]: I understand. So it looks like you guys
9 are in complete agreement, still. So let's just stay in the
10 general guidance that you are all agreeing to and we'll be
11 fine.

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

13 MJ [Col COHEN]: Thank you. No real objection. Nothing
14 to rule on.

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

16 **CROSS-EXAMINATION CONTINUED**

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

18 Q. And so in this document, would you accept my
19 representation that the text is essentially identical as to --
20 and this document being 855, the text is essentially identical
21 to 753? And if you want to take a moment and satisfy yourself
22 to that.

23 A. Thank you, sir.

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1 Yes, I agree.

2 Q. Okay. And would it make sense to you, sir, that
3 someone -- in document 23753, someone in the FBI had sent an
4 electronic communication to someone else in the FBI laying out
5 the text and the questions; and then in document 23855, the
6 CIA -- the FBI sends that same text and questions to the CIA?

7 A. Yes.

8 Q. All right. And that process is consistent with your
9 understanding of the way that it works?

10 A. Yes.

11 Q. Okay. And so on 21 May 2003, background information
12 and 73 questions go from the -- regarding Mr. al Baluchi, go
13 from the FBI to the CIA? Is that -- is that what you take
14 from this document?

15 A. Again, I haven't counted the questions. I accept
16 your representation -- it looks consistent to me -- between
17 the electronic communication and the item we were just
18 reviewing, 23855, beginning there.

19 Q. Okay. The -- moving forward from there, if I could
20 turn your attention to the same AE number, 628DD, FBI-23573.

21 A. Yes.

22 Q. All right. And what is this document generally?

23 A. It's a request to the CIA for fingerprints.

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1 Q. Okay. And turning to the back page.

2 A. The very last page, yes.

3 Q. Yes. Who is the drafter of this document?

4 A. I am, sir.

5 Q. Okay. And there's also basically a -- what does
6 "copy designations" mean?

7 A. Essentially who is being sent copies of this cable.

8 Q. Okay. And could you read the four persons who get
9 copies of the cable?

10 A. Yes. Ms. Turchiano; Ms. Perkins; Mr. Drucker;
11 Mr. Fitzgerald, myself.

12 Q. Okay. And when you receive a copy of this cable,
13 over what system do you receive it?

14 A. Umm.

15 Q. Or how -- I should say it a different way. How do
16 you receive it? How do you get your copy?

17 A. I really don't. So when this goes into the -- and
18 I'm going to give you my understanding of it.

19 When I'm sending a cable -- or back then, when I sent
20 a cable to the CIA, it was an arduous process to try and draft
21 it in the form in which it could be transmitted. And when it
22 was actually transmitted and went onto their system -- maybe
23 I'll start a different way.

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1 In the beginning at some point, in order for me to
2 send a cable, I had to take a hard copy along with a disc to a
3 certain area in FBI Headquarters. They would take the hard
4 copy which had been signed off on and the disc. The disc
5 would allow them, it's my understanding, to upload my cable to
6 a CIA system. So it was separate from me.

7 At some point that changed; I'm not sure precisely
8 when. But it was difficult for me to get answers back from
9 the CIA because of the separation of the systems and not
10 having ready access to a CIA system. With the caveat being if
11 they sent a response that was uploaded into ACS, then I would
12 have access to it.

13 I guess what I'm saying is if they respond within
14 their system and no one uploads it to the FBI system, I'm not
15 going to see it.

16 Q. I understand.

17 My question -- my specific question here is about the
18 copy designation.

19 A. Yes.

20 Q. Now, there's some other people who received copies,
21 right? There's redacted material under "copy designation"?

22 A. Yes.

23 Q. All right. But this is a document sent from the FBI,

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1 correct?

2 A. Yes.

3 Q. So if the FBI is copying you on the document, right,
4 it's FBI to FBI, you should receive a copy of it, correct?

5 A. But let me -- this is -- this cable is not FBI to
6 FBI ----

7 Q. I know.

8 A. ---- so ----

9 Q. But the FBI is sending a copy to the CIA?

10 A. Yes.

11 Q. Or sending the original -- or to the extent there's
12 an electronic original, but is sending the document to the
13 CIA?

14 A. Yes.

15 Q. With a copy to four listed people, correct?

16 A. The reality is that those four people don't really
17 get this unless they specifically have someone obtain it for
18 them.

19 So like -- and what I mean by that ----

20 Q. The intelligence analyst?

21 A. ---- that once this is uploaded into the FBI system,
22 if I copy -- it's actually -- it's -- I don't understand
23 really why it's done, but there's no way for them to get a

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1 copy of this document unless it's uploaded into the FBI
2 system.

3 So the routing is not automatic. Like, I understand
4 that there are copy designators there. I understand what the
5 purpose of them is. But I'm telling you, as a practical
6 matter for me on a cable that I'm sending to the CIA, those
7 copy designators really didn't help because there's no simple
8 way of these people who were receiving the copy actually
9 getting it.

10 They would have to go into a system -- now, either a
11 CIA system, or if this document were uploaded into ACS, they
12 would have to query ACS to find this document. It would not
13 be automatically routed from them. And maybe that's
14 essentially answering the question.

15 Simply because they're on a copy count on this type
16 of document does not mean that it would automatically be
17 routed to them. In my -- in my recollection and experience,
18 it was not automatically routed to them.

19 Q. Okay. But it was loaded into the case file into ACS?

20 A. I expect that it had been, yes.

21 Q. Okay. And what you told us earlier is ACS is the
22 case file, meaning you can -- anybody who wants to get
23 information from it can get information from it, at the

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1 appropriate classification level?

2 A. There were documents that were restricted based upon
3 other handling caveats ----

4 Q. All right. But ----

5 A. ---- so not everyone could get everything, but ----

6 Q. Right. But surely the author wouldn't be restricted
7 from their own document?

8 A. Likely not.

9 Q. Okay. So in this document, you request fingerprints
10 for Mr. -- the CIA to obtain fingerprints from
11 Mr. al Baluchi ----

12 A. Yes.

13 Q. ---- would you agree? Okay.

14 Why?

15 A. I wanted to compare those, the known prints, to items
16 that had been seized and see if there was a match.

17 Q. Okay. Why didn't you use the fingerprints that
18 Special Agent Fitzsimmons had taken?

19 A. I didn't know about them.

20 Q. Okay. So the -- do you not have access to materials
21 submitted to the FBI Laboratory?

22 A. I could have access submitted to the FBI Lab.

23 Q. Okay. And so when the fingerprints are analyzed, for

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1 example, from the lab under the name Ali Abdul Aziz Ali,
2 Mohammad, or Ammar al Baluchi, you don't have access to that?

3 A. I would have to ask somebody for access to it. I'd
4 have to know they exist in order to look for it.

5 Q. Okay. So you keep telling us "I would have to ask
6 someone." Who are these people who you would ask ----

7 A. What ----

8 Q. ---- for access to all of this classified information
9 that you keep asking for?

10 A. My answer is different, sir. When you're saying who
11 would you ask, I didn't know that those fingerprints existed.
12 Like at some point after this, I understood that there were
13 fingerprints. But at this point, I didn't know; otherwise, I
14 wouldn't have bothered asking for them.

15 And I had no expectation that any fingerprints were
16 taken and submitted to the FBI. And the organization that I
17 would typically check with would either be CJIS or the FBI Lab
18 making calls around to some people to have them essentially
19 run a name and date of birth and see if there was a
20 fingerprint record.

21 In this particular case, I did not believe that
22 fingerprints had been taken or submitted to the FBI, and so
23 again, it made no sense to check for something that I did not

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1 believe was there.

2 Q. Okay. What about all these other times that you say,
3 I would have to -- like the answer to the 73 questions, that
4 you would have to check with somebody. Who is the person who
5 you would check with?

6 A. When you say "check with," regarding what, sir? If
7 you could be specific.

8 Q. Sir, this is your vocabulary, so you just tell me in
9 whatever way.

10 A. Okay. Going ----

11 Q. You send off questions for Mr. al Hawsawi ----

12 A. Yes.

13 Q. ---- you -- or at least your very close colleague
14 sends off questions for Mr. al Baluchi.

15 When you are looking for answers -- and answers are
16 coming, right? There are actual answers to them. And you
17 say, if I would have access to that, I would have to check
18 with someone. Who are these people that you would have to
19 check with?

20 A. I would ask other people on the PENTTBOM team. Like
21 getting back to the specific case of the 73 questions, when
22 that reply was sent, the -- my question would be is: What
23 classification was it at? Because if it was at a

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1 classification higher than could be seen on ACS, I would have
2 to ask someone to -- with access to the CIA to go look for it.

3 Q. Okay. And you are a seasoned law enforcement
4 professional. You would -- you would do whatever you need to
5 do. You would ask whoever you need to ask, right?

6 A. Yeah. If there's something that I was looking for,
7 sure.

8 Q. Right. Like answers to the questions for
9 Mr. al Hawsawi?

10 A. These things were not -- all I can speak of is my
11 recollection, which was the information flow was difficult.

12 Q. Right. So since you're dealing with your
13 recollection, your recollection was that, in general, you
14 acted in a professional and diligent manner, I would say,
15 right? I mean, certainly that's what we've seen so far.

16 A. I've tried to.

17 Q. Okay. And that would include having gone to all of
18 this trouble of putting things in this special format and
19 getting them to the person who can send it to the CIA, that
20 would -- with access to others, and dealing with the biggest
21 case in FBI history, is what you want the military commission
22 to believe that you didn't ask the person who you had to ask
23 to get access?

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1 TC [MR. GROHARING]: Objection, argumentative.

2 MJ [Col COHEN]: I'll overrule the question -- I mean,
3 I'll overrule the objection.

4 Go ahead, answer the question.

5 A. What I understood was, when I passed anything, the
6 answer might not be forthcoming quickly. The CIA would answer
7 what it wanted, when it wanted. So I might pass something,
8 and maybe hypothetically they would respond quickly, maybe
9 not.

10 I know there was a cable that I had passed something
11 like a 20-page cable. My recollection was I asked Adam
12 Drucker, who I believe at the time was in a position to have
13 some knowledge about it, and the -- I came to understand that
14 my cable was not well received by the CIA. I don't know why.
15 I don't know if maybe they didn't like the context of the
16 questions, but it was a less formalized system.

17 Q. Did you ever receive your fingerprints that you were
18 looking for?

19 A. I did not.

20 Q. If you had received them, how would you know?

21 A. At some level, given the importance of something like
22 that, I would have expected some -- someone to reach out for
23 me. But again, this highlights part of the problem at this

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1 time, which was the CIA doesn't have to respond to me, right?
2 And they have different objectives potentially. So if their
3 priority is not fingerprints, then they just don't answer me.

4 Q. Did you call the lab to ask?

5 A. I did not.

6 Q. Did you ask Special Agent Drucker?

7 A. I may have.

8 LDC [MR. CONNELL]: Your Honor, I'm about to move to a
9 different book. If it's the right time -- it looks -- 3:25
10 looks about the right time that you have been taking breaks,
11 or I'm happy to proceed. But it's at a good break point.

12 MJ [Col COHEN]: No. Like I said, we came in here right
13 after lunch, so I think it would probably be -- there's enough
14 people in here, I'm sure someone needs a comfort break. So
15 I'll go ahead and do that.

16 We'll be in recess until approximately 3:35.

17 [The R.M.C. 803 session recessed at 1523, 18 September 2019.]

18 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1546,
2 18 September 20 19.]

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

4 LDC [MR. CONNELL]: Sir, thank you for the accommodation.

5 MJ [Col COHEN]: The parties are present. What was that,
6 Mr. Connell?

7 LDC [MR. CONNELL]: Thank you for the accommodation.

8 MJ [Col COHEN]: Absolutely. Yeah. No, we started just a
9 few minutes late. Mr. Connell, my understanding was that you
10 needed a few more minutes. Did you get what you needed?

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

12 MJ [Col COHEN]: All right. Thank you. All right. Sir,
13 still your witness.

14 LDC [MR. CONNELL]: Thank you.

15 **CROSS-EXAMINATION CONTINUED**

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

17 Q. Sir, next book that I'd like to talk about is the
18 evidence that you presented to Mr. al Baluchi in the course of
19 your interrogation. Do you understand?

20 A. Yes.

21 Q. And you testified on direct examination that it was
22 in some ways a document-driven interrogation in that you would
23 show him a document and then you would talk to him about it;

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1 is that fair to say?

2 A. Yes.

3 Q. I'd like to begin with you testified on direct
4 examination about AE 628AA Attachment BBBB, which is the box
5 for the CityBird video. Do you recall that?

6 A. Yes.

7 LDC [MR. CONNELL]: Sir, may I have access to the document
8 camera?

9 MJ [Col COHEN]: You may.

10 Q. My copy is not that great, but it gives you a general
11 idea of what we're talking about here. And when you testified
12 on direct examination, you said that it was, quote, acquired
13 overseas in Pakistan. Do you recall?

14 A. Yes.

15 Q. And you testified that it came into FBI custody on 19
16 May 2002?

17 A. I don't know if I stated 19 May 2002. I'd have to
18 check that. I may have stated that.

19 Q. Okay. We can skip over that.

20 A. Okay.

21 Q. You gave a specific date ----

22 A. Okay.

23 Q. ---- that you don't recall right now as to what

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1 its -- when it came into U.S. custody, correct?

2 A. I ----

3 Q. FBI ----

4 A. In FBI custody. Yes.

5 Q. FBI custody. All right.

6 And you would agree, sir, that the search which
7 resulted in the seizure of this document, or this box, was not
8 on that same date, correct?

9 A. Correct.

10 Q. Okay. And if I were to ask you who seized that box,
11 like as in what person seized the box, you could not answer
12 because of national security privilege, correct?

13 A. I may be able to answer.

14 Q. As to the specific person?

15 A. Yeah, I -- my understanding of -- I don't have
16 complete understanding of the raids, but my understanding was
17 there were FBI personnel present.

18 Q. At this raid?

19 A. If this is the 9/11/02?

20 Q. No.

21 A. No? Uncertain, sir. I'd have to double-check to see
22 if there were FBI person -- if there were FBI personnel
23 available, I'd be able to tell you.

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1 Q. Okay.

2 A. If it was another agency, I would not be able to say
3 the name.

4 Q. Okay. As you sit here today, you're not sure who
5 seized it?

6 A. Correct.

7 Q. You're not sure whether they're a U.S. intelligence
8 agency?

9 A. That's correct.

10 Q. Or some other country's intelligence agency?

11 A. I'm not positive, that's correct.

12 Q. All right. And -- all right.

13 So let's -- this -- you -- you told us that you
14 presented a picture of a CityBird video to Mr. al Baluchi in
15 the course of the interrogation, correct?

16 MJ [Col COHEN]: One second, Counsel. You may publish
17 this to the gallery. We've already had this exhibit admitted.
18 Thank you.

19 LDC [MR. CONNELL]: Thank you.

20 MJ [Col COHEN]: Thank you. Sorry about that interrupt,
21 but you may re-ask your question. Thank you.

22 LDC [MR. CONNELL]: That's all right.

23 Q. So you testified on direct examination that you

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1 showed him a picture of a CityBird video, not necessarily the
2 same one that was ordered or this one, but the video box,
3 correct?

4 A. Correct.

5 Q. And, sir, I'd like to direct your attention to
6 AE 628DD.

7 A. Okay. I'm at ----

8 Q. Right. And it's page FBI-23659.

9 A. I'm at MEA-FBI-23659.

10 Q. Thank you. And, sir, this is another FBI
11 requirements document, correct?

12 A. If you'll just give me a moment to review.

13 Q. Of course.

14 A. Yes, it is.

15 Q. Dated 13 January 2004?

16 A. Yes.

17 Q. From the FBI?

18 A. Yes, it is.

19 Q. To the CIA?

20 A. Yes.

21 Q. And its subject is "Questions for Mr. al Baluchi
22 regarding his role in the 9/11 attacks." Would you agree?

23 A. Yes.

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1 Q. Flipping to the back page, there is a point of
2 contact, or POC, who's listed on the back line?

3 A. Okay.

4 Q. Who is that point of contact?

5 A. It is SSA Adam Drucker.

6 Q. And would you accept my representation that there are
7 39 questions contained within this document?

8 A. Yes.

9 Q. Sir, I'd like to direct your attention to AE 628CC
10 Attachment I.

11 A. Double I?

12 Q. Double C, Attachment I.

13 A. Okay. I'm right now on MEA-STA-000011.

14 Q. All right. Can you move to STA-254, please.

15 A. Yes.

16 Q. All right. And, sir, we're going to go over this in
17 some detail in the closed session, but for purposes of today,
18 could you review the second paragraph?

19 A. Yes.

20 Q. All right. And for purposes of today, would you
21 agree that this document reflects statements by Mr. al Baluchi
22 regarding use of a credit card in -- Marwan al Shehhi's credit
23 card to purchase the flight simulator and some other

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1 materials? Would you agree?

2 A. Yes.

3 Q. And if you look at the top line, would you agree that
4 this document came from a custodial interview conducted in
5 early 2004?

6 A. Yes.

7 Q. Sir, the next chapter that I would like to talk about
8 is what you testified with respect to the Southern California
9 loop -- the Southern California transaction.

10 Let us begin with --

11 LDC [MR. CONNELL]: If I could have the feed from
12 Prosecution Table 4, please. The prosecution has kindly
13 agreed to allow me to borrow their financial presentation.

14 MJ [Col COHEN]: Trial Counsel, I will -- I like to take
15 the opportunity to thank counsel anytime. Thank you for doing
16 this, it will facilitate things significantly. Thank you.

17 LDC [MR. CONNELL]: Yeah. Do appreciate that.

18 Staff Sergeant, could you click on the August 29
19 loop, please, or tab? Oh, I'm sorry. I have that wrong.

20 Q. Which was the -- the Southern California transaction
21 is 16 April?

22 A. April 16th, yes.

23 Q. Okay. With respect to this transaction ----

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1 LDC [MR. CONNELL]: Could you publish that to the gallery,
2 please?

3 MJ [Col COHEN]: Approved.

4 Q. With respect to -- and for the record, the financial
5 presentation is AE 628AA Attachment WWW.

6 On this situation, you described a money transfer
7 from -- on 16 April 2000 from Dubai to Southern California; is
8 that correct?

9 A. Yes.

10 Q. From the Wall Street Exchange Centre?

11 A. Yes.

12 Q. And you testified that that was obtained by the FBI
13 through liaison. Do you recall?

14 A. Yes.

15 Q. And on what date was it obtained by the FBI?

16 A. I believe it was -- I know -- I believe the chain of
17 custody starts on or about April 6th of 2002.

18 Q. Okay. And that's the FBI chain of custody that
19 starts then, right?

20 A. That's correct.

21 Q. And that's because it was obtained by a foreign
22 partner?

23 A. It was -- it was obtained through FBI -- I don't know

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1 if I would call them a foreign partner or not, but through FBI
2 liaison with a foreign country.

3 Q. Okay.

4 A. I'm not trying to play semantics. I'm just trying to
5 think of the way to accurately represent it.

6 Q. Okay. And the -- if I were to ask you the person
7 from whom the document was obtained, you would not be able to
8 answer because of national security privilege; is that
9 correct?

10 A. I may be able to.

11 Q. Okay. Who -- where did they get it from?

12 TC [MR. GROHARING]: Objection, Your Honor.

13 MJ [Col COHEN]: Does that call for classified
14 information?

15 TC [MR. GROHARING]: It sounds like it might.

16 WIT: My ----

17 MJ [Col COHEN]: Okay. I tell you what ----

18 LDC [MR. CONNELL]: Sir, my understanding under -- is
19 that, in fact, the -- I'll pull out my 658 as well -- but is,
20 in fact, the government has invoked national security
21 privilege over it. I only asked because the witness said that
22 he could answer.

23 MJ [Col COHEN]: No, I understand. You're playing --

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1 you're -- playing is a bad word. You are complying with
2 the -- I was going to say playing within the rules -- but you
3 were -- didn't mean to use that euphemism. You are complying
4 with the guidance that I have provided to ask a predicate
5 question without calling for classified information.

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

7 MJ [Col COHEN]: I am going to take the government's
8 recent assertion that that did call for classified information
9 and ----

10 LDC [MR. CONNELL]: I understand, sir.

11 MJ [Col COHEN]: All right. And ----

12 TC [MR. GROHARING]: Judge?

13 MJ [Col COHEN]: Yeah, Counsel?

14 TC [MR. GROHARING]: I would just clarify, if -- I didn't
15 know what the testimony was going to be, so out of an
16 abundance of caution, I wanted to raise the issue.

17 LDC [MR. CONNELL]: May I ----

18 MJ [Col COHEN]: Great. I tell you what, why don't you
19 guys confer, and let's figure out what we -- what the bounds
20 are.

21 [Counsel conferred.]

22 MJ [Col COHEN]: Yeah, Counsel, where are you guys at?
23 Because I'm with that same general guidance that we're all

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1 talking about. Are we going into specific names or are we
2 going into ----

3 LDC [MR. CONNELL]: I think that I have nailed down the
4 distinction. Let me just try the question a little different
5 way and ----

6 MJ [Col COHEN]: Absolutely. All right.

7 **CROSS-EXAMINATION CONTINUED**

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

9 Q. Sir, so you said that -- you testified that it was
10 obtained by an FBI liaison, correct?

11 A. Yes.

12 Q. Okay. And you could testify to the name of the FBI
13 liaison, an employee of the FBI ----

14 A. Yes.

15 Q. --- that's not -- doesn't fall under national
16 security privilege.

17 A. Yes.

18 Q. But if I correctly understand it, you could not
19 testify to the name of the person that the FBI liaison
20 obtained the document from?

21 A. Here's where I have a question, sir. There are
22 certain financial representatives that I believe I may be able
23 to testify to. I would have to refresh my recollection. I

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1 don't know if those names are protected. That's what I was
2 trying to explain.

3 Q. Okay. Maybe before the closed session, you could
4 refresh your recollection.

5 A. Yes.

6 Q. Okay. The ----

7 TC [MR. GROHARING]: Your Honor?

8 MJ [Col COHEN]: Mr. Groharing.

9 TC [MR. GROHARING]: The financial representatives would
10 be okay.

11 MJ [Col COHEN]: Okay.

12 LDC [MR. CONNELL]: The actual ----

13 [Counsel conferred.]

14 MJ [Col COHEN]: All right. So, Trial Counsel, here's
15 what -- here's the way I feel comfortable proceeding, is I'm
16 going to allow him to ask a question. If at that point, if
17 you believe it calls for beyond what you guys are talking
18 about there, then let me know. If not, I will allow the
19 witness to answer the question. Does that make sense?

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

21 MJ [Col COHEN]: We've been very smooth. Every once in a
22 while we're probably going to run into these areas, and that's
23 fine. Let's just do it that way.

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1 Sir, before you respond to any questions, at least
2 the next couple of questions, please allow Trial Counsel the
3 opportunity to inform me whether or not they're asserting a
4 privilege.

5 WIT: Yes, Your Honor.

6 MJ [Col COHEN]: All right, thank you. You may proceed.

7 Q. Special Agent, do you know the person from whom --
8 who gathered the evidence originally?

9 A. I believe I do. There's -- I have some question
10 regarding some of the -- how exactly things were obtained, but
11 I believe in substance that it was through connections with a
12 foreign bank.

13 So if -- if upon either closed session or at the end
14 of this, if I'm able to confirm those names -- I don't recall
15 the names, but I should be able to review the names and find
16 out if I could reveal them. I believe that I could.

17 Q. Okay. All right. I'll let you do that.

18 MJ [Col COHEN]: Sounds good, Counsel. Like I said, we'll
19 hold off those questions, and then I will let you guys work
20 that out. And then I'm more than happy to take open session
21 testimony to the extent we can.

22 LDC [MR. CONNELL]: Okay. We can cut the feed from
23 Prosecution Table 4, please.

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1 MJ [Col COHEN]: Please cut it.

2 Q. Sir, on Monday you testified about an original
3 document that you had in your possession?

4 A. Yes.

5 Q. And a photograph of that will be entered into the
6 record as AE 628BB. Do you recall that document?

7 A. Yes, I do.

8 Q. And do you have it with you now?

9 A. Yes, I do.

10 Q. Okay. The --

11 LDC [MR. CONNELL]: May I retrieve it from the witness?

12 MJ [Col COHEN]: You may.

13 WIT: May I ask if you go to take it out of the room, that
14 you let me know?

15 LDC [MR. CONNELL]: I'm not taking it out of the room.

16 WIT: Very good.

17 MJ [Col COHEN]: I will just summarize the colloquy. The
18 witness just wanted to make sure that the document wasn't
19 leaving the room.

20 LDC [MR. CONNELL]: May I have access to the document
21 camera?

22 MJ [Col COHEN]: You may. You may display this to the
23 public. This was shown during the government's presentation

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1 earlier.

2 Q. All right. Now, in your testimony you testified that
3 AE 628AA Attachment EEEE is the chain of custody for that
4 document. Do you recall?

5 A. Yes.

6 Q. And you testified that -- you stressed that that was
7 not the date that the evidence was gathered. Do you recall?

8 A. Yes.

9 Q. And you stressed that the, quote, chain of custody
10 starts when evidence is entered into evidence. Do you recall?

11 A. Yes. In general terms, yes.

12 Q. Okay. And what document, if any, establishes where
13 this document -- where this came from originally?

14 A. I believe there was some sort of FD-302 articulating
15 where the document came from.

16 Q. Really?

17 A. I -- I have ----

18 Q. Who authored that 302?

19 A. I would have to check.

20 Q. Okay. So you don't think that ----

21 A. It may not be an FD -- I believe there's some other
22 document.

23 Q. Okay. Well, there's a chain of custody that starts

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1 on 6 April of 2002 -- I'll show that to you -- when Special
2 Agent Drucker takes control of the evidence. Is that what
3 you're referring to?

4 A. Yeah. I guess what I'm saying is I don't know how it
5 came to be in the hands of Adam Drucker. What I was trying to
6 say is I can see that it was listed as collected on April 6th,
7 2002. What I'm trying to say is I don't know how it came into
8 the hands of Adam Drucker.

9 Q. All right. Me neither, so that makes sense.

10 LDC [MR. CONNELL]: I'm going to return your -- with the
11 court's permission, I'm going to return your document to you
12 so there's no worries about it.

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

14 LDC [MR. CONNELL]: So there will be no worries about its
15 further chain of custody.

16 MJ [Col COHEN]: The witness now has the original.

17 LDC [MR. CONNELL]: Thank you.

18 Q. All right, sir. I'm going to -- if you don't mind,
19 I'm -- there's some sort of financial pieces we need to move
20 through. I'm going to lead you through those. I mean, it is
21 cross. But on the other hand, if you feel that you need to
22 explain something, don't -- I mean, just jump in and explain,
23 okay?

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1 A. I understand.

2 Q. All right. So on 17 September 2001, the FBI received
3 certain wire transfer documents from Adel Rafeea. Does that
4 sound right?

5 A. That sounds about right, yes.

6 Q. For an April 18, 2000 wire transfer, correct?

7 A. That sounds correct.

8 Q. And at the same time the FBI received the name and
9 address of Omar al Bayoumi, correct?

10 A. I take your representation, sir.

11 Q. No, I -- we can do it on the paper.

12 The -- sir, I direct your attention to AE 628CC.

13 A. Okay.

14 Q. Attachment H.

15 A. I'm at Attachment H.

16 Q. Document FBI-13341.

17 TC [MR. GROHARING]: Excuse me, Your Honor. Can I just
18 ask for the Bates number again?

19 MJ [Col COHEN]: Counsel, please.

20 LDC [MR. CONNELL]: 13341. And then on this -- on 133 --
21 is the first page of the document. On 13344 is the
22 attachments to the 302.

23 A. I'm at 13341.

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1 Q. Okay. Can you just go to 13344?

2 A. Yes.

3 Q. And do you see that there are attachments? The --
4 attachment number 4 is a copy of a Sportmart -- excuse me,
5 attachment number 3 is a copy of a FedEx shipping receipt?

6 A. Yes.

7 Q. Okay. Hold that. We're coming back to that.

8 The -- on 18 September 2001, as part of this
9 investigation in Southern California, it was determined by the
10 FBI that Omar al Bayoumi had introduced Mohdar Abdullah to
11 al Hazmi and al Mihdhar. Does that sound familiar?

12 A. It does.

13 Q. And the -- back when you talked to al-Azazi, when we
14 talked about that on the 27th of September 2001, one of the
15 facts that you learned from Mr. al-Azazi was that Fuad
16 Bazarah, had come -- had applied for a U.S. visa, along with
17 Ramzi Binalshibh, correct?

18 A. Yes. I recall that.

19 Q. Okay. Later in -- on September -- on 24
20 September 2001, Mohdar Abdullah is arrested. Does that sound
21 familiar?

22 A. I knew he was arrested. I didn't know what date.

23 Q. Okay. And as a result of a search incident to

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1 arrest, the telephone number of Walid al Hussaini is obtained.

2 Does that sound familiar?

3 A. That's not familiar to me.

4 Q. On 23 October 2001 -- I'll skip over al Hussaini for

5 now. I'll come back to him if I need him. On 23

6 October 2001, you filled out an electronic communication

7 seeking information about Bazarah in Yemen. Do you recall?

8 A. I do.

9 Q. And -- all right. That brings us to AE 628DD.

10 A. Okay.

11 Q. The page is FBI-23698.

12 A. 23698, yes.

13 Q. Yes. What is that document?

14 A. It's a communication from FBI to CIA.

15 Q. All right. And it's dated 17 February 2004, correct?

16 A. Yes.

17 Q. All right. The -- and it is a request by the FBI for

18 interrogation of Mr. Binalshibh about -- or for information --

19 a summary of all CIA information about Mr. Binalshibh and his

20 family in Yemen; is that fair to say?

21 A. May I take a look?

22 Q. Of course.

23 A. Okay. I can see that this is providing information

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1 about Binalshibh.

2 Q. And requesting CIA information in return?

3 A. Yes. Request information from CIA, yes.

4 Q. The -- and the specific issue which was the subject
5 of your prior -- of the prior investigation, your interview
6 with al-Azazi and others, is a 1995 visa application by
7 Mr. Binalshibh within Yemen. Do you recall?

8 A. I recall talking about the 1995 visa application.

9 Q. Okay. I'll now turn your attention to AE 628CC.

10 TC [MR. GROHARING]: Your Honor?

11 MJ [Col COHEN]: Counsel.

12 TC [MR. GROHARING]: If I could just get Mr. Connell's
13 attention. He had a question earlier that I think I can
14 answer.

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

16 [Counsel conferred.]

17 Q. Special Agent, I'm sorry. I have to skip back one
18 because there was an update, but I can lead you through it.

19 The 17 February 2004 requirement from FBI to CIA that
20 we just talked about, the only identifiable point of contact
21 on that is the UFI of Interrogator SG1; is that right?

22 A. I'm sorry. You're going back to which document?

23 Q. I'm sorry. I'm going back to FBI-23698.

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1 A. 23698. Yes, I see that.

2 Q. All right. In the "pass" line is listed

3 Interrogator SG1. Do you see that?

4 A. Yes.

5 Q. Okay.

6 A. And I just wanted to understand your question. Did
7 you have another question regarding ----

8 Q. No. That was the only piece of information that I
9 just learned I was allowed to elicit.

10 All right. So now let's go back to STA-2853 within
11 628CC Attachment I.

12 TC [MR. GROHARING]: Could I just ask for the Bates
13 numbers again, please?

14 LDC [MR. CONNELL]: Certainly. It is STA-2853.

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

16 LDC [MR. CONNELL]: I'm sorry. The AE is AE 628CC
17 Attachment I. The Bates number within that AE is STA-2853.

18 A. I'm sorry, sir. Could you give me the location and
19 the Bates number again for that document that we're referring
20 to? The AE ----

21 Q. The binder is AE 628CC.

22 A. Yes, I have that.

23 Q. Attachment H -- no, no, I'm sorry. Attachment I.

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1 A. Okay.

2 Q. And the Bates number is STA-2853.

3 A. Okay. I have it.

4 Q. All right. I'll direct your attention to the third
5 full paragraph, which begins "Binalshibh said."

6 A. Yes.

7 Q. The -- would you skim over that paragraph, please.

8 A. Are you asking me to read it aloud or ----

9 Q. No, just to yourself.

10 A. Okay. Thank you.

11 Q. All right. So the requirements went from FBI to CIA
12 in February. What is the date of -- this refers to an early
13 2004 interrogation, would you agree?

14 A. Yes.

15 Q. And in the -- and in the results of the
16 interrogation, the cable describes the 1995 application of
17 Mr. Binalshibh for a visa to the United States?

18 A. Yes.

19 Q. It explains his relationship to Fuad Bazarah?

20 A. Yes.

21 Q. And explains communications to his -- how he
22 communicates with his family in Yemen?

23 A. Back at that time, yes.

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1 Q. Yes, back at that time. All right.

2 I would now ask you to look at AE 628DD.

3 A. Okay.

4 Q. All right. And I would direct your attention to
5 FBI-23662.

6 A. Okay. I have 23662 in front of me.

7 Q. All right. This document is also a FBI requirement?

8 A. I see it's from FBI and to CIA. I'm just checking to
9 see what is requested.

10 Q. All right.

11 A. Okay.

12 Q. All right. This document is dated 14 May 2004,
13 correct?

14 A. Yes.

15 Q. All right. And this document contains -- is --
16 reports back from the FBI to the CIA about the interview of
17 Fuad Bazarah, correct?

18 A. It reports to the CIA or provides to the CIA the
19 results of an interview of Fuad Bazarah, that's correct.

20 Q. And the -- it's a little bit difficult to see, but in
21 the pass line is Interrogator SG1?

22 A. I see that.

23 Q. All right. And in the pass line, it also says "CTC

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1 UBL," which we already discussed is Usama bin Laden Unit,
2 correct?

3 A. Yes.

4 Q. And it says for SSA; is that correct?

5 A. Yes.

6 Q. And that typically stands for supervisory
7 special agent, correct?

8 A. Yes.

9 Q. And this document -- so we had the -- we had the 17
10 February requirements from the FBI to the CIA. We had the
11 early 2004 interrogation, and then we have this 23 May
12 document, and the information back was about Fuad Bazarah, and
13 then we had this document providing results of an interview to
14 CIA of Fuad Bazarah. Do you agree?

15 A. In general terms, yes.

16 Q. And at this point, the -- there -- there is a line
17 for -- an unclassified line for attention. Can you flip to
18 the back page. It's FBI-22663.

19 A. You said 22663?

20 Q. Sorry. 23667. I must have misspoken. I'm sorry.

21 A. Okay.

22 Q. It's just the last page of that document.

23 A. I have it.

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1 Q. All right. And on an unclassified paragraph says,
2 "Please direct responses to this teletype to the PENTTBOM,
3 special attention FBI Headquarters, room" -- redacted --
4 "Attention Special Agent Aaron Zebley, telephone" -- redacted.
5 Do you see that?

6 A. Yes.

7 Q. And so he's listed -- Special Agent Zebley is listed
8 as the POC on this document?

9 A. Yes.

10 Q. Okay. In addition to relating the results of the
11 interview of Fuad Bazarah, it also contains a number of
12 follow-up questions for Mr. Binalshibh. Would you agree?

13 A. Yes.

14 Q. In fact, 21 -- would you accept my representation
15 that there are 21 numbered questions with sub-questions?

16 A. Yes.

17 Q. All right. Now, I will direct your attention to
18 AE 628DD, and it is FBI-23766.

19 A. I'm at 23766.

20 Q. Thank you. This is also an Organizational Message
21 Form communicating from the FBI to the CIA?

22 A. Yes.

23 Q. Dated 23 November 2005?

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1 A. Yes.

2 Q. And in general, it contains questions for Khalid
3 Shaikh Mohammad, Khallad Bin'Attash, Ramzi Binalshibh, and
4 several other prisoners, correct?

5 A. Would you just allow me to review, sir?

6 Q. Of course.

7 A. Okay. I have skimmed it. Thank you.

8 Q. Thank you.

9 TC [MR. GROHARING]: Your Honor, I apologize for
10 interrupting.

11 MJ [Col COHEN]: Counsel.

12 TC [MR. GROHARING]: If I could have just a moment with
13 Mr. Connell, there's something in the document I just want to
14 draw his attention to before he asks the question. I think it
15 would be helpful.

16 MJ [Col COHEN]: No. Thank you. I appreciate it.

17 [Counsel conferred.]

18 Q. Sir, could I direct your attention to the pass line
19 of this document.

20 A. Yes.

21 Q. Don't read it. I just want your attention.

22 A. I see it.

23 Q. It lists Interrogator SG1. Do you see that?

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1 A. Yes.

2 Q. And then it lists a specific supervisory special
3 agent. Do you see that?

4 A. Yes.

5 Q. Okay. And now, in this document, sort of the fifth
6 in the back-and-forth, there are a number of unclassified
7 paragraphs. Would you agree?

8 A. Yes.

9 Q. And the first unclassified paragraph, the second full
10 paragraph on the -- on page 23766 states that, "FBI is
11 investigating a possible Yemeni support cell that may have
12 assisted 9/11 hijackers Khalid al Mihdhar and Nawaf al Hazmi
13 during their time in Southern California." Do you see that?

14 A. Yes, I do.

15 Q. And it goes on in the next paragraph to discuss a
16 video which was taken by the Los Angeles International
17 Airport, which included images of al Mihdhar and al Hazmi. Do
18 you see that?

19 A. Yes, I do.

20 Q. And it relates to their leaving the United States on
21 10 June 2000. Do you see?

22 A. I believe that was only al Mihdhar who left, but I
23 understand exactly what you are pointing out.

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1 Q. And the issue was that there were three additional
2 males who were depicted in the video whose identity they did
3 not know. Do you agree?

4 A. I didn't read it through, but I know that there was
5 at least one additional person. If you represent three -- I
6 haven't read the whole paragraph -- I accept that.

7 Q. All right. And in the course of the document, it
8 relates -- I'm on page 23767 -- possible identity of the
9 unknown subjects?

10 A. Yes.

11 Q. Okay. And it talks about Ramez Noaman?

12 A. Yes.

13 Q. And it talks about Fuad Bazarah?

14 A. Yes.

15 Q. It explains the relationship between Fuad Basra and
16 Ramzi Binalshibh?

17 A. Yes.

18 Q. The -- and I'm skipping ahead a couple of pages
19 because there's a lot of pages on that topic.

20 And at 23772, there's a reference to Walid al
21 Hussaini?

22 A. Yes.

23 Q. And then on page 27 -- excuse me, 23773.

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1 A. Yes.

2 Q. There's a list of 14 individuals?

3 A. Yes, I see them.

4 Q. Okay. And then under that, the cable requests, "In
5 order to determine if Hazmi and Mihdhar were assisted by a
6 support cell in Los Angeles, we request that KSM be asked the
7 following questions." Do you see that?

8 A. Yes, I do.

9 Q. And the "we" in that is the FBI, correct?

10 A. Yes.

11 Q. And then there are 13 questions plus sub-questions?

12 A. Yeah. I see a lot of questions on the end here ----

13 Q. Oh, I'm sorry. You're right. There are more than
14 that, there are 20 questions plus sub-questions?

15 A. Yes.

16 Q. Okay. And then I'm on page 23775. The FBI asks, "In
17 order to determine if Tawfiz Mohammed bin Saleh, Bin'Attash,
18 had any knowledge of Hazmi's and Midhar's operations in
19 Southern California, we request that Saleh be asked the
20 following questions."

21 Do you see that?

22 A. Yes.

23 Q. And then there are 11 questions.

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1 A. Yes.

2 Q. And then at the top of page 23777.

3 A. I see.

4 Q. There are questions for a Guantanamo prisoner, al
5 Shorabi?

6 A. Yes.

7 Q. Why would the FBI have to ask the CIA to ask
8 questions of a Guantanamo prisoner?

9 A. I asked myself the same question when I read this. I
10 don't understand why they would do that. These -- he's in
11 custody in Guantanamo, so either it's an error or there's
12 something I just don't understand.

13 Q. Okay. On the next page, 23778.

14 A. Yes.

15 Q. In the middle of the page, "In order to determine if
16 Hambali had any knowledge of Hazmi and Mihdhar's operations in
17 Southern California, we request that" -- and then I think
18 there's a typo -- "be asked the following questions."

19 A. Yes.

20 Q. On page 23779, "In order to determine if Binalshibh
21 had any knowledge of Hazmi and Mihdhar's operations in
22 Southern California, we request that Ramzi Binalshibh be asked
23 the following questions."

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1 A. Yes.

2 Q. Okay. And then on the last page, there's a space for
3 the point of contact, but all of the point of contacts are --
4 points of contact are redacted. Would you agree?

5 A. Yeah, the -- I see, "Please direct response and
6 questions to" -- and that's redacted. I do point out there
7 is -- I see administrative note, and like a tickler count or
8 copy below that.

9 Q. Okay. And the -- the -- who is listed in the tickler
10 count or copy count?

11 A. SSA Joan-Marie Turchiano.

12 Q. Okay. And then redacted SSA at the CIA CTC?

13 A. Yes.

14 Q. And another SSA?

15 A. Yes.

16 Q. Another special agent?

17 A. Yes.

18 Q. And then a reference to a TFO. Who is a TFO?

19 A. A TFO is a task force officer, typically assigned to
20 an FBI Joint Terrorism Task Force, although it could be
21 another task force as well.

22 Q. Okay. And then the last one is SA -- redacted -- at
23 the Los Angeles FBI CT2?

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1 A. Yes.

2 Q. And CT2 would be Counterterrorism Squad 2?

3 A. Yes.

4 Q. All right. Now, sir, I'd like to direct your
5 attention to AE 628DD Attachment -- at FBI-20709.

6 A. 20709?

7 Q. Yes, that's correct, sir.

8 A. Okay.

9 Q. All right. Now, this document is another
10 Organizational Message Form from the FBI?

11 A. Yes.

12 Q. And it is dated 12 -- no, excuse me --
13 9 December 2005?

14 A. Yes.

15 Q. Okay. I'd like you to take a moment and satisfy
16 yourself that this is a very similar document.

17 A. One moment, please, sir.

18 Yes, it appears to be much the same text.

19 Q. Okay. The -- but it has a later date. Is this an
20 example of someone sending a cable a second time, perhaps
21 because they hadn't got a response?

22 A. That's possible, sir. I don't know.

23 Q. Okay. And I would like to direct your attention to

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1 AE 628DD, 23650.

2 LDC [MR. CONNELL]: May I -- may I approach counsel for a
3 moment?

4 MJ [Col COHEN]: You may.

5 [Counsel conferred.]

6 Q. All right, sir.

7 A. Yes.

8 Q. Thanks for your accommodation. Do you see the
9 document?

10 A. Yes, I do.

11 Q. Okay. And in AE 628DD, FBI-23650, this is a
12 document -- a requirement document from the FBI to the CIA.
13 Do you see that?

14 A. Yes, I do.

15 Q. And it's dated 12 December 2005?

16 A. Yes.

17 Q. And if I could direct your attention to the pass
18 line?

19 A. Yes.

20 Q. It includes -- it's a pass to CTC-UBL for the
21 detainees' branch chief, Interrogator SG1. Do you see that?

22 A. Yes.

23 Q. And then it has reference to two FBI detailees, one

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1 redacted, one not redacted?

2 A. Yes.

3 Q. And then another special agent?

4 A. Yes.

5 Q. This document in general provides additional
6 questions about a possible support cell for Hazmi and Mihdhar.
7 Do you agree?

8 A. Yes. The text appears to be much the same as the
9 other one with all the questions.

10 Q. Except this one includes photos?

11 A. Okay.

12 Q. Would you -- well, don't let me tell you. Just take
13 a look at the subject line there for a moment.

14 A. Yes.

15 Q. And do you see it has questions and photos for
16 detainees?

17 A. If you give me one moment, sir.

18 Q. Of course.

19 A. Okay. I see that.

20 Q. Okay. And this one seems to have straightened out
21 the people who were supposed to be asked questions of, lists
22 Khalid Shaikh Mohammad. I'm in the first full paragraph under
23 "action requested."

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1 A. Yes, I see it.

2 Q. And then, instead of a reference to any member of the
3 Bin'Attash family, it has Tawfiz Mohammed bin Saleh?

4 A. Yes.

5 Q. And Ramzi Binalshibh?

6 A. Yes.

7 Q. And Hambali?

8 A. Yes.

9 Q. And then it has a note that the photos were mailed to
10 three specific FBI detailees. Do you see that?

11 A. Yes.

12 Q. Other than that, it's a very similar document with
13 similar questions. Do you agree?

14 A. Yes.

15 Q. Okay. Now, would you agree with me, sir, that this
16 exchange of information has every appearance of being --
17 cooperating on an investigation?

18 A. It's difficult for me to say, sir. Like I understand
19 that we just went through these documents. I haven't read
20 them all in detail and sort of compare them against each
21 other. In general terms, I can see information sharing back
22 and forth between the two agencies.

23 As to whether or not I'd characterize it as

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1 investigation, I don't know. But I understand what you're
2 saying, sir. I guess what I'm saying is, in general terms,
3 going through the documents that fast, I'm a little hesitant
4 to look at the cause and effect.

5 Q. All right. Sir, my next chapter that I would like to
6 talk to you about is about money transfers.

7 Sir, you testified at some length about the -- about
8 money transfers that Mr. al Baluchi was allegedly involved in,
9 correct, on direct examination?

10 A. Yes.

11 Q. And on -- for some of the financial documents, they
12 were received, as we talked -- you talked about earlier, by
13 George Piro on 17 April 2002. Do you recall?

14 A. Yes.

15 LDC [MR. CONNELL]: If I may have the court's indulgence
16 for just one moment.

17 Q. In that situation, those lab -- those items, excuse
18 me, were eventually submitted to the laboratory, correct?

19 A. Yes.

20 Q. And those include the K3170, the receipt from the
21 U.A.E. Exchange Centre dated 17 September 2000?

22 A. As being obtained from Piro?

23 Q. Yes.

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1 A. I don't think that's correct, sir.

2 Q. Okay. I have a document that could refresh your
3 recollection.

4 LDC [MR. CONNELL]: May I show counsel?

5 MJ [Col COHEN]: Please.

6 [Counsel conferred.]

7 Q. Sir, I'm going to move on from that for a moment and
8 talk about the sort of sharing of information around --
9 between FBI and CIA on these money transfers.

10 I'd like to direct your attention to AE 628DD.

11 A. Okay.

12 Q. Document FBI-23659.

13 A. Okay.

14 Q. All right. Are you with me, sir?

15 A. 23659, yes.

16 Q. Yes. And so this is a document sent from the FBI to
17 the CIA, correct?

18 A. Yes.

19 Q. On 13 January 2004?

20 A. Yes.

21 Q. And it lists in the pass line, Interrogator SG1?

22 A. Yes, it does.

23 Q. And the -- if you'll take a moment to review it, many

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1 of the specific questions which are intended for

2 Mr. al Baluchi relate to money transfers?

3 A. Okay. If you will just ----

4 Q. If you'll just take a moment to satisfy yourself to
5 that.

6 A. Thank you, sir.

7 Okay. Sir, I see the information being passed
8 regarding the wire transfers.

9 Q. All right. And so when you say that, what you mean
10 is questions being submitted by the FBI to the CIA to be put
11 to Mr. al Baluchi regarding wire transfers?

12 A. Yes.

13 Q. Okay. And one point was -- something that was just
14 pointed out to me that I was unclear about earlier.

15 When I -- when I mentioned -- asked you about FBI
16 detailees, I meant FBI detailees to the Counterterrorism
17 Center or the CIA, correct?

18 A. That's correct.

19 Q. The -- this document -- and if you would flip to the
20 last paragraph.

21 A. Yes.

22 Q. In an unclassified paragraph, "The FBI appreciates
23 the forwarding of these requirements. POC for this request is

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1 Supervisory Special Agent Adam Drucker."

2 Do you see that?

3 A. Yes.

4 Q. The -- this document contains -- would you accept my
5 representation that it contains 39 questions?

6 A. Yes.

7 Q. And most of them relate to financial transactions.
8 Would you agree?

9 A. Um, maybe not most of -- I see there's others
10 regarding phones and some other stuff. At least half, maybe
11 more than half.

12 Q. Okay. I'd now like to direct your attention to
13 AE 628CC Attachment I at 254.

14 A. Okay. Bates number ending in 254.

15 Q. Yes. Are you with me, sir?

16 A. Yes.

17 Q. I'm sorry. Are you with me, sir? I'm just repeating
18 for the court reporters.

19 A. Yes.

20 Q. The -- this is a summary of a cable from -- like the
21 other ones that we've discussed, right?

22 A. Yes.

23 Q. From a custodial interview conducted in early 2004?

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1 A. Yes.

2 Q. Of the person they describe here is Ammar al Baluchi?

3 A. Yes.

4 Q. And would you take a moment to satisfy yourself that
5 this document describes over the course of three pages
6 financial transactions -- Mr. al Baluchi's description of
7 financial -- the financial transactions which were described
8 in the FBI cable?

9 A. Yes, sir. One moment, please, sir.

10 Okay. Just in scanning it, I can see the general
11 substance of the memo.

12 Q. And the general substance of the memo is -- well, we
13 can go through it in more detail. Hang on.

14 The -- I'll call your attention to the fourth
15 paragraph.

16 A. Yes.

17 Q. And that's regarding the 16 April 2000 transaction
18 regarding \$5,000 to Nawaf al Hazmi?

19 A. Yes.

20 Q. The -- in the fifth paragraph, it describes the Wall
21 Street Exchange for the 16 April transaction?

22 A. Yes.

23 Q. The -- it describes the use of the name Ali and the

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1 phone number?

2 A. Yes.

3 Q. Same phone number that you used for matching in your
4 direct examination?

5 A. Yes.

6 Q. The -- it lists the P.O. Box 16958?

7 A. Yes.

8 Q. The same P.O. box that you used in your direct
9 examination for information matching?

10 A. Yes, it is.

11 Q. A discussion of Adel Rafeea as the recipient of the
12 transaction?

13 A. Yes.

14 Q. The same Adel Rafeea that you discussed in your
15 direct examination?

16 A. Yes.

17 Q. On the first full paragraph at the top of 255 is a
18 description of the 29 May -- 29, excuse me, June 2000
19 transaction?

20 A. Yes.

21 Q. In which al Baluchi describes here sent \$5,000 to
22 Marwan al Shehhi?

23 A. Yes.

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1 Q. Describes the Western Union?

2 A. Yes.

3 Q. In the neighborhood -- in the Bur Dubai neighborhood?

4 A. Yes.

5 Q. It actually says Bur neighborhood of Dubai, but you
6 know it's Bur Dubai?

7 A. Yes, yes.

8 Q. The use -- the discussion of the name Imam [sic]
9 Mansour?

10 A. Yes.

11 Q. And in the next paragraph, the second full paragraph
12 on 255, the CIA cable describes description of the name Imam
13 Mansour -- Mansar?

14 A. Isam Mansar, yes.

15 Q. Yes. And where it came from?

16 A. Yes.

17 Q. The -- skipping down to the bottom is a description
18 of the 29 June transfer?

19 A. Yes.

20 Q. Description of the phone number?

21 A. Yes.

22 Q. Same phone number you testified about in direct
23 examination?

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1 A. Yes, it is.

2 Q. The -- so this cable from the CIA in response to
3 requirements from the FBI covers the first three -- or three
4 of the five financial transactions that you testified about in
5 direct examination; is that fair to say?

6 A. It appears to do so, yes.

7 LDC [MR. CONNELL]: Sir, it seems like that might be --
8 there's a little bit more on this, but I'm happy to stop and
9 pick up here tomorrow.

10 MJ [Col COHEN]: Okay. Just for planning purposes, where
11 are we at in the books?

12 LDC [MR. CONNELL]: Two-thirds.

13 MJ [Col COHEN]: Okay. How much time do you think you
14 will need tomorrow?

15 LDC [MR. CONNELL]: Two-thirds of the way.

16 I was thinking that from the beginning that two full
17 days would be my cross, and I think I can get it done tomorrow
18 morning.

19 MJ [Col COHEN]: Okay. And then how much for redirect?

20 TC [MR. GROHARING]: I don't imagine more than an hour or
21 two at this point, Your Honor.

22 MJ [Col COHEN]: Okay.

23 TC [MR. GROHARING]: I think it might be most efficient,

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1 though, to conduct the closed session cross-examination, and
2 then go back to the redirect to cover as much in open as
3 possible.

4 LDC [MR. CONNELL]: I could do that, Your Honor. That's
5 fine.

6 MJ [Col COHEN]: Okay. All right. I'm not opposed to
7 that idea. So what would you propose, then? Tomorrow
8 afternoon we would be in a closed session? Because that's
9 fine. I mean, I ----

10 TC [MR. GROHARING]: Yes, the government is good with
11 that, Your Honor.

12 MJ [Col COHEN]: Okay. All right. Then that's what we'll
13 do. We will proceed until approximately 12:30 tomorrow,
14 roughly, and then to the extent that we can, then come back at
15 1400 for a closed session.

16 And we'll have that 802 to discuss the overtime
17 issues and everything, but I -- I have no problem going a
18 little bit later tomorrow night if we need to to get through
19 that closed session to the extent that we can. All right.
20 Thank you.

21 All right. Let's go ahead and take break. I'd like
22 to reconvene with counsel in an 802 just to discuss some of
23 those issues that we've talked about around 1745. That gives

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1 an hour for you guys to figure out what you're going to do,
2 and let's meet back here at 1745.

3 All right. We're in recess.

4 [The R.M.C. 803 session recessed at 1650, 18 September 2019.]

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