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1 [The R.M.C. 803 session was called to order at 0902,
2 19 September 2019.]

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

5 Trial Counsel, are there any additions or
6 subtractions to the prosecution team today?

7 CP [BG MARTINS]: No, Your Honor. Good morning.

8 MJ [Col COHEN]: All right. Thank you. Good morning.

9 Mr. Sowards, I recognize Mr. Mohammad here. It looks
10 like we have the same team from your team as yesterday; is
11 that correct?

12 LDC [MR. SOWARDS]: That is correct, Your Honor. Good
13 morning.

14 MJ [Col COHEN]: All right. Thank you. Good morning.

15 Ms. Bormann, I do not see Mr. Bin'Attash here. Other
16 than Mr. Bin'Attash, are there any additions or subtractions
17 from yesterday?

18 LDC [MS. BORMANN]: Mr. Perry is still out of court doing
19 other ----

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

21 LDC [MS. BORMANN]: ---- business.

22 MJ [Col COHEN]: Mr. Harrington, I do not see
23 Mr. Binalshibh this morning. Any other additions or

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1 subtractions?

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

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

4 Mr. Connell, I do recognize Mr. Ali being here this
5 morning. Any other additions or subtractions that need to be
6 noted for the record?

7 LDC [MR. CONNELL]: Good morning, Your Honor. All counsel
8 are present.

9 MJ [Col COHEN]: Thank you.

10 Mr. Ruiz, currently Mr. Hawsawi is not here. If he
11 does show up later, he's welcome to do so. Are there any
12 other additions or subtractions.

13 LDC [MR. RUIZ]: Just Lieutenant Colonel Williams is not
14 presently with us.

15 MJ [Col COHEN]: All right. Thank you, sir. Appreciate
16 it.

17 Is there a witness with respect to the gentlemen who
18 are currently not here?

19 I recognize the witness to be the same witness who's
20 testified previously here. I remind you that you're under
21 oath.

22 WIT: Yes, sir.

23 MJ [Col COHEN]: Thank you.

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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. Good morning, Major.

6 A. Good morning, sir.

7 Q. Do you have Appellate Exhibit 660S consisting of
8 three pages, 660T consisting of two, and 660U consisting of
9 two pages?

10 A. Correct.

11 Q. Let's take S first. This is the waiver by Khallad
12 Bin'Attash. Did you have occasion to advise Mr. Bin'Attash of
13 his right to attend today's proceeding?

14 A. I did.

15 Q. What time did you do that?

16 A. At 0633.

17 Q. And did he -- did you do it the same way you've done
18 it every other time?

19 A. Yes, sir.

20 Q. Did he waive his right to attend this morning's
21 proceeding?

22 A. He did.

23 Q. Did he sign that in Arabic or the English version?

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1 A. I read the English version while he followed along in
2 the Arabic, and he signed the Arabic.

3 Q. And that's his signature?

4 A. Yes, sir.

5 Q. With respect to Ramzi Binalshibh, I have the English
6 version in front of me. Did he exercise the -- or did he sign
7 the English version?

8 A. Yes, sir.

9 Q. Did you do it the same way that you did with the
10 others?

11 A. Yes, sir.

12 Q. And is that his signature on page 2 of this document?

13 A. It is.

14 Q. With respect to Mustafa Ahmed Adam al Hawsawi,
15 two-page document; this is the English version. Did he sign
16 that on the second page?

17 A. Yes, sir.

18 Q. Did you read his rights to him in English or in
19 Arabic?

20 A. In English.

21 Q. And that's his signature?

22 A. Yes, sir.

23 Q. Do you have any question about these individuals

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1 waiving their right to attend today's proceeding?

2 A. I do not.

3 Q. Now, with respect to Binalshibh, he indicated that he
4 wanted to attend his legal meeting this morning at 9:00?

5 A. That's correct.

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

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

8 Thank you. I have the exhibits that were just
9 referenced.

10 Ms. Bormann, have you had the opportunity to review
11 AE 660S, and do you have any questions?

12 LDC [MS. BORMANN]: Judge, I just want to confirm it was
13 AE 660S because it wasn't previously marked ----

14 MJ [Col COHEN]: That is correct. The one I'm looking at
15 has been marked 660S.

16 LDC [MS. BORMANN]: Thank you. And we've reviewed it, and
17 we have no questions.

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

19 Mr. Harrington, I have 660T, which purports to be a
20 statement signed by Mr. Binalshibh, based on the witness'
21 testimony. Have you had an opportunity to review this
22 document, and do you have any questions?

23 LDC [MR. HARRINGTON]: Judge, I have reviewed it, and I

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1 have no questions.

2 MJ [Col COHEN]: All right. Thank you, sir. I'm going to
3 hand back 660U to the witness.

4 Ma'am, there is some Arabic writing with respect to
5 what Mr. Hawsawi wrote. Do you know what that says?

6 WIT: Sir, I don't know. I asked the interpreter while we
7 were still standing there, and he stated to me that it has to
8 do with the date, the time -- I mean, the full date plus the
9 word "Thursday."

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

11 WIT: Yes, sir.

12 MJ [Col COHEN]: Mr. Ruiz, have you had the opportunity to
13 personally, or at least someone from your team, to review
14 AE 660U?

15 LDC [MR. RUIZ]: Yes.

16 MJ [Col COHEN]: Do you have any questions?

17 LDC [MR. RUIZ]: I don't. Thank you.

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

19 I note the standing objection with respect to the
20 identity of the witness. I'm handing these exhibits to -- to
21 there.

22 The gentlemen are aware they've exercised their right
23 this week to change their minds, and if it can be accommodated

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1 with transport, et cetera, then they will be allowed to join
2 us at any time they choose consistent with the instructions
3 that I gave them earlier.

4 But at this point, based on the information that's
5 been presented to the commission, I find that Mr. Bin'Attash,
6 Mr. Binalshibh, and Mr. Hawsawi -- al Hawsawi have knowingly
7 and voluntarily waived their right to be present at today's
8 session.

9 Thank you very much for your testimony. You are
10 temporarily excused.

11 WIT: Thank you, sir.

12 [The witness was temporarily excused.]

13 MJ [Col COHEN]: Yesterday at 1745 hours I conducted a
14 conference with trial and defense counsel in accordance with
15 Rule for Military Commission 802. The accused were absent.

16 During that conference we discussed scheduling issues
17 dealing primarily with the rest of this week and, to a lesser
18 extent, next week.

19 During that conference Mr. Connell informed the
20 commission that his in-court estimates as to the remaining
21 time needed for cross-examination may be -- may have been too
22 short. He therefore suggested that it may be necessary to
23 take open session testimony during cross-examination for the

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1 entirety of today, and that potentially Friday then would be
2 used -- could be used for a closed session cross-examination
3 of Special Agent Fitzgerald, and that potentially Saturday
4 could be used or at least portions thereof, for the
5 government's redirect.

6 Based on the estimates provided by Mr. Connell and
7 the government, it became clear that Special Agent Perkins'
8 testimony would most likely, but not definitively, be
9 conducted prior to -- would not be conducted prior to the
10 third week of this session, but we're going to wait and see
11 how that plays out.

12 In response to funding concerns raised earlier
13 yesterday morning, Brigadier General Martins informed the
14 commission that he had verified that funds would be available
15 for overtime to -- or in the event that we needed to go extra
16 hours or into the weekend.

17 Mr. Sowards raised some practical concerns with
18 Mr. Connell's proposed schedule but noted a willingness to
19 proceed if the commission adopted such schedule.
20 Additionally, he requested the government inform the accused
21 about the change in schedule that evening, if there was going
22 to be one.

23 In addition, we talked about starting even earlier

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1 today and going later for both today and tomorrow in lieu of
2 going into a Saturday. Ultimately, the decision was -- or the
3 discussion led to it's probably just best to leave things as
4 they were at least for today.

5 Mr. Connell clarified that he was not necessarily in
6 favor of conducting weekend sessions. He was just informing
7 the commission of his willingness to do so, if that was the
8 case.

9 Ms. Bormann joined her colleagues in raising general
10 concerns about weekend court sessions and noted that some of
11 the defense teams will be in transit on Saturday. She also
12 requested the commission to rule on AE 631D, a decision that
13 she indicated she needed to be able to file Mr. Bin'Attash's
14 suppression motion. And the commission is now looking at that
15 again.

16 Mr. Harrington also noted some personal and personnel
17 concerns with having commission sessions on the weekends and
18 noted some of the practical difficulties that require extra
19 effort on the part of his team should we be inclined to do so;
20 but he also indicated that if the commission ordered it, as
21 did Ms. Bormann and Mr. Sowards and Mr. Connell, that they
22 would comply with the order.

23 Mr. Ruiz similarly adopted the positions of his

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1 colleagues, noted his preference or opposition to doing it on
2 the weekends, primarily because of his previously scheduled
3 meetings with his client. And Mr. Ruiz was the one who
4 suggested that the commission consider scheduling longer days
5 during the week to avoid the weekends, and that's how that
6 discussion occurred.

7 I then indicated that I was interested in at least
8 trying to begin at 0800 on Thursday and Friday and to run
9 later in the afternoons. Given the hour last night, it did
10 not seem to make a lot of sense, and the government thereafter
11 indicated -- at least didn't make much sense to start
12 tomorrow, that that might be too -- too much of a burden to
13 re-shift the main pieces that would need to be moved on -- on
14 such a late notice.

15 Nevertheless, the government thereafter indicated
16 they did not believe that much would be gained by having
17 longer sessions on Thursday and Friday, unless it allowed for
18 the taking of Special Agent Perkins' testimony this week; and
19 it did not appear, just from a general discussion, that we
20 would likely be able to conclude her testimony, but still to
21 be determined.

22 It was thereafter that I thanked everyone for their
23 -- for their conversations and for their -- their thoughts and

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1 indicated that for now, then, there was no reason to issue any
2 -- any orders. To the contrary, we will just remain with the
3 status quo for today.

4 I did ask Brigadier General Martins to at least look
5 into the inquiry of -- even if next week, if we needed to have
6 some extended days, if we could make that happen, given that
7 we are coming up against a very hard deadline of returning at
8 the end of next week. So I want to make sure that we're not
9 stuck in the middle of a -- of a witness testimony, and then
10 having to wait weeks before we can conclude that testimony.

11 And then I also asked the government -- or Brigadier
12 General Martins on behalf of the government or whoever he
13 assigns on his behalf to -- just general inquiry as to the
14 consequences -- unintended consequences of -- with respect to
15 guard force, et cetera, of having -- of having hearings on a
16 Saturday and/or Sunday of a particular week so we could have
17 that as a frame of reference moving forward.

18 I also indicated that if Mr. Connell finds that he is
19 quicker than what he's anticipating, that I was inclined to
20 take a break at some point today, after we've concluded with
21 any open testimony, and to immediately go into -- after the
22 necessary time off, to go into a closed session so that we
23 could at least start -- start that process as well.

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1 I also wanted to indicate -- as I told the parties
2 that I would do this on the record -- to thank Mr. Connell,
3 Mr. Groharing, and Mr. Trivett for the extremely professional
4 and efficient way in which they handled the issues of
5 classification and information yesterday.

6 The -- I say that just to say the professionalism
7 that was -- that was exhibited by these three gentlemen should
8 be commended, and it was -- was definitely recognized by the
9 commission in the efforts to have those -- I won't call them
10 sidebars, that's really not what they were, but to take the
11 commission's willingness to let them have these conversations,
12 and even noted that a couple of times when a question was
13 uncertain, that Mr. Groharing even asked for Mr. Connell's
14 attention so he could clarify what -- what additional
15 questions could be asked in an open session.

16 Like I said, I appreciated it. I think it was in the
17 interest of justice for everyone, and for the idea of a public
18 trial, and to maximizing open session testimony to the extent
19 practicable. And so, although I'm sure there were others
20 involved, it was very apparent that primarily I noticed
21 Mr. Connell speaking with those two gentlemen, so I wanted to
22 thank all three of you and encourage you to continue to do the
23 same thing. You will definitely have leave of the commission

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1 to do those very things. So thank you, gentlemen.

2 That is a general synopsis. Like I said, discussions
3 were had, things are being looked into, but nothing has really
4 changed as far as any timing of commission hearings,
5 et cetera, at this point.

6 Trial Counsel, is there anything you would like to
7 add to my summary of the 802?

8 CP [BG MARTINS]: Your Honor, the United States believes
9 that's a fair and thorough synopsis.

10 I did want to raise that -- the topic you at the
11 outset mentioned of deposition scheduling ----

12 MJ [Col COHEN]: That is correct. Thank you, sir.

13 CP [BG MARTINS]: Yes, sir.

14 MJ [Col COHEN]: I did. Yeah, so I did remind the parties
15 that I was looking for some kind of an idea of when we might
16 be able to have ordered deposition in November or December,
17 and so please continue to work through that. But a date was
18 not decided. In fact, we didn't have much discussion. It was
19 more of just a reminder that that was still a pending issue
20 that was out there.

21 All right. Mr. Sowards, anything that your team
22 would like to add? And if it's not -- if you don't want to
23 stand, then if someone else wants to stand up and tell me

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1 that, that would be fine.

2 LDC [MR. SOWARDS]: Thank you, Your Honor. I'm learning
3 to adjust independently.

4 MJ [Col COHEN]: And I am accommodating the fact that your
5 foot is in at least an air cast, so that's why I'm saying it
6 doesn't always have to be you. I will accept if you want to
7 designate someone else to answer these kinds of questions.

8 LDC [MR. SOWARDS]: Thank you, sir. But we have nothing
9 else to add.

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

11 Ms. Bormann, anything that you would like to add?

12 LDC [MS. BORMANN]: Just a couple of points.

13 MJ [Col COHEN]: Yes, ma'am.

14 LDC [MS. BORMANN]: One, I advised you that Captain Caine,
15 our military counsel, would be departing the island tomorrow
16 because one of his family members is gravely ill, and that's
17 the first availability for a flight to get off the island.
18 And that we would be detailing a new military counsel,
19 assuming that he gets his read-on today. We were able to,
20 with the help of Mr. Bumpus and a few other people, get some
21 quick action, and Captain Peer should be here late in the
22 afternoon on Saturday.

23 MJ [Col COHEN]: Excellent. Thank you for reminding me of

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1 that.

2 LDC [MS. BORMANN]: Also at the request -- Mr. Connell
3 noted that there had been an order imposed by the Office of
4 Military Commissions through General Baker that none of the
5 individuals who are employees of the Department of Defense,
6 that is, not me or the other contractors, but actual GS
7 employees -- like Mr. Montross here, Mr. Solis here, or any of
8 the variety of the people that Mr. Connell pointed out -- are
9 not getting paid for their work if they go over the 37 and a
10 half hours or so that they are normally given a week. And
11 that was because of a claimed budget shortfall by the Office
12 of Military Commissions.

13 So they were basically banned from requesting
14 overtime pay for the -- as Mr. Connell noted, some of his
15 employees are working 17-, 18-hour days and not being
16 compensated for those.

17 MJ [Col COHEN]: In the form of monetary, right?

18 LDC [MS. BORMANN]: Monetary ----

19 MJ [Col COHEN]: Compensatory time off was authorized,
20 correct?

21 LDC [MS. BORMANN]: Yes, sort of. But that's really kind
22 of an empty promise because, of course, we have to be back
23 here in two weeks for more -- or three weeks for more

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1 hearings, and so the schedule has it so that they really can't
2 use the time to ----

3 MJ [Col COHEN]: I understand. I just wanted to make sure
4 that they're -- it was -- it wasn't that they were working
5 without any type of either compensatory time or time off -- or
6 monetary funding, correct? I mean, that would be against the
7 law.

8 LDC [MS. BORMANN]: Yes. Right. And so then
9 General Martins was kind enough to actually come in and
10 apprise you that, in fact, he had reached out to whomever -- I
11 don't know, because he didn't indicate -- and that, in fact,
12 they were -- the Department of Defense was going to make this
13 thing happen, and that, in fact, they were authorized to
14 submit over -- requests for overtime pay.

15 MJ [Col COHEN]: Excellent.

16 LDC [MS. BORMANN]: So I have advised my team, those
17 individuals who have that issue, that they should request it
18 proactively going forward and also retroactively for the last
19 couple of weeks.

20 MJ [Col COHEN]: Understand. No, I agree with that. I'm
21 not in the budget process, but I'm generally familiar that
22 even if someone's bucket of money dries up, which does happen,
23 that there may be ability to tap other buckets of money or

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1 to -- that belong to other portions of the Department of
2 Defense.

3 LDC [MS. BORMANN]: General Baker could not make that
4 happen. I'm grateful to General Martins for making that
5 happen.

6 MJ [Col COHEN]: Excellent.

7 LDC [MS. BORMANN]: And we're going to take him up on his
8 promise. Thank you.

9 MJ [Col COHEN]: Thank you, ma'am.

10 Mr. Harrington, anything that you would like to add?

11 LDC [MR. HARRINGTON]: Judge, I don't have anything on the
12 802. I do have one short administrative matter which I can
13 take up when you finish this if you wish.

14 MJ [Col COHEN]: Okay. Let me just get through this, sir,
15 and I'll definitely come back to you.

16 Mr. Connell, anything that you would like to add?

17 LDC [MR. CONNELL]: No, thank you, sir.

18 MJ [Col COHEN]: Mr. Ruiz?

19 LDC [MR. RUIZ]: No.

20 MJ [Col COHEN]: Thank you.

21 Mr. Harrington, you may be heard. Thank you.

22 LDC [MR. HARRINGTON]: Judge, before the -- these
23 hearings, we submitted to the court an order -- or a motion

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1 which you granted with respect to the various counsel on our
2 team who would be here during the next three weeks. At that
3 time, Ms. Cline had not been admitted to the court so we
4 didn't include her. But our plan was for her to leave on
5 Saturday and she's going to be replaced by a different
6 attorney on our team.

7 I just procedurally want to know if you need a new
8 motion to do that or you can excuse her.

9 MJ [Col COHEN]: No, I will take that as an oral motion
10 now, and that is granted. Thank you.

11 No, I -- some things have to be documented, and I
12 appreciate you doing that when you have the time. But yeah,
13 if the parties need to make an oral motion that I think I can
14 rule on here in place, please -- please do that.

15 Because I realize that every time someone has to
16 write a motion for something that is fairly straightforward,
17 that is time you're not spending. In addition, when I have to
18 read the motion and then have someone write a formal response
19 to it, that's time that we're not working on other issues as
20 well. So to the extent that some of these administrative
21 matters we can handle orally on the record, please feel free
22 to take me up on that. If it's something I can't do, I'll
23 definitely tell you at that point like, hey, I think I need a

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1 briefing on that or something.

2 Mr. Harrington, thank you for doing that.

3 All right. Are there any other matters we need to
4 take up before we recall the witness?

5 Apparently not. Please retrieve the witness.

6 TC [MR. RYAN]: Your Honor?

7 MJ [Col COHEN]: Mr. Ryan.

8 TC [MR. RYAN]: May I be permitted to leave as I need
9 to ----

10 MJ [Col COHEN]: You may. In fact, Mr. Ryan, just moving
11 forward, on any given day, you just have leave of the court.
12 That's for any of the parties. The only ones I need to make
13 sure don't leave are the learned counsel. Please, if you are
14 leaving, we need to discuss that and then, obviously, if it's
15 one -- someone who's responsible for the witness.

16 TC [MR. RYAN]: Yes, sir. Thank you.

17 MJ [Col COHEN]: Thank you.

18 Sir, please have your seat. I recognize you as the
19 same Special Agent Fitzgerald who has testified for the last
20 three days. You are still under oath, sir.

21 WIT: Yes, Your Honor.

22 [Witness returned to the stand.]

23 MJ [Col COHEN]: Mr. Connell, your witness.

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1 LDC [MR. CONNELL]: Thanks, Your Honor.

2 MJ [Col COHEN]: You're welcome.

3 LDC [MR. CONNELL]: Your Honor, I'm going to begin by
4 tying up a few loose ends from yesterday.

5 MJ [Col COHEN]: Sure.

6 LDC [MR. CONNELL]: The first of those is that I have been
7 requested to state the spelling of Said Boujaadia. And that
8 is S-A-I-D, B-O-U-J-A-A-D-I-A.

9 MJ [Col COHEN]: Thank you.

10 LDC [MR. CONNELL]: Sir, the government and I have
11 overnight worked hard to tie up some of our loose ends from
12 yesterday as well, and so we're going to start there before we
13 get back into the main subject.

14 Also advise you, sir, that I have more or less
15 promised the military commission that we will finish this
16 unclassified cross-examination today, and so I may move a
17 little faster. I do not intend to deny you the opportunity to
18 review any document that you need to. So let me know if you
19 need to review a document, and we'll review it; but I may not
20 initially offer you the review just to move us faster. But
21 it's still your testimony, sir, and your documents, so if you
22 need to look at them, we'll take the time that we need, with
23 the permission of the military commission.

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1 MJ [Col COHEN]: That sounds sufficient to me, too. Thank
2 you.

3 LDC [MR. CONNELL]: Thank you. Okay.

4 **CROSS-EXAMINATION CONTINUED**

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

6 Q. First, sir, with respect ----

7 MJ [Col COHEN]: And, Mr. Connell, just to make sure. I
8 did not order you to be done today. Do you understand that?

9 LDC [MR. CONNELL]: I know, sir, but I also intend to be a
10 person of my word ----

11 MJ [Col COHEN]: Okay. I just wanted to.

12 LDC [MR. CONNELL]: ---- and so if I can finish today ----

13 MJ [Col COHEN]: I just wanted to make sure that this was
14 your own internal clock that you were putting on you and ----

15 LDC [MR. CONNELL]: Internal to me, sir.

16 MJ [Col COHEN]: Okay. Great. Yeah, I just -- I didn't
17 want you to maybe feel that I was going to be like, well, you
18 said today and we're done.

19 LDC [MR. CONNELL]: No, I didn't take it that way, sir.

20 And I'm putting that on myself.

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

22 Q. Sir, yesterday, I'd like to remind you, I asked you
23 about your interrogation of al Qahtani in the fall of 2002

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1 here at Guantanamo. Do you recall?

2 A. Yes, sir, I do.

3 Q. Okay. And do you recall that I asked you the
4 question whether your interrogation of al Qahtani was before
5 or after the e-mail discussion of an FBI plan to render
6 Mr. al Qahtani in an e-mail dated 14 November 2002? Do you
7 recall that question?

8 A. Yes, I do.

9 Q. And do you recall giving the answer that you would
10 need to review the 302?

11 A. Yes.

12 Q. Okay. In the binder -- in a binder in front of you,
13 which -- the ever-growing binder, which now says AE 628DD, I
14 think, through SS, maybe. Do you see that binder?

15 A. I have 628DD through RR.

16 Q. That's the one. It's now grown a little bit. And if
17 you'll flip to the back, you will see AE 628QQ, which is your
18 302.

19 LDC [MR. CONNELL]: For purposes of the record, the
20 government produced that overnight.

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

22 A. Yes, sir. I have it in front of me.

23 Q. All right. And so looking at that, does that refresh

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1 your recollection that your interrogation of Mr. al Qahtani
2 occurred on 15 November 2002?

3 A. Yes, it does.

4 Q. Okay. And looking at it, does -- do you recall your
5 testimony of yesterday that Special Agent Neer and Special
6 Agent Clemente were in a support role rather than an
7 interrogation role?

8 A. Yes.

9 Q. Okay. Would you review that document and see if that
10 refreshes your recollection that, at least on that occasion,
11 Special Agent Neer and Special Agent Clemente participated in
12 the interrogation of Mr. al Qahtani?

13 A. Yes. I see that written, sir, and it's correct that
14 they were there. I think it's fair to say that I led the
15 interview, but I have refreshed my recollection.

16 Q. Thank you. Stay in that binder.

17 Moving to a different topic, I asked you yesterday
18 about when you knew of Mr. al Baluchi's arrest. Do you recall
19 that?

20 A. Yes.

21 Q. And you expected maybe a couple of months at first
22 and then a couple of weeks. And I asked you about a *Time*
23 magazine article from 2 May 2003. Do you recall?

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1 A. Yes.

2 Q. Will you turn to Tab AE 628RR in that. Should just
3 be the next page.

4 A. Yes, I have it in front of me.

5 Q. Sir, in your testimony yesterday you noted correctly
6 that I was merely representing to you the existence of such an
7 article. Would you take a moment and review AE 628RR.

8 A. Yes.

9 Q. I'm not going to question you on the content. I just
10 want you to see the existence of the article.

11 A. Yes, sir.

12 Q. All right. Having reviewed that -- and it's actually
13 marked 1 May, although I think the -- back when things came
14 out weekly, it was a 2 May magazine. Does that satisfy you to
15 the existence of an early May, 1 or 2 May 2003, article
16 regarding the arrest of Mr. al Baluchi?

17 A. Yes.

18 Q. Sir, moving to another topic, I asked you yesterday
19 about -- we reviewed together the 302 for the FBI interview of
20 Adel Rafeea. Do you recall?

21 A. Yes.

22 Q. And you reviewed a printed electronic copy of the
23 302, which listed attachments. Do you recall?

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1 A. Yes, I do.

2 Q. And this was in -- my question was in reference to
3 whether the FBI agents at that time had received contact
4 information for Omar al Bayoumi. Do you recall?

5 A. Yes.

6 LDC [MR. CONNELL]: Sir, if I may have access to the
7 document camera?

8 MJ [Col COHEN]: You may. Is this for publication to the
9 gallery or just counsel?

10 LDC [MR. CONNELL]: To the gallery.

11 MJ [Col COHEN]: All right.

12 LDC [MR. CONNELL]: Let me just show it to counsel.

13 [Counsel conferred.]

14 LDC [MR. CONNELL]: Your Honor, for the record, I'm
15 showing the witness what is in the record as AE 628CC
16 Attachment B. Bates number FIN-4788 is the first page.

17 Q. I'm going to show you, sir. If you'll take a look at
18 that, does that appear to be the cover to a 1A envelope?

19 A. Yes.

20 Q. And if I told you that the -- that this was the 1A
21 which was attached to the 302 that you reviewed yesterday,
22 would you be satisfied with that representation?

23 A. Yes.

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1 LDC [MR. CONNELL]: Your Honor, I'm flipping to page
2 FIN-4796, which is a FedEx waybill which was referenced as
3 Attachment 3 on the 302 yesterday.

4 Q. Sir, does this refresh your recollection as to the
5 receipt of information regarding the contact information for
6 Omar al Bayoumi?

7 A. I may have reviewed this before, but obviously, I can
8 clearly see it here in front of me.

9 Q. Okay. So you're satisfied that the -- at that time
10 that the contact information for Omar al Bayoumi was -- was
11 received?

12 A. Yes.

13 Q. Sir, if you would turn in your binder to AE 628EE.

14 A. Okay. I'm there.

15 Q. Sir, if you would look at a document Bates stamped
16 RAD-12 -- excuse me, 1823.

17 A. Okay.

18 Q. Sir, I'll represent to you that RAD-1823 is a -- this
19 is an electronic communication, correct?

20 A. Yes, it is.

21 Q. Drafted by Adam Drucker?

22 A. Yes.

23 Q. Dated 26 April 2002, correct?

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1 A. Yes.

2 Q. All right. And this document includes -- this is a
3 document submitting evidence to the lab, correct?

4 A. Yes, it is.

5 Q. And it includes evidence from two different sources,
6 correct?

7 A. I haven't reviewed it. I could take a quick look,
8 sir.

9 Q. If I could orient you to -- I'll point you to the
10 language details on RAD-1823.

11 A. Yes.

12 Q. And it has a 1B number of 2046.

13 A. Yes, I see that.

14 Q. Okay. And then if you'll turn to page 1827.

15 A. Yes.

16 Q. You see a 1B number of 2052?

17 A. Yes.

18 Q. Okay. The -- and under the first 1B number, there
19 are 24 items listed? You can see that at 1827.

20 A. Yes.

21 Q. And at page -- if you turn to page 1829, you can see
22 that there are 22 items listed under the 1B number 2052?

23 A. Yes.

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1 Q. So, sir, I will represent to you, and Mr. Groharing
2 can do the same, that Mr. Groharing and I met and conferred
3 about the question of the invocation of national security
4 privilege over the origin of this evidence.

5 A. Yes.

6 Q. And I will represent to you, sir, that Mr. -- that
7 the government has stated -- we clarified that question which
8 came up yesterday, and that the government has stated that it
9 has invoked national security privilege over the individuals
10 or the specific affiliation of the individuals who provided
11 this evidence.

12 Can you accept that representation? You can check
13 with Mr. Groharing, if you want.

14 MJ [Col COHEN]: Mr. Groharing, is that an accurate
15 summary?

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

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

18 Q. Okay. Sir, what I would like to do now is talk to
19 you about ----

20 MJ [Col COHEN]: Mr. Groharing.

21 TC [MR. GROHARING]: One caveat: The affiliation of the
22 individuals is classified and can be disclosed in a closed
23 session, not the actual identity of the individual.

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1 LDC [MR. CONNELL]: Right. So let me state -- so I said
2 specific affiliation. So the country with which they are
3 affiliated -- and I think the distinction here is about
4 affiliation.

5 So the country with which they are affiliated is
6 classified but may be listed in closed session, but any more
7 specificity than country, like what agency within the country
8 they worked for or what type of agency, is subject to a claim
9 of national security privilege.

10 MJ [Col COHEN]: Is that correct?

11 TC [MR. GROHARING]: That's correct, Your Honor.

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

13 LDC [MR. CONNELL]: Thank you for the opportunity to
14 clarify.

15 Q. Sir, with that in mind, what I would like to do is
16 ask you about the origin of certain evidence -- and I'm just
17 going to go in order so it's not going to be that
18 complicated -- and ask you about whether the United States has
19 invoked national security privilege for that evidence.

20 A. The question I think you see on my face, sir, is I
21 thought in your consultation with Mr. Groharing you determined
22 both those 1Bs, 2046 and 2052, the government was invoking.

23 Q. That's correct. That's their clarification.

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1 A. Okay. And your question for me in relation to that?

2 Q. My question will be -- I'm going to talk to you about
3 specific evidence that was included in your direct
4 examination.

5 A. Yes.

6 Q. And I'm going to ask you the question whether the
7 United States invokes national security privilege -- and for
8 short, I'm just going to say over the origin of the evidence,
9 rather than giving the whole long explanation reflected in our
10 discourse here. Is that satisfactory to you?

11 A. I -- yes. I do have one question about ----

12 Q. Of course.

13 A. ---- 1B2046 for the government.

14 LDC [MR. CONNELL]: I know this is a little unusual, but
15 we're -- may the three of us confer?

16 MJ [Col COHEN]: I'm okay with that.

17 LDC [MR. CONNELL]: Let me just ----

18 Q. Your question relates to invocation of national
19 security privilege, correct?

20 A. Correct.

21 Q. All right. Under those circumstances ----

22 MJ [Col COHEN]: I'll allow the witness to step down, meet
23 with Mr. Groharing, Mr. Trivett, and Mr. Connell temporarily.

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1 Off the record.

2 [Counsel conferred with the witness.]

3 LDC [MR. RUIZ]: Judge?

4 MJ [Col COHEN]: Mr. Ruiz.

5 LDC [MR. RUIZ]: While they're doing that, I just want to
6 ask the commission, once the witness retakes the stand, I
7 would like to know what the witness has said. He's still
8 under oath, still testifying, so I think it's important for us
9 to know.

10 MJ [Col COHEN]: Okay. I'll consider that.

11 LDC [MR. RUIZ]: Thank you.

12 LDC [MR. CONNELL]: Sir, thank you for that accommodation.
13 We've reached a path forward.

14 MJ [Col COHEN]: Okay. Sir, I don't want to discuss any
15 classified information in this session. Can you just -- in an
16 unclassified manner, can you discuss generally what your
17 concerns were?

18 WIT: Yes, Your Honor. For the two 1B items, for the two
19 evidence items, one of them I was certain would invoke
20 national security privilege; the other one, I thought there
21 were less concerns about that based upon acquisition details.

22 MJ [Col COHEN]: Okay. And are you able to say which one
23 in particular you were concerned about at the time in an

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1 unclassified setting?

2 WIT: Yes, Your Honor. 1B2046, I understood the
3 acquisition details to be less sensitive.

4 MJ [Col COHEN]: Okay.

5 WIT: And the government was going to do its due diligence
6 to provide additional information to counsel regarding that.

7 MJ [Col COHEN]: Okay. Thank you. All right. That's all
8 the questions I'm going to ask about that.

9 LDC [MR. CONNELL]: Sure. Sir, and I'll just close the
10 loop on that by saying that we have agreed on the language
11 of -- that the government is invoking national security
12 privilege over the origin of the evidence, with the
13 understanding that, with respect to 1B2046, in closed session
14 there may be additional shading put on the word "origin."

15 MJ [Col COHEN]: Okay. So you may get more in a closed
16 session than ----

17 LDC [MR. CONNELL]: That's right.

18 MJ [Col COHEN]: Okay. And was there anything that was
19 discussed with the witness beyond just the scope of what could
20 be said in an open versus a closed session or what could not
21 be said at all?

22 LDC [MR. CONNELL]: The one -- the main topic of the
23 conversation was whether -- over exactly what the United

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1 States was invoking national security privilege in the way
2 that the witness just articulated.

3 MJ [Col COHEN]: Okay. Okay. Great. Thank you very
4 much.

5 LDC [MR. CONNELL]: And that was the exclusive topic of
6 the conversation. Nothing else was ----

7 MJ [Col COHEN]: No, I understand. Like I said, I'm
8 creating a process as we go along, and sometimes that's
9 probably the most efficient way if we're going to try to get
10 as much in an open session as we can.

11 LDC [MR. CONNELL]: Yes.

12 **CROSS-EXAMINATION CONTINUED**

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

14 Q. Sir, I'm going to be referring to the unclassified
15 paragraph, which is called "Details."

16 A. Yes, I see.

17 Q. And I will first ask you about the invocation of
18 national security privilege over the origin of the items in
19 1B2046, with the understanding that there may be an additional
20 fine point put on that in closed session.

21 A. Yes, that's correct.

22 Q. Okay. With respect to 1B2046, the -- does the United
23 States -- has the United States invoked national security

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1 privilege over the origin of the receipt from the U.A.E.
2 Exchange Centre dated 9/17/00?

3 A. Yes.

4 Q. Is the same true of the receipt from the
5 U.A.E. Exchange Centre dated 7/18/00?

6 MJ [Col COHEN]: One second, Counsel. Mr. Ryan?

7 TC [MR. GROHARING]: Your Honor, just to speed things,
8 we've invoked it over every item in 1B2046. I don't think
9 it's necessary to ask about every single item.

10 LDC [MR. CONNELL]: I'm not going to ask about every item,
11 only the ones he covered in direct.

12 MJ [Col COHEN]: Okay. Copy. I'll allow that. If you
13 want to go over the specific items that he covered in direct,
14 that makes sense.

15 LDC [MR. CONNELL]: Yes.

16 MJ [Col COHEN]: All right. Thank you. Thank you, Mr.
17 Groharing, for the clarification, though.

18 A. As to the document you just mentioned, sir, the
19 U.A.E. Exchange Centre 7/18/2000 in the amount of 10,000, yes.

20 Q. Is the same true with respect to item 3., the receipt
21 from the U.A.E. Exchange Centre dated 8/29/00 for the sending
22 of 20,000?

23 A. Yes.

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1 Q. Is the same true for the receipt from the
2 U.A.E. Exchange Centre dated 8/5/00 for the sending of 9,500?

3 A. Yes.

4 Q. Is the same true for item 5a., the ----

5 A. Yes, it is.

6 Q. Wait. I have to stop.

7 It's been a long time since I got the hard stop from
8 the interpreters. Obviously, I'm in big trouble.

9 MJ [Col COHEN]: They gave you a go.

10 LDC [MR. CONNELL]: Thank you. I will go a little slower.

11 Because there's a lot of simultaneous pressure to go
12 fast and slow.

13 MJ [Col COHEN]: No, I got it. But we can't get ahead of
14 them.

15 LDC [MR. CONNELL]: Right.

16 Q. Sir, with respect to item 5a., a receipt for the
17 U.A.E. Exchange Centre dated 6/29/00 for the sending of \$5,000
18 from Imam Mansar, has the United States invoked its classified
19 information privilege -- national security privilege over the
20 origin of the information?

21 A. Yes.

22 Q. Item 5a., the computer printout that was included in
23 your financial presentation with respect to the 6/29/00 money

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1 transfer, is that the same situation?

2 A. Yes.

3 Q. Is the same true for -- let me just -- turning the
4 page.

5 Sir, I will direct your attention to item 13a., a
6 receipt from the Wall Street Exchange Centre dated 16 April
7 2000 for the sending of \$5,000 from a person named Ali, has
8 the United States invoked national security privilege over the
9 origin of that material?

10 A. Yes.

11 Q. Is the same true for item 13b., a computer printout
12 detailing that transaction?

13 A. Yes.

14 Q. Is the same true for item 13c., a photocopy of the
15 government of Dubai Jebel Ali Free Trade Zone Authority
16 employment card?

17 A. Yes.

18 Q. Sir, directing your attention to item 18. on
19 page 1826.

20 A. Yes.

21 Q. Has the United States invoked national security
22 privilege over the origin of a computer printout for the
23 rental of P.O. Box 16958?

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1 A. Yes.

2 Q. And item 24., has the United States invoked national
3 security privilege over the origin of bank records for the
4 Citibank account of Hani Hanjour?

5 A. Yes.

6 Q. Right. And just so that's clear, that's the Dubai
7 Islamic Bank?

8 A. No. That's -- Dubai Islamic Bank is separate from
9 that. Those are -- Citibank records are different.

10 Q. That's Citibank.

11 A. Yes.

12 Q. Okay. Sir, are there any items in 1B2046 that the
13 United States has invoked national security privilege over
14 that you covered in your direct that I didn't mention?

15 A. If you'll allow me one moment to review?

16 Q. Yes.

17 A. On item number 14., sir, I did not show those records
18 to Mr. Ali; however, I did make reference to them.

19 Q. And that's immigration records in Arabic?

20 A. That's correct, sir.

21 Q. And has the United States invoked national security
22 privilege over the origin of item 14., immigration records in
23 Arabic?

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1 A. Yes.

2 Q. All right. Thank you.

3 A. To the best of my recollection, that's it. I
4 obviously have not done a comparison, document to document.
5 To the best of my recollection, those are the items from
6 1B2046.

7 Q. Well, you caught one that I didn't, sir, so -- moving
8 to page RAD-1827.

9 A. Yes.

10 Q. With respect to 1B2052 ----

11 A. Yes.

12 Q. ---- the -- these are the items that you considered
13 to be more sensitive, correct?

14 A. Yes.

15 Q. So this -- these are the items about which you do not
16 have questions as to invocation of national security
17 privilege?

18 A. That's correct.

19 Q. Has -- I direct your attention to item 2., a copy of
20 a Pakistani passport in the name of Abdul Aziz Ali Mohammad.
21 Has the United States invoked national security privilege over
22 the origin of that item?

23 A. Yes.

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1 Q. Item 3., a copy of a Pakistani passport in the name
2 of Ali Abdul Aziz Ali, has the United States invoked national
3 security privilege over the origin of that item?

4 A. Yes.

5 Q. Item number 13a., a ComTech certificate of
6 achievement, has the United States invoked national security
7 privilege over the origin of that item?

8 A. Yes.

9 Q. Item number 13b., a CV for Ali Abdul Aziz Ali, has
10 the United States invoked national security privilege over
11 that item?

12 A. Yes.

13 Q. Item 14, materials from Lucent Technologies, has the
14 United States invoked national security privilege over the
15 origin of that item?

16 A. Yes.

17 Q. Would you quickly review and see if there are any
18 other items that you testified about in your direct
19 examination over which the United States has invoked national
20 security privilege.

21 A. Yes, if you'll give me one moment.

22 No, sir. That's all I see.

23 Q. Thank you. And I was going to show you the financial

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1 presentation, but I think I'm going to skip that.

2 Is it fair to say that these documents form the
3 foundation for much of the financial presentation that you
4 gave in your direct examination?

5 A. Yes, I believe that's fair.

6 Q. All right. So, sir, moving back to where we were.
7 When we broke off yesterday, we were discussing CIA cables
8 sent regarding the same information which was requested in the
9 FBI requirement cable of 13 January 2004 regarding money
10 transfers found in the record at AE 628DD, Bates number
11 FBI-23659. Do you recall?

12 A. I didn't recall that specific number, but I recall
13 the general topic.

14 Q. Okay. I have one other question about the FBI
15 requirement of 13 January 2004.

16 You testified yesterday that the cite line or the
17 pass line includes Interrogator SG1?

18 A. Yes, it does.

19 Q. At the time did you know the true identity of
20 Interrogator SG1.

21 A. I don't believe so. And when I say "I don't believe
22 so," I don't recall any -- I don't know that I knew any names
23 of the interrogators. If I recall something, I will tell you,

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1 but I do not recall.

2 Q. Okay. Perhaps that will be a better question for the
3 drafter, Special Agent Drucker?

4 A. Yes.

5 Q. Sir, moving to -- we discussed yesterday AE 628CC
6 Attachment I, Statement 254. Do you recall?

7 A. If I review it, sir, I'm sure I'll recall.

8 Q. Sure.

9 A. So that's AE 628C.

10 Q. CC.

11 A. CC.

12 Q. 628CC is its own binder, guys.

13 A. Yes, and which ----

14 Q. Attachment I.

15 A. I do have that here in front of me.

16 Q. And it's STA-254.

17 [Pause.]

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

19 MJ [Col COHEN]: Will someone please check the mic for the
20 witness. He's speaking into the mic but not being picked up.
21 Sir, would you ----

22 WIT: Is that better, sir?

23 MJ [Col COHEN]: No, your mic has gone dead. Give us a

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1 moment.

2 WIT: How about that, sir?

3 MJ [Col COHEN]: Now it's good. Thank you.

4 Q. All right. And for orientation purposes, this is a
5 summary of a cable sent regarding a custodial interview
6 conducted in early 2004?

7 A. Yes.

8 Q. And you testified yesterday about the discussion of
9 the 16 April 2000 transaction, the 29 June 2000 transaction.
10 Do you recall?

11 A. Yes, I do.

12 Q. Right. And that's where we picked up.

13 There's also discussion in the CIA cable regarding
14 interrogation of Mr. al Baluchi regarding phone numbers; would
15 you agree? And I'll direct you to the bottom of page 225 --
16 255.

17 A. Yes, I see that in the last paragraph.

18 Q. Okay. And then on the following page, page 256,
19 there's continuing discussion of phone -- of where this phone
20 number came from, correct?

21 A. Yes, there is.

22 Q. And the phone number at issue here is 971043554346?

23 A. Yes.

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1 Q. The -- sir, now I'd like to direct your attention to
2 the next cable, which is found in the same AE 628CC
3 Attachment I, STA-1347.

4 A. Okay. I have 1347.

5 Q. All right. And, sir, at the top you'll see the
6 notation that the information in this cable or summary of the
7 cable should be read in conjunction with Bates number
8 MEA-STA-268. Do you see that?

9 A. Yes.

10 Q. Okay. It's my understanding that that means that
11 the -- at some point, the government split the cable into two
12 parts, and produced them at separate times and that they're
13 originally all part of the same cable. That's my
14 understanding. I don't know what "read in conjunction" means
15 otherwise, but that's my guess.

16 If you need to refer to STA-268, please let me know
17 and it will be found in the same binder.

18 A. Okay, sir. I have a different understanding of "read
19 in conjunction with."

20 Q. Please.

21 A. My understanding of that is a document that may be
22 related to it, but not necessarily the same document.

23 Q. Okay. And what's the basis of that understanding?

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1 It's probably better than mine.

2 A. Okay. The basis of understanding would be exposure
3 to something like this over the period of time that we're
4 talking about. And one document might provide initial
5 information on a topic, and a second document might provide
6 more information but related to the first.

7 So I guess what I'm saying is I don't know that it
8 comes from the same document, but the documents are likely
9 related by subject matter.

10 Q. I see. And so is what you're saying that in the
11 original cable it probably said, "read this document in
12 conjunction with the different TD" or something like that?

13 A. It may have.

14 Q. Okay. And that -- the basis of your knowledge is
15 your exposure to the original cables, like when you saw them
16 in unsummarized form?

17 A. In general terms, that's probably fair. Again, I'm
18 hesitant to agree to that without seeing specifically, but in
19 general, my recollection for something like this is that it
20 might refer to something of a similar subject matter.

21 Q. I see. All right. Well, please disregard my
22 comments then. Not having seen the originals, I don't know.
23 But the actual point is if you need to see the one that it's

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1 read in conjunction with, please let me know.

2 A. Understood.

3 Q. All right. So with respect to 1347, this is a cable
4 relating to a custodial interview conducted in mid-2004,
5 correct?

6 A. Yes.

7 Q. And the subject matter of this cable as a whole is
8 Mr. al Baluchi's time in United Arab Emirates relating to
9 hijackers, correct?

10 A. I'd have to take a quick scan.

11 Q. If you just look at that first paragraph starting
12 "During custodial interviews," I think it will orient you.

13 A. Yes.

14 Q. All right. And so, for example, you testified on
15 direct examination about your conversation with Mr. al Baluchi
16 about a deposit into Hani Hanjour's account?

17 A. Yes, I did.

18 Q. On 28 January 2001?

19 A. Yes.

20 Q. And CIA interrogation about that -- or statements of
21 Mr. al Baluchi are reflected in this cable in the third full
22 paragraph, "Ammar said"?

23 A. Yes, they are.

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1 Q. Okay. The -- you testified on direct examination
2 about -- well, actually, you've previously testified about
3 telephone calls between hijackers and Mr. al Baluchi; is that
4 fair to say?

5 A. Yes.

6 Q. And if you look at the fourth and fifth paragraphs in
7 that cable, they discuss telephone calls between
8 Mr. al Baluchi and hijackers in the United States?

9 A. Yes.

10 Q. Okay. You testified about Mr. al Baluchi's
11 recognition of Wail al Shehri. Do you recall?

12 A. Yes. I believe at the time I testified that he ----

13 Q. Or Waleed or Wail?

14 A. Correct.

15 Q. Yes. If you look at the sixth paragraph of this
16 cable, you'll see a discussion of Wail al Shehri?

17 A. Yes, I do.

18 Q. Okay. You testified on direct examination about a
19 partial relationship between Mr. al Baluchi and
20 Mr. al Mihdhar. Do you recall?

21 A. Yes.

22 Q. And if you look at the second paragraph from the
23 bottom, you will see the results of interrogation about the

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1 relationship with Mr. al Mihdhar?

2 A. Yes, I see.

3 Q. You testified on direct examination in response to
4 questioning about security measures that Mr. al Baluchi told
5 you about in the -- in your interrogation of him?

6 A. Yes.

7 Q. If you will look at the bottom page of this CIA
8 cable, you will see discussion of security tips that ----

9 A. Yes.

10 Q. All right. I'll ask you to turn to the next page.

11 A. Okay.

12 Q. If you look at the fourth paragraph from the bottom
13 at -- on page STA-1348 ----

14 A. Yes.

15 Q. ---- you'll see that Mr. al Baluchi discussed Ahmad
16 al-Kuwaiti?

17 A. Yes.

18 Q. And then the bottom three paragraphs, and, in fact,
19 the remainder of the document of the cable -- of the CIA cable
20 relate to Mr. al Baluchi's guesses about some phone numbers
21 that he was shown, correct?

22 A. If you will just give me a moment, sir.

23 Q. Of course.

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1 A. Yes, I see he is talking about phone numbers.

2 Q. And I say guesses because he uses the word -- he says
3 he didn't know, but he offered the following speculation. Is
4 that a fair characterization?

5 A. Yes, it is.

6 Q. All right. Sir, I will now refer you to the document
7 to be read in conjunction, which is in the same tab at
8 STA-268. Sir, for the record, the same Tab as AE 628CC
9 Attachment I.

10 A. Yes, I have it.

11 Q. This also -- if you look at the first line, this CIA
12 cable -- or summary of a CIA cable also relates to mid-2004
13 custodial interviews?

14 A. Yes.

15 Q. But in distinction to most of them, this one
16 describes a series of mid-2004 custodial interviews; would you
17 agree?

18 A. Yes, it does.

19 Q. And from your experience dealing with the original
20 cables, do you think that that means that the government
21 compiled them in the discovery process into one, or that the
22 original cable reflected a series of custodial interviews with
23 information combined into one cable?

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1 A. In this case, I would have no idea.

2 Q. Okay. So in your exposure to various cables, have
3 you seen this nomenclature during a series of custodial
4 interrogations before?

5 A. I may have. I don't recall it.

6 Q. Okay. The -- all right. Referring to the -- so you
7 testified on direct examination about your interrogation of
8 Mr. al Baluchi about his relationship with Mr. al Hawsawi?

9 A. Yes.

10 Q. I will refer you to the second paragraph in this
11 cable. The cable reflects answers of Mr. al Baluchi during
12 this custodial interrogation regarding his relationship with
13 Mr. al Hawsawi; is that a fair characterization?

14 A. Yes.

15 Q. Same is true for the third paragraph?

16 A. Yes.

17 Q. In fact, Mr. al Baluchi is walking through a timeline
18 of his entire relationship with Mr. al Hawsawi; is that fair
19 to say?

20 A. It appears to be that. I've just glanced down the
21 rest of the page, that appears to be consistent.

22 Q. Sure. So paragraph 3, for example, refers to late
23 2000 or early 2001?

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1 A. Yes.

2 Q. Paragraph 4 describes his relationship with
3 Mr. al Hawsawi in April 2001?

4 A. Yes.

5 Q. Paragraph 5 describes Mr. al Baluchi's relationship
6 with Mr. al Hawsawi in July or August 2001?

7 A. Yes.

8 Q. The -- in the second paragraph from the bottom -- or
9 excuse me. You testified on direct examination about your
10 interrogation of Mr. al Baluchi regarding post office boxes.
11 Do you recall?

12 A. Yes.

13 Q. The second paragraph from the bottom reflects CIA
14 interrogation -- or Mr. al Baluchi's answers under CIA
15 interrogation regarding the post office box. Do you see?

16 A. Regarding a separate post office box, yes.

17 Q. Yes. You testified on direct examination about
18 Mr. al Baluchi's visits to Pakistan?

19 A. Yes, I did.

20 Q. The bottom paragraph of this CIA cable reflects
21 Mr. al Baluchi's answers under interrogation to -- regarding
22 his visits to Pakistan; would you agree?

23 A. Yes, it does.

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1 Q. You testified on direct examination about your
2 interrogation of Mr. al Baluchi about his contact with Nawaf
3 al Hazmi. Do you recall?

4 A. Yes, I did.

5 Q. I'll direct you to the next page, which is 269. In
6 the first full paragraph, this cable reflects interrogation --
7 or Mr. al Baluchi's answers under interrogation to the CIA
8 regarding his contacts with Mr. al Hazmi. Do you see?

9 A. Yes, I do.

10 Q. You testified on direct examination regarding
11 Mr. al Baluchi's contacts with Hani Hanjour in Dubai. Do you
12 recall?

13 A. Yes.

14 Q. And the results of your interrogation of
15 Mr. al Baluchi on that topic?

16 A. Yes.

17 Q. In the second full paragraph, do you see that this
18 cable reflects Mr. al Baluchi's answers under CIA
19 interrogation on the same topic?

20 A. Yes.

21 Q. Do -- and the fourth paragraph also talks about --
22 Mr. al Baluchi under interrogation talks about Mr. Hanjour and
23 Mr. al Hazmi?

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1 A. Yes, it does.

2 Q. The -- you testified on direct examination to the
3 results of your interrogation of Mr. al Baluchi regarding his
4 helping people as they transited Dubai with going to the mall
5 and similar assistance. Do you recall?

6 A. Yes.

7 Q. I'd like to direct your attention to the bottom full
8 paragraph on page 269 and then the bottom partial paragraph
9 and the three -- first three full paragraphs on the next
10 line -- on the next page, rather.

11 Would you please take a look at those.

12 MJ [Col COHEN]: Counsel, what's the Bates number on that?

13 A. Yes.

14 LDC [MR. CONNELL]: It's MEA-STA-269 and then going into
15 270.

16 MJ [Col COHEN]: Thank you.

17 Q. And, sir, would you agree that this cable -- summary
18 of a cable reflects the results of interrogation of
19 Mr. al Baluchi on the topic of what assistance he rendered to
20 men as they transited through Dubai?

21 A. Yes.

22 Q. Sir, I'd like to direct your attention to the fourth
23 full paragraph, the one that's only two lines long, on

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1 STA-270. Would you agree that, like the previous cable,
2 there's also discussion of Mr. al Baluchi's security
3 suggestions?

4 A. Yes.

5 Q. Turn to the next page, 271. First full paragraph --
6 excuse me. You testified on direct examination regarding
7 Mr. al Baluchi's bank account at the Dubai Islamic Bank?

8 A. Yes, I did.

9 Q. And the results of your interrogation of him about
10 that topic?

11 A. Yes, I testified to that.

12 Q. In the first full paragraph, would you concur that
13 this CIA cable reflects interrogation of Mr. al Baluchi and
14 his answers regarding his bank account at the Dubai Islamic
15 Bank?

16 A. Yes.

17 Q. The -- you testified on direct examination regarding
18 the results of your interrogation of Mr. al Baluchi relating
19 to the ending of his -- you described it as work permit in the
20 UAE. Do you recall?

21 A. Yes.

22 Q. If you look at the fourth full paragraph, would you
23 agree that this cable reflects the interrogation of

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1 Mr. al Baluchi by the CIA on the same topic?

2 A. Yes.

3 Q. You testified on direct examination about the results
4 of your interrogation of Mr. al Baluchi regarding his leaving
5 UAE on 10 September 2001. Do you recall?

6 A. Yes.

7 Q. If you will look at the second full paragraph from
8 the bottom on page 271. Would you agree that this cable
9 reflects CIA interrogation of Mr. al Baluchi on the same
10 topic?

11 A. Yes.

12 Q. And finally, I don't know that you testified about it
13 on direct examination, but in your letterhead memorandum, you
14 document Mr. al Baluchi's home, his two homes that he lived in
15 in Dubai. Do you recall?

16 A. Yes.

17 Q. I'll turn your attention to the last paragraph of
18 this cable on page STA-272.

19 A. Yes.

20 Q. And would you agree that that paragraph reflects the
21 results of interrogation by the CIA of Mr. al Baluchi
22 regarding his home in Al Karama?

23 A. Yes.

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1 Q. Are there, in fact, any topics about which you
2 interrogated Mr. al Baluchi that the CIA had not previously
3 interrogated him?

4 A. I don't know precisely.

5 Q. Sir, I'd like to direct your attention to another
6 document, which is found at AE 628DD Attachment MEA-FBI-20772.

7 A. Could you give me that address again, sir?

8 Q. Sure. 628DD.

9 A. Yes.

10 Q. FBI-20772.

11 MJ [Col COHEN]: Counsel, while he's looking that up,
12 within the next 20 minutes, if you get to a point where you
13 think we can take a comfort break, I'd like to do so.

14 LDC [MR. CONNELL]: Yes, sir. I think -- I will advise
15 the court.

16 MJ [Col COHEN]: Thank you. I'm not rushing you. I'll
17 just let you ----

18 LDC [MR. CONNELL]: I have four more documents, and I
19 think that will be a good -- that will be the end of a
20 chapter.

21 MJ [Col COHEN]: Okay. Great. Thanks.

22 A. I have 20772 in front of me.

23 Q. Okay. So my first question is: This document

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1 reflects the legats you told us about on Tuesday?

2 A. It appears to. I believe that to be.

3 Q. Okay. My first question is: This a letter to a
4 legat or from a legat?

5 A. If you'll give me time to review, sir?

6 Q. Okay.

7 A. On quick inspection, it appears to be from a legal
8 attaché to a foreign government.

9 Q. Okay. And the subject of this request for -- from
10 the legat to a foreign government relates to information about
11 telephone numbers; would you agree?

12 A. Yes.

13 Q. And its date is 1 February 2005?

14 A. Yes.

15 Q. Sir, I'll now direct your attention to AE 628CC
16 Attachment H.

17 A. Okay. I'm at AE 628CC Attachment H.

18 Q. And if you -- if I could direct your attention to
19 FBI-7087.

20 A. Yes.

21 Q. This is a 302?

22 A. Yes, it is.

23 LDC [MR. CONNELL]: And if I could have the government --

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1 if I could speak with the government?

2 MJ [Col COHEN]: You may.

3 [Counsel conferred.]

4 Q. Sir, this 302 reflects the receipt of certified
5 copies of documents from Standard Chartered Bank, Citibank, Al
6 Ansari Exchange, Wall Street Exchange Centre, Emirates Bank
7 International, HSBC, U.A.E. Exchange, and Dubai Islamic Bank;
8 would you agree? I'm in the first paragraph.

9 A. Yes, I would.

10 Q. And this document is dated 29 May 2005?

11 A. Yes.

12 Q. And are these, in fact, the certified copies that --
13 that you relied on in your financial presentation?

14 A. There's actually two sets of certified copies. This
15 would be one of them.

16 Q. Sir, I'd now like to direct your attention to
17 AE 628CC Attachment H.

18 A. Okay.

19 Q. And page FBI-2158.

20 A. Okay. I'm at MEA-FBI-21 -- 21058.

21 Q. Yes. And is this an EC?

22 A. Yes, it is.

23 Q. Drafted by Special Agent -- or Supervisory Special

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1 Agent Maguire?

2 A. I don't know if she was a supervisor at that time.

3 Q. Okay. Special Agent Maguire?

4 A. Yes.

5 Q. Just trying to give everybody their rank. It's a big
6 deal around here.

7 A. Fair enough, sir.

8 Q. The -- do you see under -- or this one's
9 unclassified. I can show it to you.

10 TC [MR. GROHARING]: Excuse me, Your Honor. If I could
11 just get the attachment and Bates number.

12 LDC [MR. CONNELL]: Sure. AE 628CC -- AE 628CC
13 Attachment H, FBI-21058.

14 MJ [Col COHEN]: Counsel, you may proceed.

15 TC [MR. GROHARING]: Thank you.

16 LDC [MR. CONNELL]: Thank you. May I have access to the
17 document camera?

18 MJ [Col COHEN]: You may. Public display?

19 LDC [MR. CONNELL]: Yes. It's fully unclassified.

20 MJ [Col COHEN]: Thank you.

21 Q. Sir, this document is dated 24 June 2005, correct?

22 A. Yes.

23 Q. All right. What goes under this redaction, this

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1 giant -- this big redaction at the top on an EC?

2 A. As I recall -- I don't have the form in front of me,
3 but the contact information and the office that Jacqueline
4 Maguire would have been assigned to at that time. So it would
5 have said probably to someone, from New York, contact,
6 whoever. And to the best of my recollection.

7 Q. Sure. The -- that is not a topic that the United
8 States has asserted information as national security privilege
9 over, correct?

10 A. Not -- not to my knowledge. I don't know what
11 information is there, but not to my knowledge.

12 Q. Okay. And why is that material redacted?

13 A. I don't know.

14 Q. Okay. I guess other than the obvious, to keep us
15 from knowing who this was sent to?

16 A. There may be units within FBI Headquarters or within
17 the FBI that have sensitivity, but I don't know why that would
18 be redacted.

19 Q. All right, sir. After -- if you look at the line
20 that says "Case ID #."

21 A. Yes.

22 Q. That reflects the New York case number that you've
23 testified about?

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1 A. Yes, it does.

2 Q. And there's a redaction after the case ID number.

3 Why is that?

4 A. It's a sub-file. My understanding of that is not all
5 the sub-files in this particular case are public.

6 Q. Are public?

7 A. Yeah, there are -- I'm speaking from -- I had to go
8 through -- at one point go through the 9/11 Commission Report
9 to determine which of the -- the case file was already in the
10 public domain, the NY-280350.

11 The 9/11 Commission Report in it revealed not only
12 that number, the 280350, but sub-files, so it would be dash,
13 whatever. Let's say, dash 1, dash 2, dash 3, that's making up
14 an example.

15 Q. Sure.

16 A. My understanding of that was those sub-files that
17 were revealed in the 9/11 Report are essentially in the public
18 domain, and my understanding is other sub-files that were not
19 in the public domain would not necessarily be released.

20 And in my experience, we typically don't release
21 sub-files because it may show the structure of a case. But
22 other than that, I don't know why this would be redacted.

23 Q. Okay. And do you -- you wouldn't want the defense to

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1 know the structure of the case?

2 A. It's ----

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

4 MJ [Col COHEN]: Counsel, this ----

5 LDC [MR. CONNELL]: I'll move on.

6 MJ [Col COHEN]: Okay.

7 LDC [MR. CONNELL]: That's fine.

8 MJ [Col COHEN]: Sustained.

9 Q. Under "Title" there's a redaction ----

10 LDC [MR. CONNELL]: Well, I will go ahead and answer the
11 objection, though, Your Honor.

12 You know, one of the elements which is being -- that
13 is the purpose of this hearing is to assess the sufficiency of
14 the government's discovery as a substitute for investigation.
15 And given that so many, like scores of thousands of documents,
16 have -- are heavily redacted without court approval I think
17 goes to that question.

18 So I think a few questions about where did these
19 redactions come from are not out of order.

20 MJ [Col COHEN]: I would allow that question, like did you
21 make this redaction, or something like that. But if it's
22 something that trial counsel did, having this witness answer
23 for what trial counsel did ----

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1 LDC [MR. CONNELL]: Understood. Let me -- I'll ask that
2 question.

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

4 Q. Sir, you testified yesterday that you had some
5 involvement in the discovery process, although I understand
6 the mass majority of the work has been done by others.

7 Did you have any involvement in the decision as to
8 what redactions would be made to these 302s?

9 A. No. Again, notwithstanding the -- I didn't have any
10 input into this redaction. Again, as I was saying, I do
11 recall undertaking that review for me to understand what is in
12 the public domain and what isn't. What someone used that
13 information for, I don't precisely now.

14 But my recollection right now, I -- I don't know
15 what's been redacted -- clearly it is a sub-file -- I don't
16 know who made that decision.

17 Q. And that review that you did to determine what's in
18 the public and what's not in the public, was that in
19 connection with one of -- the prosecution of either Moussaoui
20 or this prosecution?

21 A. Maybe tangentially. I don't recall why specifically
22 I undertook that. I simply was directed to go through and
23 determine what was in the public domain and what wasn't.

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1 Again, it may have been directly related, it may have been
2 tangentially related. Clearly, it's the same case, so I would
3 expect it's at least tangentially related. I just don't
4 recall why I was asked to do that.

5 Q. All right. Who asked you to do it? Do you recall?

6 A. It would have been my FBI supervisor at the time.

7 Q. Special Agent Maguire?

8 A. No. At this time, I believe it was Unit Chief Brian
9 Wickham, who -- this is some number of years ago, and
10 that's -- sir, that's the best of my recollection. It could
11 have been someone different.

12 Q. Sure. How do you spell the last name, for the court
13 reporters?

14 A. W-I-C-K-H-A-M.

15 Q. All right. And one more discovery-related question,
16 which is: Did you have any involvement in the decision-making
17 process over withholding the 150,000 or so 302s from the
18 defense in this case?

19 A. I did not.

20 Q. So you did not assert some FBI privilege over those
21 documents which caused them to be withheld?

22 A. I did not.

23 Q. Thank you. Sir, the -- returning to AE 628CC

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1 Attachment H, would it be fair to say that this is a synopsis
2 of financial transactions relating to the 9/11 case?

3 A. Yes.

4 Q. And I don't know if I did this already, but its date
5 is 24 June 2005, correct?

6 A. Yes.

7 Q. Now, sir, you testified that there was a second wave
8 of certifications.

9 A. Yes.

10 Q. I'd like to draw your attention to AE 628CC
11 Attachment H, 16856.

12 A. Sorry, sir. One more time. AE 628CC?

13 Q. Yes. Attachment H.

14 A. Yes.

15 Q. 16856.

16 MJ [Col COHEN]: Is that FBI in that ----

17 LDC [MR. CONNELL]: FBI-16856. Sorry.

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

19 A. MEA-FBI-16856?

20 Q. Yes.

21 A. Yes, I have that document.

22 Q. However, that's not the right document, so I'll move
23 on.

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1 Let me ask you this question: So would it be fair to
2 say that there was -- you testified about an additional
3 request for certified documents. Would it be fair to say that
4 that request was made on 5 November 2008?

5 A. I don't have a specific recollection, but that
6 sounds -- at least about that time frame.

7 Q. Okay. And would it be -- oh, I'm sorry. I can
8 actually point you to that. It is -- I had the wrong tab. It
9 is AE 628CC Attachment B.

10 LDC [MR. CONNELL]: And your question was prescient, Your
11 Honor; because it was not FBI-16856, it was FIN-16856.

12 MJ [Col COHEN]: Thank you.

13 A. Okay, sir. I have MEA-FIN-16853, then I have
14 MEA-FIN-16865.

15 MJ [Col COHEN]: Counsel, do you have a copy you'd like to
16 show counsel and then the witness?

17 LDC [MR. CONNELL]: I do. I can use the document camera,
18 it's appropriate.

19 MJ [Col COHEN]: That will be fine.

20 TC [MR. GROHARING]: Could I see a ----

21 MJ [Col COHEN]: Just show him real quick since it may not
22 be in the binder.

23 [Counsel conferred.]

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1 Q. All right, sir. I'm showing you a -- FIN-16856 dated
2 5 November 2008. Does that refresh your recollection?

3 A. Yes.

4 Q. And that was the provision of -- the other provision
5 of certified documents that you testified about; is that
6 right, sir?

7 A. Correct.

8 LDC [MR. CONNELL]: Your Honor, that completes this
9 chapter.

10 MJ [Col COHEN]: Okay. Excellent. I think we'll take a
11 recess. I understand that Mr. Hawsawi may be here at this
12 point, so we'll allow time for him to enter the courtroom.

13 We're in recess.

14 [The R.M.C. 803 session recessed at 1025, 19 September 2019.]

15 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1045,
2 19 September 2019.]

3 MJ [Col COHEN]: The commission is called to order. The
4 witness remains on the stand. I recognize Mr. Hawsawi has
5 joined us.

6 Ms. Bormann is the only one at her table, which is
7 fine. If -- when the attorneys come, they can just join us.

8 Mr. Harrington, it looks like you are also down an
9 attorney; is that correct?

10 LDC [MR. HARRINGTON]: Yes, Judge. She will be joining us
11 shortly.

12 MJ [Col COHEN]: Not a problem.

13 Mr. Connell, it looks like your team is still the
14 same.

15 And, Mr. Ruiz, it looks like your team is still the
16 same, correct?

17 That's a thumbs up. That's sufficient. All right.

18 General Martins, it looks like your team is the same
19 as well.

20 Okay. Let's proceed.

21 **CROSS-EXAMINATION CONTINUED**

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

23 Q. Sir, you testified under direct examination about

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1 Mr. al Baluchi's bank account at Dubai Islamic Bank. Do you
2 recall?

3 A. Yes, I do.

4 Q. A little earlier today we talked about one FBI
5 requirement which covered, in addition to the CityBird video
6 and some other financial transactions, covered the Dubai
7 Islamic Bank. Do you recall?

8 A. Yes.

9 Q. All right. I'm not going to ask you about that one
10 again. I'm going to ask you about a different requirement
11 relating to the Dubai Islamic Bank. Do you understand?

12 A. Yes.

13 Q. Okay. I have -- direct your attention to AE 628DD
14 FBI-23516. Do you recall?

15 A. Yes, I have it here.

16 Q. Okay. And there's an individual who is listed there
17 that we have collectively agreed to to refer to as
18 Individual K. Do you understand?

19 A. Yes.

20 Q. All right. FBI-23516 is a Organizational Message
21 Form dated 3 April 2003; do you agree?

22 A. Yes, I do.

23 Q. And it's from the FBI to the CIA?

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1 A. Yes.

2 Q. Although what I feel that we have understood now is
3 that this first step in the process is internal within the
4 FBI; that the FBI is sending it from one person up to the FBI,
5 and then it goes to the CIA. Is that your understanding?

6 A. I think what I was talking about before, sir, is --
7 if I recall correctly, we -- there was an FBI electronic
8 communication which was providing something to someone else in
9 FBI Headquarters. And my presumption is they would then put
10 that information in a document, whether it's a cable like
11 this, for transmission to the CIA.

12 Q. Understood.

13 A. This looks like it's going directly from the FBI --
14 to me, this document looks like it's going directly from FBI
15 to CIA. Someone might have requested this to be sent, but
16 this looks like the document going.

17 Q. Hold that thought because there's going to be another
18 document that might change your mind.

19 A. Okay.

20 Q. But with respect to this document, this is -- the
21 general subject of it is seeking information about
22 Individual K, correct?

23 A. Correct.

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1 Q. And then moving down to the first paragraph, which is
2 marked LES ----

3 A. Yes.

4 Q. ---- do you see? So it provides information about
5 Ali Abdul Aziz Ali a/k/a Ammar al Baluchi ----

6 A. Yes.

7 Q. ---- and his bank account at Dubai Islamic Bank. Do
8 you concur?

9 A. Yes.

10 Q. And then it states that Individual K is the person
11 who introduced Mr. al Baluchi to that bank.

12 A. Yes.

13 Q. Bottom paragraph marked LES says, "Although no
14 derogatory information is currently known regarding this
15 subject, his association with PENTTBOM financier Ali Abdul
16 Aziz Ali necessitates follow-up." Do you see that?

17 A. Yes.

18 Q. And then on the back page it has a number of
19 questions. Do you see those?

20 A. Yes.

21 Q. And those questions are like, "Who is Individual K?"

22 A. Yes.

23 Q. "Is he associated with al Qaeda?"

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1 A. Yes.

2 Q. "Has he attended training camps?"

3 A. Yes.

4 Q. "Is he involved in financing al Qaeda operations?"

5 A. Yes.

6 Q. "Where does he live?"

7 A. Yes.

8 Q. "What is his relationship with Ali" -- or

9 "al Hawsawi?"

10 A. Yes.

11 Q. And, "What does he do in the UAE?"

12 A. Yes.

13 Q. Now, sir, I'd like to direct your attention to

14 AE 628DD at FBI-23659. I'm sorry, sir. Scratch that. We

15 don't actually need to do that one.

16 I will instead direct your attention to AE 628CC

17 Attachment I.

18 A. I have Attachment I.

19 Q. At STA-1473.

20 A. I have 1473 in front of me.

21 Q. I direct your attention to the last paragraph, and

22 AE 14 -- excuse me. AE 628CC Attachment I, STA-1473, is a

23 summary of a CIA cable; would you concur?

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1 A. Yes, it appears to be. Yes.

2 Q. And the bottom paragraph reflects the results of
3 interrogation regarding Individual K?

4 A. Yes, it does.

5 Q. And according to the second paragraph, that occurred
6 during custody in early 2004?

7 A. Yes.

8 Q. And in this paragraph, the cable describes
9 Mr. al Baluchi's, essentially, response to questions about
10 Individual K?

11 A. Yes, it does.

12 Q. Sir, I'm now turning to a new chapter regarding
13 hijacker activity.

14 You testified on direct examination on multiple
15 occasions regarding what hijackers were doing in the United
16 States at any particular time. Do you recall?

17 A. Yes.

18 Q. I'd like to direct your attention to AE 628DD?

19 A. Okay.

20 Q. FBI-23586.

21 A. I'm at 23586.

22 Q. All right, sir. This document is an FBI
23 Organizational Form; would you agree?

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1 A. Yes. Again, I don't -- did not refer to it by that,
2 but I see that's the name at the top.

3 Q. Okay. And -- but you would call it a cable?

4 A. Yes. In my vernacular, yes.

5 Q. I want to use your vernacular. So this cable is
6 dated 16 October 2003. Do you see?

7 A. Yes.

8 Q. And it's from the FBI?

9 A. Yes, it is.

10 Q. To the CIA?

11 A. Yes.

12 Q. And in the "pass" line, it includes Interrogator SG1?

13 A. Yes.

14 Q. And it's -- it includes questions which are
15 requested -- the FBI request to be put to Khalid Shaikh

16 Mohammad, Ali Abdul Aziz Ali a/k/a Ammar al Baluchi, Mustafa
17 Ahmed al Hawsawi, and Ramzi Binalshibh. Do you agree?

18 A. Yes.

19 Q. And then as background, it states that there is some
20 unexplained information about hijacker activity, and there is
21 a -- then they're seeking additional information ----

22 A. Yes.

23 Q. ---- right? And there's a reference to a prior cable

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1 regarding hijacker activities on 2 October 2003. Do you see
2 that?

3 A. Could you direct me to that, sir?

4 Q. Yes. If you look at the paragraph right in the
5 middle of page 23586, the one that begins "Background," and
6 then there's a parenthetical sentence at the end of that.

7 A. If you'll just give me one moment to review?

8 Q. Of course.

9 A. Okay. I see that.

10 Q. All right. And so it makes a reference to a previous
11 cable dated 2 October 2003. Do you see that?

12 A. Yes.

13 Q. Now, I'd like to ask you about the questions, the
14 FO -- the unclassified questions which are posed in this
15 cable.

16 A. Yes.

17 Q. Okay. So the bottom full paragraph on page 23586
18 discusses travel from Tampa, Florida, to New York. Do you see
19 that?

20 A. Yes, I see it.

21 Q. Okay. And the FBI wants the CIA to ask what was the
22 intended purpose of this trip.

23 A. Yes.

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1 Q. And then at the top of page 23587, the FBI wants the
2 CIA to ask why was it cancelled.

3 A. Yes.

4 Q. The next section is regarding Atlanta, Georgia area
5 in January-April 2001. Do you see that?

6 A. Yes, I do.

7 Q. And the FBI provides background regarding hijacker
8 stay in the Atlanta, Georgia area. Do you see?

9 A. Yes.

10 Q. And moving to the next page, page 23588, starting at
11 the mid of the page are a series of questions. Do you see
12 that?

13 A. Yes, I do.

14 Q. And the FBI wants the CIA to ask, "Why did Mohamed
15 Atta, Marwan al Shehhi, and Ziad Jarrah travel to the Atlanta,
16 Georgia area in 2001?" Do you concur?

17 A. Yes.

18 Q. And, "Did Atta, al Shehhi, or Jarrah do any other
19 training while in the Atlanta, Georgia area?"

20 A. Yes.

21 Q. "What did Atta, al Shehhi, and Jarrah do while in the
22 Atlanta, Georgia area?"

23 A. Yes.

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1 Q. "Who did Atta, al Shehhi, and Jarrah meet while in
2 the Atlanta Georgia area?"

3 A. Yes.

4 Q. "And what type of reconnaissance did Atta, al Shehhi,
5 and Jarrah do in the Atlanta, Georgia area?"

6 A. Yes.

7 Q. "Why did Atta and al Shehri change -- al Shehhi
8 rather, change hotels so often?"

9 A. Yes.

10 Q. "Why did Atta withdraw the \$8,000 in cash?"

11 A. Yes.

12 Q. "Where did Atta and al Shehhi go and what did they
13 see when they rented the small plane on March 22, 2001, for
14 1.1 hours?"

15 A. Yes.

16 Q. "Why did Atta, al Shehhi, and Jarrah use aliases,
17 usually true name permutations, when they registered as guests
18 in the Atlanta, Georgia area hotels?"

19 A. Yes.

20 Q. Following that is a request for the FBI -- from the
21 FBI to the CIA to interrogate about trips in the Norfolk,
22 Virginia area in February and April of 2001. Do you agree?

23 A. Yes.

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1 Q. At the bottom of page 23589 and the top of
2 page 23590, the FBI provides background information on travel
3 to the Norfolk, Virginia/Virginia Beach area?

4 A. Yes.

5 Q. And then beginning at the middle of page 23590, there
6 are a series of questions that the FBI asks the CIA to put to
7 the four detainees mentioned?

8 A. Yes.

9 Q. The first of those is: "What did Atta and al Shehhi
10 do in Virginia Beach, Virginia?"

11 A. Yes.

12 Q. "Why did Atta and al Shehhi go to Richmond,
13 Virginia?"

14 A. Yes.

15 Q. "Did Atta and al Shehhi meet anyone during this
16 trip?"

17 A. Yes.

18 Q. "Why did Atta and al Shehhi withdraw \$8,000 while
19 visiting Virginia Beach in April 2001?"

20 A. Yes.

21 Q. "Did Atta and al Shehhi conduct reconnaissance of the
22 U.S. Naval Base at Norfolk, Virginia?"

23 A. Yes.

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1 Q. "Did Atta and al Shehhi conduct reconnaissance at
2 Washington, D.C. during this trip?"

3 A. Yes.

4 Q. "Why did Atta and al Shehhi open up the post office
5 box in Virginia Beach?"

6 A. Yes.

7 Q. Slowing.

8 On the next page, at FBI 23591 ----

9 A. Yes.

10 Q. ---- the FBI seeks the CIA ----

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

12 MJ [Col COHEN]: Counsel, basis?

13 TC [MR. GROHARING]: Judge, I would say this information
14 is cumulative. There are 20 pages of questions. This is not
15 really a matter that's in dispute. I think Mr. Connell has
16 made the point that he's wanted to make, and we don't need to
17 read all 20 pages of questions.

18 MJ [Col COHEN]: Counsel, what is your intention?

19 LDC [MR. CONNELL]: Two things, Your Honor. First, the --
20 there are -- if counsel is arguing that there are, in fact, an
21 enormous amount of inquiry -- requests by the FBI to the CIA
22 to interrogate these men that resulted in statements that are
23 then fed back to the FBI, I could not agree more.

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1 But the government has not agreed that there was
2 coextensive interrogation or cooperation between the CIA and
3 the FBI. I'm simply -- you know, that is very much a matter
4 in dispute, and it's a matter that we're having this hearing
5 about.

6 The -- I'm seeking to show the extent of that
7 cooperation. I will later show the responses, for example,
8 from the people to whom the questions were put, and then the
9 CIA feed that back to the FBI. I can't do it all in one
10 witness, and I'm -- I am going to -- I'm not going to repeat
11 this information with any other witness, for example.

12 But since we have the case agent on the stand, and I
13 can represent -- I haven't actually asked the question yet --
14 he is the drafter of this document, the -- I should be
15 entitled to ask.

16 There's a second factor, which is that these are
17 unclassified questions in a Secret document, and the only way
18 to accomplish the goal of a public trial, including
19 Mr. al Baluchi hearing this information, is to ask these
20 questions in open court.

21 I agree it's a little bit lengthy. There's not a lot
22 that are like this, and this is -- you know, really, this is
23 only the second example we've had of unclassified questions.

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1 So it's not cumulative. These are all on different
2 subjects which will be linked up with different statements of
3 CIA interrogations.

4 MJ [Col COHEN]: So how many questions do you want to ask
5 that he drafted?

6 LDC [MR. CONNELL]: Sir, I don't have an exact number for
7 you. I will tell you that we're about one-third through.

8 MJ [Col COHEN]: Okay. Is the government willing to
9 provide a means for defense counsel to take these specific
10 questions that are unclassified and put them in a document
11 that can be filed in a public document?

12 TC [MR. GROHARING]: We would be willing to do that, Your
13 Honor.

14 MJ [Col COHEN]: You are willing to do that?

15 TC [MR. GROHARING]: Yes.

16 MJ [Col COHEN]: Okay. Counsel, if you could file all of
17 these questions and then just ask more generally whether he
18 drafted all of these questions, and then it would be available
19 to be reviewed by your client and everyone else and the
20 public. Would that meet your needs?

21 LDC [MR. CONNELL]: Yes, sir. I have some different
22 questions other than the text of the questions, but I
23 understand what the military commission is saying.

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1 MJ [Col COHEN]: What I'm asking is: Would that meet your
2 needs?

3 LDC [MR. CONNELL]: Yes.

4 MJ [Col COHEN]: Okay. Then the government has indicated
5 they're willing to do so. I'm, therefore, ordering the
6 government to produce a document containing all those
7 unclassified questions that can be made part of the public
8 record.

9 I can read -- I can read the original document that
10 you have submitted, but I understand the interests in getting
11 that unclassified information out into the public and the
12 reason why you're doing it. I think that is important. It's
13 just a matter of judicial economy.

14 If that would meet your needs, then -- and you're --
15 are you willing to take that as an option?

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

17 MJ [Col COHEN]: Okay. Great. Then let's do that. Then
18 the public can see exactly what questions were asked, and then
19 when you file motions -- your final motion later, those kinds
20 of things, the public is then aware of the connections you're
21 making, and it also -- I got the sign, too -- then I am also
22 able to include more information in any potential --
23 unclassified ruling that I may make on this matter, so.

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

2 MJ [Col COHEN]: So I'm in agreement.

3 So let me make sure I understand the government's --
4 like I said, we've a had some concerns about making sure we're
5 on the same mindset.

6 In this document, every unclassified question, you
7 are willing to say that he -- that there will be a public
8 document that indicates all of these unclassified questions?

9 TC [MR. GROHARING]: Yes, sir. The only very small caveat
10 would be to the extent that it's a U//FOUO question, to the
11 extent that any of them contain FOU information that would
12 still need to be protected, we would need to make a
13 modification for that.

14 MJ [Col COHEN]: Okay.

15 TC [MR. GROHARING]: But it doesn't seem like there would
16 be many of those instances in the document from looking at it.

17 MJ [Col COHEN]: Okay.

18 LDC [MR. CONNELL]: Well, Your Honor, actually, it's
19 mostly U//FOUO questions. I can pass up my copy if you want
20 to -- I mean -- or I can -- I can direct you to it, but it's
21 mostly U//FOUO questions.

22 MJ [Col COHEN]: Okay.

23 LDC [MR. CONNELL]: So ----

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

2 TC [MR. GROHARING]: I think most of those paragraphs
3 could be released unclassified. They're marked U//FOUO within
4 a Secret document at this point. What I'm saying is the
5 number of instances where we would not be able to get those
6 U//FOUO paragraphs remarked as UNCLASSIFIED, I think it would
7 be very limited and I think it would be just -- a small amount
8 of information within those paragraphs.

9 MJ [Col COHEN]: You put me in a tough position here. I
10 want -- the evidence is relevant, so either we're getting the
11 questions or we're not. I just need it to be that simple.

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

13 MJ [Col COHEN]: All right.

14 TC [MR. GROHARING]: Your Honor, rather than go through
15 that process, at this point we just say go ahead and ask the
16 questions.

17 MJ [Col COHEN]: Okay. That's satisfactory as well.

18 Carry on.

19 LDC [MR. CONNELL]: Thank you.

20 **CROSS-EXAMINATION CONTINUED**

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

22 Q. Sir, we're on page 23591?

23 A. Yes.

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1 Q. All right. And the caption is "The Failed Bahamas
2 Trip, May 2001"?

3 A. Yes.

4 Q. Okay. And you provide background information on
5 the -- a proposed trip to the Bahamas?

6 A. Yes, I do.

7 Q. And you seek an answer to the question -- or you seek
8 the CIA to ask the four detainees: "Why did Waleed al Shehri
9 and Satam al Suqami attempt to go to the Bahamas? What were
10 they going to do there?"

11 A. Yes.

12 Q. And, "Who were Waleed al Shehri and Satam al Suqami
13 going to meet in the Bahamas?"

14 A. Yes.

15 Q. At the bottom of page 23591, the heading is "Satam
16 al Suqami at Orlando." Do you see that?

17 A. Yes, I do.

18 Q. Then you provide information about a -- a stay in
19 Disney World, it looks like?

20 A. Close to.

21 Q. Or close to. In Lake Buena Vista?

22 A. Yes.

23 Q. The -- and then there are two questions?

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1 A. Yes.

2 Q. "Why did Satam al Suqami go to Orlando?"

3 A. Yes.

4 Q. And "Did al Suqami conduct reconnaissance of Disney
5 World?"

6 A. Yes.

7 Q. The next topic that you ask about is duplicate
8 identifications?

9 A. Yes.

10 Q. Regarding -- and this is basically regarding
11 identification like driver's licenses, correct?

12 A. Correct.

13 Q. And on page 2593, you ask the CIA to ask the four
14 detainees a series of questions?

15 A. Yes, I do.

16 Q. And the first of those is: "Why did many of the
17 hijackers obtain multiple identification cards?"

18 A. Yes.

19 Q. Then "Why did the hijackers obtain state ID cards
20 and/or driver's licenses and then obtain duplicate versions of
21 the same ID?"

22 A. Correct.

23 Q. "Why did Mohamed Atta, Ziad Jarrah, and Marwan al

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1 Shehhi obtain duplicate pilot certificates?"

2 A. Yes.

3 Q. "Did the hijackers send identification cards back to
4 al Qaeda overseas?"

5 A. Yes.

6 Q. "If so, what was done with these ID cards?"

7 A. Yes.

8 Q. The next topic that you asked the CIA to interrogate
9 about is Mohamed Atta and Abdul Aziz al Omari at Portland,
10 Maine.

11 A. Yes.

12 Q. You provide background information on that topic?

13 A. Yes, I do.

14 Q. And at the bottom of 23594, you ask: "Why did
15 Mohamed Atta and Abdul Aziz al Omari go to Portland, Maine?"

16 A. Yes.

17 Q. And on the next page, 23595: "Did Atta and al Omari
18 meet anyone in the Portland, Maine area?"

19 A. Yes.

20 Q. Now, you specifically testified at some -- multiple
21 times on direct examination about the participation of the
22 hijacker pilots at flight schools?

23 A. Yes, I did.

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1 Q. And on page FBI-23595, there -- the next topic is
2 selection of flight schools.

3 A. Yes.

4 Q. And you provide background information on the flight
5 schools?

6 A. Yes, I do.

7 Q. And the participation of the various hijackers --
8 hijacker pilots at the flight schools?

9 A. Yes.

10 Q. At the bottom of page 23596, you request the CIA to
11 interrogate the four detainees regarding: "How did the
12 hijackers learn about the flight schools which they eventually
13 attended?"

14 A. Yes.

15 Q. And "What flight schools does al Qaeda know about and
16 send students to?"

17 A. Yes.

18 Q. On the next page, 23597, "How did the hijackers
19 decide upon a particular school?"

20 A. Yes.

21 Q. Then in a little bit of a change, you use -- you
22 provide additional background information for more questions
23 about flight schools, correct? I'm ----

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1 A. Just one moment, sir.

2 Q. Sure. Paragraphs 2 and 3 on 23597.

3 A. Yes, I do provide additional information.

4 Q. Okay. And additional questions ----

5 A. Yes.

6 Q. ---- right? Such as: "How did the hijackers learn
7 about the above companies and products?" "Who else knew about
8 these companies and products?" And "Who was this information
9 shared with?"

10 A. I see that. That's above the arrow I was looking at.
11 Yes, I see that.

12 Q. Okay. And that particular -- those particular
13 questions are specifically about the Just Planes video order,
14 correct?

15 A. Yes, they are.

16 Q. And that's the same Just Planes video order that you
17 testified about Mr. al Baluchi and Mr. al Shehri participating
18 in on direct examination?

19 A. Yes, it is.

20 Q. The -- in the next paragraph, you describe a
21 particular e-mail used by Mohamed Atta, correct?

22 A. Yes, I do.

23 Q. And you want to know if it belongs to a real person

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1 and what their relationship to the other hijackers is?

2 A. Yes.

3 Q. In the next paragraph, you ask: "How and why did the
4 hijackers decide to attend flight schools in the United
5 States? Did they consider any other countries?"

6 A. Yes.

7 Q. You asked the CIA to interrogate about: "Why did
8 Mohamed Atta and Marwan al Shehhi fly all the way to Airman
9 Flight School in Norman, Oklahoma, to check out this one
10 school? With the thousands of U.S. flight schools available,
11 why fly cross-country to check out this one school?"

12 A. Yes.

13 Q. "After checking out the flight schools in New York,
14 New Jersey, and Oklahoma, Atta and al Shehhi flew to Florida
15 where they almost immediately enrolled in Huffman Aviation.
16 What made them choose this school?"

17 A. Yes.

18 Q. At the bottom of the page: "How did the hijackers
19 find out about large aircraft simulators?"

20 A. Yes.

21 Q. "How did Atta and al Shehhi learn about Pan Am
22 International Flight Academy in Florida?"

23 A. Yes.

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1 Q. "How did Hanjour learn about Pan Am Jet Tech
2 International?"

3 A. Yes.

4 Q. "Did anyone assist the hijackers in obtaining this
5 information about simulator schools and flight schools?"

6 A. Yes.

7 Q. "How did the hijackers do research on flight
8 schools?"

9 A. Yes.

10 Q. "Did they use aviation magazines to locate
11 prospective schools; if so, which ones?"

12 A. Yes.

13 Q. "Who conducted reconnaissance of the September 11
14 targets in areas where the hijackers settled?"

15 A. Yes.

16 Q. "Who conducted any reconnaissance in the United
17 States relating to September 11th?"

18 A. Yes.

19 Q. You then at the -- on page 23598, provide information
20 about rental of a camcorder by Marwan al Shehhi?

21 A. Yes.

22 Q. And in the second half of page 23599, you ask the CIA
23 to interrogate the detainees about: "Have you seen the

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1 video?"

2 A. Yes.

3 Q. "What was the purpose of renting the camcorder?"

4 A. Yes.

5 Q. "What is on the video?"

6 A. Yes.

7 Q. "Why did Atta go to Las Vegas?"

8 A. Yes.

9 Q. "Where is the video now?"

10 A. Yes.

11 Q. You then talk about a financial transaction involving
12 Marwan al Shehhi at the bottom of 23599?

13 A. Yes.

14 Q. And ask at the bottom of page 23600: "What did
15 al Shehhi do, and who did he meet when he traveled?"

16 A. Yes.

17 Q. At the top of page 23601: "Did Marwan al Shehhi
18 meet, Bahaji, Essabar, Mzoudi, and El-Motassadeq or anyone
19 else while in Morocco?"

20 A. Yes.

21 Q. "Did al Shehhi attempt to meet or assist Essabar in
22 Morocco? Did al Shehhi attempt to help Essabar gain a U.S.
23 visa?"

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1 A. Yes.

2 Q. "Where else did al Shehhi go during this trip?"

3 A. Yes.

4 Q. "What was the purpose of this trip?"

5 A. Yes.

6 Q. You then provide information about a -- about Marwan
7 al Shehhi's travel to Egypt?

8 A. Yes.

9 Q. And on page 23602, you ask the CIA to interrogate
10 these four men about: "What did al Shehhi do, and who did he
11 meet when he traveled to Egypt?"

12 A. Yes.

13 Q. "Where else did al Shehhi go during this trip?"

14 A. Yes.

15 Q. "What was the purpose of this trip?"

16 A. Yes.

17 Q. You then provide background information about Mohamed
18 Atta in Afghanistan?

19 A. Yes.

20 Q. And specifically Mr. Binalshibh?

21 A. Yes.

22 Q. On the second half of page 26 -- excuse me,

23 FBI-23603, you ask: "Where did the Hamburg pilot -- what did

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1 the Hamburg pilots do in Afghanistan and Pakistan?"

2 A. Yes.

3 Q. "Did anyone accompany Atta, al Shehhi, Jarrah, or
4 Binalshibh to or from Afghanistan and Pakistan?"

5 A. Yes.

6 Q. "Where did the Hamburg pilots stay in Afghanistan?
7 Which guesthouse?"

8 A. Yes.

9 Q. "Who did they meet with and why?"

10 A. Yes.

11 Q. "What specific training did they receive: Knife
12 fighting training, aircraft assault training? If so, what
13 specifically was taught?"

14 A. Yes.

15 Q. And I'm on page 23604 now. "Who did they train
16 with?"

17 A. Yes.

18 Q. "When else did the Hamburg pilots go to Afghanistan?"

19 A. Yes.

20 Q. "How many times were the Hamburg pilots in
21 Afghanistan?"

22 A. Yes.

23 Q. "How were Atta, al Shehhi, Jarrah, and Binalshibh

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1 recruited and selected to do 9/11?"

2 A. Yes.

3 Q. "Who recruited Atta, al Shehhi, Jarrah, and
4 Binalshibh into al Qaeda? When, how, and who vouched for
5 them?"

6 A. Yes.

7 Q. "When was Hani Hanjour selected to be a pilot?"

8 A. Yes.

9 Q. And "How was Hanjour's pilot background known?"

10 A. Yes.

11 Q. If you look at the bottom of page FBI-23604, it shows
12 "drafted by James M. Fitzgerald." That's you?

13 A. That's me.

14 Q. And then the copy designations which are not redacted
15 include Mr. Drucker, Ms. Turchiano, Mr. Zebley, and
16 Mr. Fitzgerald?

17 A. Yes.

18 Q. Sir, when you drafted that and asked the CIA to
19 interrogate these men about hundreds of questions, what did
20 you expect to happen?

21 A. I expected those questions to be asked of the men in
22 detention.

23 Q. And then what did you expect to happen?

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1 A. I hoped to receive an answer so that I could try to
2 determine some sort of threat information.

3 Q. This must have been a lot of work to put this
4 together.

5 A. Yes, it was.

6 Q. Do you recall doing it?

7 A. Yes.

8 Q. Who else had input into the document?

9 A. I created this entire document myself. Now,
10 certainly, I'm relying on the investigative work of lots of
11 other people, but I drafted this whole document.

12 Q. Sir, when you drafted those hundreds of questions,
13 did you have any idea how much these men would be tortured to
14 get answers?

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

16 MJ [Col COHEN]: Basis?

17 TC [MR. GROHARING]: Form of the question, assuming facts
18 not in evidence. It also asks for a legal conclusion.

19 LDC [MR. CONNELL]: I can rephrase.

20 MJ [Col COHEN]: Let's rephrase. I'll sustain it. You
21 may rephrase the question.

22 Q. Sir, when you wanted the CIA to ask these questions
23 of their secret incommunicado detainees, did you think they

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1 were going to ask nicely?

2 A. I really didn't ----

3 TC [MR. GROHARING]: Objection, Your Honor. Speculation.

4 LDC [MR. CONNELL]: I'm just asking what he thought.

5 MJ [Col COHEN]: Overruled. You asked specifically what
6 he thought at the time.

7 A. I don't -- I certainly wouldn't use the word
8 "nicely," no.

9 Q. Did you think that -- after your conflict with
10 intelligence interrogators in Guantanamo, did you think that
11 they were going to use rapport-building techniques?

12 A. I don't know if I knew at the time. Again, I'm sure
13 you can -- you'll refresh my memory. But I don't know if I
14 knew at the time exactly what would happen. And perhaps I
15 did; I'm trying to assess what level of knowledge I had when.

16 But as to your characterization, sir, I knew the
17 questions would be put to them. I knew they were in the
18 custody of the CIA, and I knew it was different than a law
19 enforcement approach.

20 Q. Sir, at this time, in 2003, you had been a law
21 enforcement professional for more than ten years. Why were
22 you willing to participate in something like that?

23 A. Participate in passing the questions to these

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1 individuals?

2 Q. No, participate in passing the questions to the CIA
3 to be put to these individuals.

4 A. There were 3,000 dead people, and there were
5 multitudes of threats and unknown information. I considered
6 the actions I took at that time to be reasonable.

7 Q. Who received the answers to your questions?

8 A. I'm not precisely sure. I know when this cable was
9 originally transmitted, I heard it was not well received. So
10 I understand the CIA asked questions when it wants; so as to
11 how the results were received, I don't precisely know.

12 Q. What do you mean "not well received"?

13 A. I understood this cable was not well received by the
14 CIA.

15 Q. What does that mean?

16 A. That means they didn't like the questions that I
17 asked. I don't know precisely why they didn't like them, or
18 maybe they didn't like my tone. I'm speculating. I
19 understood that this cable was not well received by the CIA.

20 Q. Who told you that?

21 A. Adam Drucker.

22 Q. What was your reaction when Adam Drucker told you
23 that your questions were not well received?

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1 A. I was upset.

2 Q. Because, number one, you felt this to be important
3 information?

4 A. I felt there might be significant threat information
5 that would maybe stop another attack. And the reason for me
6 providing this information was not to embarrass people, was
7 not to try to dictate to people what they should ask. It was
8 to obtain threat information, if it could be obtained.

9 Q. So I can't show you the answers in this forum because
10 they're Secret. Do you know who saw the answers?

11 A. Right now, I don't have a specific recollection of
12 who may have seen the answers.

13 LDC [MR. CONNELL]: Sir, I'd like to move on to another
14 topic.

15 MJ [Col COHEN]: You may. I will just note -- no. Carry
16 on.

17 Q. Sir, you testified in your direct examination about a
18 search known as Tariq Road?

19 A. Yes, I did.

20 Q. You're not -- I know that you're not really the right
21 witness to testify about Tariq Road, but can you give us just
22 a general, unclassified -- your general unclassified
23 understanding of what happened at Tariq Road?

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1 A. On or about September 11th, 2002, in Pakistan, there
2 was a raid. There was more than one raid of several different
3 locations in or about that time. There was a gunfight at one
4 of the locations. People were injured, killed. Ramzi
5 Binalshibh was caught. At one of the locations -- one or more
6 of the locations, documents and other items were seized.

7 Q. Sir, I'd like to direct your attention to AE 628DD.

8 A. Yes.

9 Q. FBI-230 -- excuse me, 23659.

10 A. Yes.

11 Q. This is a document that we've looked at before, but
12 I'd like to direct your specific attention to paragraph 8 --
13 or question 8 on page 23661.

14 A. I see question number 8 on page 23661.

15 Q. Okay. Would you review it to yourself without
16 reading it aloud?

17 A. Yes. One moment, please.

18 I just read question 8.

19 Q. Thank you. And just for orientation, this document
20 is a 13 January 2004 requirement document from the FBI to the
21 CIA directed -- asking the CIA to ask questions of
22 Mr. al Baluchi, correct?

23 A. Yes, it is.

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1 Q. Okay. And one of the questions relates to items
2 which were found at Tariq Road, correct?

3 A. Yes.

4 Q. All right. I will now direct your attention to
5 AE 628CC Attachment I.

6 A. I'm at Attachment I.

7 Q. STA-1473.

8 A. I'm on page 1473.

9 Q. Direct your attention to paragraphs 4, 5, and 6 of
10 that document.

11 A. Yes.

12 Q. And as a whole, this document is a summary of a CIA
13 cable regarding a custodial interrogation in early 2004; would
14 you agree?

15 A. Yes, it is.

16 Q. And with respect to paragraphs 4, 5, and 6, they
17 contain information about the specific individuals and the
18 specific practices requested in the 13 January 2004 cable from
19 the FBI; would you agree?

20 A. I see paragraph 4 does, and paragraph 5 does. Give
21 me a moment to read paragraph 6.

22 Q. Yes.

23 A. Okay. I see the relation down at the bottom of

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1 paragraph 6.

2 Q. When you say "the relation," you mean the relation to
3 the ----

4 A. The specific ----

5 Q. ----- specific January 2004 FBI requirement?

6 A. Yeah, the specific name. I was looking for why
7 the -- that was provided, and I see the specific name. So now
8 I understand that, yes.

9 Q. Okay. Sir, moving to a new chapter, I'd like to ask
10 you about a topic that you interrogated Mr. al Baluchi about
11 in January of 2007 but did not testify about on direct
12 examination, which is the so-called shoe bombers.

13 A. Okay.

14 Q. The -- it's fair to say that you interrogated
15 Mr. al Baluchi about the so-called shoe bombers during your
16 interrogation in January 2007?

17 A. Yes, it is.

18 Q. And of the 45-page letterhead memorandum, pages 19
19 through 22 are about the shoe bombers, correct?

20 A. I'll accept your representation. I don't have it in
21 front of me.

22 Q. So something a little less than 10 percent of the LHM
23 is about this topic?

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1 A. That seems high, but again, I'll accept your
2 representation.

3 Q. Okay. And the specific individuals that we are
4 talking about are Richard Reid, a/k/a Abdul Jabbar?

5 A. Yes.

6 Q. And Saajid Badat, a/k/a Issa al-Britani?

7 A. Yes.

8 Q. And you in -- in your -- the LHM document
9 interrogation of Mr. al Baluchi about a series of specific
10 e-mail addresses?

11 A. Yes, I do.

12 Q. And do those include sacrifice72@yahoo.co.uk?

13 A. Yes, that sounds correct. I recognize sacrifice72.

14 Q. Kaykoman, which is K-A-Y-K-O-M-A-N, 2001@yahoo.com?

15 A. Yes.

16 Q. And a_jay2001@hotmail.com?

17 A. Yes.

18 Q. In your LHM, you document showing Mr. al Baluchi a
19 photo of Saajid Badat?

20 A. Yes, I do.

21 Q. And he wrote on it, I think it's Issa al-Britani?

22 A. Yes.

23 Q. In your LHM, you designate showing him a Yahoo

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1 account management tool with identifying information about
2 kaykoman2001?

3 A. Yes.

4 Q. How did you acquire that?

5 A. I got the e-mail documents from Analyst Kimberly
6 Waltz.

7 Q. And you showed him an e-mail from a_jay2001 to
8 kaykoman2001?

9 A. Yes.

10 Q. You showed Mr. al Baluchi another e-mail from
11 a_jay2001 to kaykoman2001, so two separate e-mails?

12 A. Yes. Can you -- just so I can read along with you,
13 sir, can you tell me what ----

14 Q. Yes. It's in AE 502SS, which is a binder probably on
15 the bottom because we haven't used it much.

16 A. So AE 502, you said?

17 Q. 502SS.

18 MJ [Col COHEN]: Counsel, do you mind assisting the
19 witness a little bit with those binders?

20 LDC [MR. CONNELL]: Oh, sure. No problem.

21 MJ [Col COHEN]: Thanks. Just help him find which one
22 you're referring to.

23 LDC [MR. CONNELL]: I can also put it on the overhead.

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1 That would probably be even faster.

2 MJ [Col COHEN]: Counsel just indicated he could put it on
3 the overhead. That will be sufficient.

4 LDC [MR. CONNELL]: May I have the court's indulgence for
5 just one moment, please?

6 Q. So, sir, I was just asking you about the e-mails from
7 a_jay2001 to kaykoman?

8 A. Yes.

9 Q. And I'm going to show you AE 628 Attachment XX at LHM
10 680 and 682.

11 MJ [Col COHEN]: That's 628SS, correct?

12 LDC [MR. CONNELL]: I'm sorry?

13 MJ [Col COHEN]: The actual AE is 628SS, correct?

14 LDC [MR. CONNELL]: No, sir. That's the exact mistake
15 that I made yesterday.

16 MJ [Col COHEN]: Okay.

17 LDC [MR. CONNELL]: It's 502SS.

18 MJ [Col COHEN]: Copy.

19 LDC [MR. CONNELL]: There's a separate one which is 628S.

20 MJ [Col COHEN]: Got it.

21 LDC [MR. CONNELL]: I made that mistake.

22 MJ [Col COHEN]: All right, 502SS. And then what was the
23 attachment again, Counsel?

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1 LDC [MR. CONNELL]: Double XX.

2 MJ [Col COHEN]: Thank you.

3 Q. Sir, I'm showing you page 680, which is the first
4 e-mail to kaykoman from a_jay.

5 A. Yes, thank you.

6 Q. And I'm showing you page 682, which is the second
7 e-mail that you showed Mr. al Baluchi from kaykoman to a_jay?

8 A. Yes.

9 Q. And I'll show you page 686. You showed
10 Mr. al Baluchi an e-mail from mydeardoggy2001 to sacrifice72?

11 A. Yes.

12 Q. All right. I'd now like to ask you just a couple of
13 questions to explain what the context for your questioning of
14 Mr. al Baluchi was.

15 On 22 December 2001, Richard Reid boarded a plane
16 with an explosive device in his shoe?

17 A. Yes, he did.

18 Q. Yeah. And he was indicted on 16 January 2002. Does
19 that sound right?

20 A. That sounds close, yes.

21 Q. Okay. And then that investigation led to the
22 indictment of another man named James Ujaama. Does that sound
23 right?

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1 A. I'm not aware of that. That may well be the case.

2 Q. Are you aware that in April 2003, Mr. Ujaama pled
3 guilty and agreed to cooperate with the FBI?

4 A. I'm aware that he pled guilty. I was not aware of
5 the time.

6 Q. Okay. Now, sir, I'd like to direct your attention to
7 AE 628CC Attachment I at 3171.

8 A. I'm at 3171.

9 Q. Okay. This is a -- a CIA cable describing a mid-2003
10 interrogation of Mr. Mohammad rather than Mr. al Baluchi. Do
11 you see that?

12 A. Yes, I do.

13 Q. And if you -- if you look down there, it describes
14 two specific e-mail accounts which the CIA reported were used
15 by Mr. al Baluchi, although it doesn't actually list what the
16 e-mail accounts were. Do you see that?

17 A. Yes, I see those paragraphs. I see that reference.

18 Q. All right. Now I'd like to draw your attention to
19 AE 628CC Attachment I, but 31 -- excuse me, 1316.

20 A. I'm at 1316.

21 Q. Okay. And 1316 is a summary of a CIA cable
22 describing a mid-2003 custodial interrogation of
23 Mr. al Baluchi?

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1 A. Yes, it is.

2 Q. And includes information about Mr. al-Britani and
3 Majid Khan?

4 A. Just ----

5 Q. Yeah, sure, take ----

6 A. ---- can you tell me which paragraph that's in?

7 Q. I'm not 100 percent sure that I can.

8 A. I'll just take a quick look then, sir.

9 Q. Oh, yes, I can. If you'll flip to the second
10 page ----

11 A. Yes.

12 Q. ---- 1316.

13 A. Yes.

14 Q. Yeah. And you look at the third -- second full
15 paragraph, it begins "To illustrate."

16 A. Yes. Yes, I see that.

17 Q. All right. And now I'd like to direct your attention
18 to same tab, which is AE 628CC Attachment I, STA-1563.

19 A. I'm at 1563.

20 Q. All right. And if you will -- this is a CIA -- a
21 summary of a CIA cable describing custodial interrogation of
22 Mr. al Baluchi in mid-2003?

23 A. Yes.

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1 Q. If you look at the second full paragraph, it includes
2 additional information about Mr. al-Britani and Mr. Khan?

3 A. Yes.

4 Q. All right. Now, I'd like to turn your attention to
5 AE 628DD, 23682, FBI-23682.

6 A. I'm on page 23682.

7 Q. Okay. And FBI-23682 is an FBI Organizational Message
8 Form, or a cable?

9 A. Yes, it is.

10 Q. Dated 4 August 2003?

11 A. Yes.

12 Q. From the FBI to the CIA?

13 A. Yes.

14 Q. It includes in the pass line a redacted special
15 agent?

16 A. Yes, it does.

17 Q. It includes a redacted IOS?

18 A. Yes.

19 Q. Another redacted special agent?

20 A. Yes.

21 Q. And an ALAT, which I assume is an assistant legal
22 attaché?

23 A. Correct, yes.

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1 Q. The subject of this is information about
2 Mr. al-Britani and Mr. Reid?

3 A. Yes, it is.

4 Q. And included in this document are -- and I can orient
5 you to this. Oh, I'm sorry.

6 Did I say this is from the FBI to the CIA?

7 A. Yes, you did.

8 Q. Okay. And I'll orient to you the fourth page, 23686.

9 A. I'm on 23686.

10 Q. In an unclassified paragraph, the cable -- and
11 there's no clear drafter. But the FBI cable lays out nine
12 e-mail addresses, including, for example, a_jay2001,
13 kaykoman2001, and sacrifice72.

14 A. Yes, it does.

15 Q. All right. I'd like to turn your attention -- excuse
16 me -- to the next page, 23668.

17 MJ [Col COHEN]: Did you say 668 or 688, Counsel?

18 LDC [MR. CONNELL]: It's 23688.

19 MJ [Col COHEN]: Okay.

20 LDC [MR. CONNELL]: I'm sure I said it wrong.

21 MJ [Col COHEN]: That's all right. You had me thrown off
22 because that wouldn't have been in sequential order, so ----

23 LDC [MR. CONNELL]: Thank you.

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1 Q. Do you see the top full paragraph there?

2 A. Yes, I do.

3 Q. Okay. And this unclassified paragraph, the FBI
4 states to the CIA, "These e-mail accounts and communications
5 offer insight into Reid's Karachi-based facilitator and can be
6 used for questioning KSM and Ammar regarding their possible
7 roles and identifying others who were involved, including
8 Ésa."

9 Do you see that?

10 A. I don't, sir. I'm on page 23688. Which -- the top
11 paragraph you stated?

12 Q. Yes.

13 A. Yes, I see it. Yes, I see it.

14 Q. And those e-mails that the FBI suggests the CIA can
15 use to interrogate Mr. Mohammad and Mr. al Baluchi include at
16 least three of the ones which you interrogated Mr. al Baluchi
17 about, right?

18 A. Yes, they do.

19 Q. And then the last sentence in that paragraph is --
20 redacted -- "has enclosed some of the e-mail correspondence
21 for reference during interviews with KSM and Ammar." Do you
22 see that?

23 A. Yes.

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1 Q. And the cable does not include the exact e-mail
2 correspondence -- which the government has produced to us what
3 the e-mail correspondence was, but the e-mail correspondence
4 that you chose to interrogate Mr. al Baluchi about was some of
5 the most important, I would say. Would that be fair to say?

6 A. That would be fair to say from my -- I don't have a
7 vast knowledge of Ésa al-Britani or Richard Reid, but I would
8 say that that's a fair characterization from what I know.

9 Q. Okay. And the last question about that. The -- that
10 specific paragraph, the first sentence of it is, "E-mail
11 traffic between Reid and the above accounts incurred in
12 Pakistan, Brussels, Amsterdam, and Paris." Do you agree?

13 A. Yes.

14 Q. Okay. Now I'd like to direct your attention to
15 AE 628C -- excuse me, CC.

16 A. Okay.

17 Q. Attachment I.

18 A. Yes.

19 Q. STA-1780.

20 A. I'm on 1780.

21 Q. And this is a summary of a CIA cable describing
22 custodial interrogation conducted in late 2003?

23 A. Yes, it is.

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1 Q. And I'll discuss the second paragraph -- I'm in the
2 first paragraph.

3 The context makes it clear that Mr. al Baluchi was
4 being interrogated regarding specific e-mails sent to him by
5 Saajid Badat.

6 A. Okay. I -- I understood that to be the case.

7 Q. So you would agree with that characterization?

8 A. If you'd just give me a moment to review, sir.

9 Q. Of course.

10 A. Okay. I see this. He's providing information
11 regarding his knowledge of Saajid Badat.

12 Q. And the second sentence -- or excuse me, the first
13 sentence is: "During a custodial interview conducted in late
14 2003, Ammar al Baluchi discussed an e-mail sent to him by
15 Saajid Badat, who Ammar knew as Issa al-Britani."

16 I'd also like to direct your attention to the third
17 line from the bottom in 1780.

18 A. Okay.

19 Q. And do you see the specific reference to Amsterdam?

20 A. Yes.

21 Q. I'd now like to turn your attention to AE 628CC
22 Attachment I, 1795, so with a little bit of luck, it will be
23 only be a couple -- a few pages later.

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1 A. Yes, I have 1795 here.

2 Q. The -- this is a summary of a CIA cable describing
3 the results of custodial interrogation in late 2003?

4 A. Yes, it is.

5 Q. And it documents that Ammar al Baluchi was shown two
6 photographs of a person of interest to the United States?

7 A. Yes.

8 Q. And he recognized one of the photographs, according
9 to the cable?

10 A. Yes.

11 Q. And identified Issa al-Britani?

12 A. Yes.

13 Q. The -- I'd now like to direct your attention to the
14 same tab, 628CC Attachment I, STA-1736.

15 A. That was in Attachment I, 1736?

16 Q. Yes.

17 A. I do not have that document.

18 Q. Okay. It's unclassified. I can show it to you on
19 the ----

20 TC [MR. GROHARING]: I don't have the document ----

21 LDC [MR. CONNELL]: May I have access to the document
22 camera?

23 MJ [Col COHEN]: Mr. Groharing, I didn't hear you.

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1 TC [MR. GROHARING]: I don't have the document either but
2 I'm fine ----

3 LDC [MR. CONNELL]: Sorry.

4 TC [MR. GROHARING]: ---- with just if he uses the
5 document camera.

6 MJ [Col COHEN]: Let me just have him show it to you real
7 quick and then I have no objection to him doing so.

8 Counsel, you may display. Is this for public display
9 or limited?

10 LDC [MR. CONNELL]: Thank you. Public display is fine.

11 MJ [Col COHEN]: Okay.

12 Q. Sir, I'm showing you what's been -- what I hoped
13 would be in the record at AE 623CC I, STA-1736.

14 A. Okay.

15 Q. I direct your attention to the first highlighted
16 material, which documents that this is a CIA -- excuse me,
17 this is a summary of a CIA cable regarding a custodial
18 interrogation conducted in late 2003?

19 A. Yes.

20 Q. And there is a -- in the first sentence, it states
21 that, "Ammar al Baluchi repeatedly stated -- or stated
22 repeatedly that he was unaware of a Karachi al Qaeda cell
23 existence"?

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1 A. A Karachi JI.

2 Q. A Karachi -- al Qaeda JI. That's what you mean,
3 right?

4 A. Yes.

5 Q. Farther down in this cable -- and I'm going to
6 underline the relevant material for you -- it documents
7 speculation or possible comments by Mr. al Baluchi that he
8 thought Issa al Britani had excellent management skills. Do
9 you see that?

10 A. Yes, I do.

11 Q. And finally in this chapter, I'd like to direct your
12 attention to AE 628CC Attachment I ----

13 MJ [Col COHEN]: Counsel, I'll just need you to make sure
14 that you get -- a copy of that gets to the court reporters for
15 the record.

16 LDC [MR. CONNELL]: Yes.

17 MJ [Col COHEN]: Thank you.

18 LDC [MR. CONNELL]: And, Your Honor, if I understand, just
19 to put a mark in the record, it will probably wind up as --
20 marked as (Sup).

21 MJ [Col COHEN]: That will be fine.

22 LDC [MR. CONNELL]: Yeah.

23 Q. AE 628CC Attachment I, STA-4027. Do you have that

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1 document?

2 A. Yes, I do.

3 LDC [MR. CONNELL]: Okay. Excuse me just -- court's
4 indulgence for just one moment.

5 Q. Okay. And this is a document -- or this is a summary
6 of a custodial interrogation by the CIA of Khalid Shaikh
7 Mohammad on -- in early 2004. Do you agree?

8 A. Yes, I do.

9 Q. And I'd like to direct your attention to the bottom
10 paragraph.

11 A. Yes.

12 Q. And in the bottom paragraph, the CIA summarizes that,
13 "Mohammad Said Issa" -- meaning Issa al Britani -- "would have
14 difficulty working in or managing a cell, as he was a loner
15 who preferred to work on his own."

16 A. I see that.

17 Q. Moving on to the next chapter. Sir, in your --
18 continuing with topics about which you questioned
19 Mr. al Baluchi but which were not the subject of direct
20 examination, you -- during your interrogation, you showed
21 Mr. al Baluchi a photograph of Souhail al Shorabi?

22 A. Yes, I did.

23 Q. Now I'd like to move backwards in time. On 5

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1 June 2003, you drafted an electronic communication regarding
2 Mr. al Shorabi?

3 A. Yes.

4 Q. Now, I'd like to review the events which led up to
5 your drafting of that electronic communication. And I'd like
6 to draw your attention to AE 628CC Attachment K.

7 A. I see Attachment K.

8 Q. And the document is RAD-2429.

9 A. Yes, I see it.

10 Q. Okay. Now, RAD-2429 is a newly declassified version
11 of a translated copy of a surveillance log of January 2007
12 surveillance; would you agree?

13 A. January 2000 surveillance.

14 Q. Yes. January 2000 surveillance. Sorry if I said it
15 wrong.

16 A. I agree, yes.

17 Q. Okay. And this is a document over which the United
18 States has asserted national security privilege over its
19 origin; would you agree?

20 A. Yes.

21 Q. So you can't say where -- even if I were to ask, you
22 can't say where it came from?

23 A. That's correct.

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1 Q. The -- but it is a log which purports to describe
2 alleged surveillance in Malaysia in January of 2001; was that
3 fair to say?

4 A. Yes.

5 Q. I'll direct your attention to -- in the same tab,
6 Attachment K, to RAD-2443?

7 A. 2443.

8 Q. Yes. And this is a 1A, which purports to contain
9 surveillance photographs of Khalid al Mihdhar, Nawaf al Hazmi,
10 Khallad Bin'Attash, and Souhail Abdu Ana'm al Shorabi?

11 A. Yes.

12 Q. And this is another document that the United States
13 has asserted national security privilege over its origin?

14 A. Yes.

15 Q. And if I were to ask you, you could not tell me where
16 it came from?

17 A. Where the photos came from, that's correct?

18 Q. Okay. Now, if you -- if you look at the previous
19 page, RAD-2442 ----

20 A. Yes.

21 Q. ---- this is an electronic communication describing
22 the arrival of the surveillance photographs, correct?

23 A. Yes, it is.

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1 Q. And it was drafted by Ricardo Grave de Peralta; would
2 you agree?

3 A. Yes.

4 Q. Now, what was the relationship with Special Agent
5 Grave de Peralta to the PENTTBOM investigation?

6 A. He was one of the agents from the Washington Field
7 Office who was assigned for a time to PENTTBOM.

8 Q. All right. Now, I'd like to -- with that as
9 background, I'd like to direct your attention to AE 628CC
10 Attachment I ----

11 A. Okay.

12 Q. ---- at STA-92.

13 A. I'm on STA-92.

14 Q. Okay. Is it fair to say that that is a summary of a
15 CIA cable describing mid-2003 custodial interrogation of
16 Khalid Shaikh Mohammad?

17 A. Yes, it is.

18 Q. And would it be fair to say that it include -- that
19 it purports to describe the evolution of the 9/11 plot,
20 including activities in Malaysia?

21 A. If you'll give me one moment, please?

22 Q. Of course.

23 Sir, I can orient you, if you'd like.

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1 A. I was just looking for the piece in here about
2 Malaysia, so I concur with what you said.

3 Q. It's on page 93, in the ----

4 A. Yes.

5 Q. ---- second full paragraph.

6 A. Okay. I've read paragraph 2, and let me just scan
7 paragraph 3. Okay. I see the piece regarding Malaysia.

8 Q. Okay. The -- I'd now like to turn your attention to
9 AE 628CC Attachment H.

10 A. Okay.

11 Q. And direct your attention to -- excuse me just one
12 second.

13 Page 7773. FBI-7773.

14 A. I'm on 7773.

15 Q. And FBI-7773 is a 302 drafted by Special
16 Agent Ricardo Grave de Peralta regarding his interrogation of
17 Souhail al Shorabi; would you agree?

18 A. Yes, it is.

19 Q. And given that it's an ordinary 302, once it was
20 prepared, it would ordinarily be uploaded into the ACS safety,
21 correct?

22 A. Yes.

23 Q. Now, I note that the file number on that is redacted.

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1 A. Yes.

2 Q. Do you know why?

3 A. I believe I do.

4 Q. Okay.

5 A. This interrogation was conducted in Guantanamo ----

6 Q. Yes.

7 A. ---- so these documents went into a file specific for
8 Guantanamo detainees. Some of them may have been also
9 uploaded into the 9/11 file. If an agent chose to put an
10 additional case number on it, you could load it into multiple
11 case files.

12 This appears -- again, I can't see -- it appears to
13 have only been uploaded into one case file. But I see a
14 second redaction, so I don't know for sure, but this likely
15 went into a Miami case file.

16 Q. Okay. And so let me direct your attention to the
17 third paragraph.

18 A. Okay.

19 Q. And in this document dated 12 May 2003, Special
20 Agent Grave de Peralta writes that "al Shorabi confessed to
21 traveling to Malaysia with Walid Bin'Attash and meeting Khalid
22 al Mihdhar and Nawaf al Hazmi"?

23 A. Yes.

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1 Q. Now, I'd like to at this point draw your attention to
2 AE 628DD.

3 A. Okay.

4 Q. Which is at FBI-23728.

5 A. Okay.

6 Q. This is an FBI requirements cable?

7 A. Yes.

8 Q. Dated 23 May 2003?

9 A. Yes, it is.

10 Q. From the FBI to the CIA?

11 A. Yes.

12 Q. Which in the pass line includes Interrogator SG1?

13 A. Yes.

14 Q. And in general is a request to present photographs of
15 GTMO detainee Souhail al Shorabi and pose questions to Khalid
16 Shaikh Mohammad?

17 A. Yes.

18 Q. And although the questions themselves are classified,
19 if you will flip to pages 23730 through 731, would you agree
20 that there are ten questions?

21 A. Yes, I would.

22 Q. And if you will turn to the back page, the "drafted
23 by"?

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1 A. Yes.

2 Q. The drafter, although the name of the drafter is
3 redacted, the initials are RGDP, correct?

4 A. Yes, they are.

5 Q. Ricardo Grave de Peralta?

6 A. I presume so.

7 Q. The tickler count includes Mrs. Turchiano?

8 A. Yes.

9 Q. Then, if I can address your attention to same tab,
10 but FBI-23725?

11 A. Yes.

12 Q. There is another FBI requirement. I'm sorry, I said
13 725. I meant 825. 23825.

14 A. I have 23821 and 23830. I do not have 23825.

15 Q. Okay. Are you in DD?

16 A. Yes, I am. DD and ----

17 LDC [MR. CONNELL]: Okay. May I approach counsel?

18 MJ [Col COHEN]: You may.

19 [Counsel conferred.]

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

22 MJ [Col COHEN]: You may. You may approach.

23 LDC [MR. CONNELL]: Your Honor, may I approach the

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1 witness?

2 MJ [Col COHEN]: You asked. You may.

3 I've had a brief conversation with the court
4 reporter. If this is in the electronic filing eventually,
5 just confirm that at the break, and then we can just put the
6 page numbers that it's found in the electronic record.

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

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

9 Q. Sir, FBI-23825 is another FBI requirements document?

10 A. Yes, it is.

11 Q. And what's it state?

12 A. "Request to present photographs of GTMO detainee
13 Souhail Abdu Ana'm al Shorabi to al Qaeda detainee Waleed
14 Bin'Attash a/k/a Tawfiq Bin'Attash a/k/a Khallad, and pose
15 questions regarding Bin'Attash's travel to Malaysia with al
16 Shorabi."

17 Q. And what is its date, sir."

18 A. 28 May 2003.

19 Q. Okay. So this document is also about al Shorabi, but
20 it requests questions to Mr. Bin'Attash rather than
21 Mr. Mohammad?

22 A. That's correct.

23 Q. Okay. I'm going to get that back from you and put it

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1 in my little stack here so I make sure to coordinate.

2 MJ [Col COHEN]: You may, Counsel. Actually, Counsel, if
3 you're not going to need that anymore, if you just want to
4 hand those to the court reporter for now, that will be fine.

5 LDC [MR. CONNELL]: I will, sir -- I will, sir, but
6 unfortunately, mine has writing on it.

7 MJ [Col COHEN]: Okay. I understand.

8 LDC [MR. CONNELL]: I'll get a clean one.

9 MJ [Col COHEN]: Now, the one that you underlined, I do
10 need to see that one. That needs to be in the record because
11 you underlined something for the witness.

12 LDC [MR. CONNELL]: Okay. I'll circle back to that.

13 MJ [Col COHEN]: Okay. Thanks.

14 LDC [MR. CONNELL]: I'll take care of it over lunch, is
15 what I mean.

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

17 Q. So those are the events which precede your drafting
18 of the electronic communication regarding Mr. al Shorabi?

19 A. Yes. By date, yes, they are.

20 Q. And I would now like to direct your attention to
21 AE 628CC Attachment H.

22 A. Okay. I'm at Attachment H.

23 Q. Okay. And it's FBI-21690.

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1 A. Okay. I'm at 21690.

2 Q. All right. And, sir, this is another 302 by Special
3 Agent Grave de Peralta about his interrogation of Mr. Shorabi
4 at Guantanamo; is that correct?

5 A. Yes, it is.

6 Q. And this one is dated -- the investigation is dated
7 June 6, 2003?

8 A. Yes.

9 Q. Okay. Now, I'd like to direct your attention to the
10 last paragraph.

11 A. Okay.

12 Q. The last sentence on the first page, 21690, says, "al
13 Shorabi was reminded that Khalid Sheik Mohammed has stated he
14 has met and knows al Shorabi and knows him as Barkat
15 al-Ta'iz."

16 A. I see that.

17 Q. Okay. Now, how did Special Agent Grave de Peralta
18 know what Khalid Shaikh Mohammad had said in CIA cables
19 regarding the identity of Mr. Shorabi?

20 A. I presume he read the cable.

21 Q. Okay. Sir, I'd like to direct your attention to
22 AE 628CC Attachment H, except this time, FBI-21189.

23 A. Okay. I see 21189.

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1 Q. And this relates to investigation taking place on
2 16 June 2003?

3 A. Yes, it does.

4 Q. It's a 302 of Special Agent Grave de Peralta
5 regarding his interrogation of Mr. al Shorabi?

6 A. Yes.

7 Q. And I'd like to direct your attention to page 2191,
8 the third page of the document.

9 A. Yes.

10 Q. And it's documented in that paragraph that "al
11 Shorabi continued that the number three man in al Qaeda and
12 Khallad have already been arrested and they should talk to
13 them."

14 A. Could you -- I'm sorry, sir. On 91 ----

15 Q. Bottom paragraph.

16 A. Which one?

17 Q. Bottom paragraph.

18 A. Okay. Thank you.

19 Q. Second sentence. Begins "al Shorabi continued"?

20 A. Yes. I see it, yes.

21 Q. Special Agent Grave de Peralta states, "al Shorabi
22 continued that the number three man in al Qaeda and Khallad
23 have already been arrested and that they should talk to them.

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1 The interviewing agent explained they are talking to them, and
2 it is what Khalid Shaikh Mohammad, Khallad, and others are
3 saying which makes the interview team believe al Shorabi is
4 not coming clean on everything." Do you see that?

5 A. I do.

6 Q. How did -- is this the same answer? Special
7 Agent Grave de Peralta knew what Mr. Bin'Attash, Mr. Mohammad,
8 and others were saying to the CIA because he had read the
9 cables?

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

11 MJ [Col COHEN]: One second. Objection?

12 TC [MR. GROHARING]: Speculation.

13 MJ [Col COHEN]: Speculation?

14 LDC [MR. CONNELL]: It was his previous answer, I was just
15 repeating it. I can ask the question a different way.

16 MJ [Col COHEN]: I'll sustain on those grounds. He
17 must -- does he have independent knowledge of that or not,
18 that would be the question.

19 LDC [MR. CONNELL]: Sure.

20 Q. As a member of the PENTTBOM team, would -- could
21 Special Agent Grave de Peralta have access to CIA reporting on
22 detainees related to his investigative materials?

23 A. He could have access.

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1 Q. How did -- so with that as foundation, how did
2 Special Agent Grave de Peralta know what Mr. Mohammad and
3 Mr. Bin'Attash and others were saying?

4 TC [MR. GROHARING]: Objection.

5 MJ [Col COHEN]: Basis?

6 TC [MR. GROHARING]: Speculation.

7 MJ [Col COHEN]: Counsel, you need to lay a predicate
8 foundation that he knows how he knew.

9 LDC [MR. CONNELL]: Okay.

10 MJ [Col COHEN]: If he doesn't, then it is speculation.
11 I'll sustain it for now and allow you some leeway to find out.

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

13 Q. So you testified that Special Agent Grave de Peralta
14 was detailed for a time as a member of the PENTTBOM team;
15 would you agree?

16 A. Yes.

17 Q. And what period of time was that?

18 A. I'd have to estimate. I would say late 2001. I'm
19 not exactly sure when he left -- excuse me. He spent maybe a
20 year or two there. I don't know what his total time was.

21 Q. Sure. It would be fair to suggest that his total
22 time probably included June of 2003, since those -- that's the
23 time period of these 302s?

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1 A. Yeah. I -- yes, I would agree with that.

2 Q. Okay. And during that time, he coordinated with the
3 other members of the team regarding issues of investigative
4 significance with the PENTTBOM team; would you say that's fair
5 to say?

6 A. He may have, and I may myself have spoken to him, but
7 I -- to answer precisely, I'd have to receive a specific
8 question.

9 Q. Given the ordinary course of business on the PENTTBOM
10 team that you described earlier, it would be ordinary habit
11 for members of the team to coordinate with each other
12 regarding issues of investigative significance; would you
13 agree?

14 A. If it made sense. When you say an issue of
15 investigative significance, it might be that some -- somebody
16 is doing something on the Flight 175 team and they have
17 something that is significant, but it doesn't necessarily
18 relate to what I'm doing on the Flight 11 team.

19 So there are a lot of important things to come up.
20 So something that's important to one person may or may not be
21 significant to another person. Again, they could be, but it's
22 going to be situation dependent.

23 Q. And on Tuesday you testified that, after a period of

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1 time, the PENTTBOM team was no longer subdivided into
2 individual teams, but -- it no longer had 30 people on it, it
3 had a smaller people -- number of people on it. That would
4 include the period of June 2003, correct?

5 A. I don't know if they were still divided up into teams
6 by then.

7 Q. Right.

8 A. I don't know.

9 Q. Okay. So as -- you don't have any reason to believe
10 that they were divided into the Flight 11 team and the
11 Flight 175 team by June of 2003?

12 A. I don't think so, no.

13 Q. Okay. What was Special Agent Grave de Peralta's area
14 of investigative focus?

15 A. Certainly it included Shorabi. To my recollection
16 right now, I don't know what he was initially looking at.

17 Q. Would it be fair to say Malaysia?

18 A. It may be. Again, obviously, having reviewed some of
19 these things, certainly it included issues related to
20 Malaysia. I don't know if it was solely that or if it
21 included something else.

22 Q. Okay. And the -- the electronic communication
23 regarding al Shorabi that you testified about earlier was on

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1 5 June 2003, correct?

2 A. Well, I testified that I wrote one. I thought -- I
3 don't know if it was 5 or 6 June 2003.

4 Q. Okay. So 5 or 6 June, so really within two weeks of
5 this period of time that we're talking about, correct?

6 A. Well, sir, before I testify -- like what connection
7 are we drawing between the document that I wrote and
8 Mr. Grave de Peralta?

9 Q. That both relate to al Shorabi.

10 A. Could we review my document, sir? Is that possible?

11 Q. It is, but it's also coming up on lunchtime. So why
12 don't I just leave that question and move on.

13 The -- do you know if, during that period of time,
14 some members -- during the period of time of June 2003, some
15 members of the PENTTBOM team had access to detainee reporting?

16 A. I suspect they did.

17 Q. Okay. You would not think that Special
18 Agent Grave de Peralta -- you don't have any reason to believe
19 that he did -- specifically did not have access to detainee
20 reporting; that he was barred?

21 A. I don't have reason to believe that.

22 Q. Okay. And if I were to suggest to you that Special
23 Agent Grave de Peralta did have access to detainee reporting,

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1 that wouldn't come as a surprise to you?

2 A. It would not.

3 Q. Okay. So with that as background, what is the most
4 reasonable explanation in your investigative experience as to
5 why Special Agent Grave de Peralta had access to what
6 Mr. Mohammad, Mr. Bin'Attash, and others were saying?

7 A. So to understand, you're asking me to speculate?

8 Q. No, I'm asking you to draw a conclusion based on your
9 experience and the facts that are available to you.

10 A. Sir, can you please restate the question, sir?

11 Q. Yes. Is the most reasonable explanation for why --
12 in your investigative experience and given the facts that you
13 have access to ----

14 A. Yes.

15 Q. ---- is the most reasonable explanation for Special
16 Agent Grave de Peralta's access to what Mr. Mohammad and
17 Mr. Bin'Attash were saying is that he had access to the CIA
18 cables?

19 A. Yes.

20 Q. Sir, I'd like to direct your attention to ----
21 LDC [MR. CONNELL]: Excuse me, with the court's
22 indulgence.

23 Q. I would like to direct your attention to AE 628CC

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1 Attachment H at FBI-21312.

2 A. I have 21312 here.

3 Q. Okay. 21312 is another 302 from -- created by
4 direct -- Special Agent Grave de Peralta regarding his
5 interrogation of Mr. al Shorabi on 17 June 2003; would you
6 agree?

7 A. Yes.

8 Q. And I'd like to direct your attention to the second
9 page, which is 21313. The second full paragraph, which begins
10 "The interview agent stated the most important reason."

11 A. Yes.

12 Q. And so in that, Special Agent Grave de Peralta
13 reports, "The interviewing agent stated the most important
14 reason he has serious doubts about what al Shorabi is or is
15 not saying is there is physical evidence and testimony of
16 others which contradicts him. It was pointed out to al
17 Shorabi that he has kept telling the interview team to go and
18 talk with Khalid -- with Khallad, and Khalid Shaikh Mohammad,
19 a/k/a Mukhtar, and that they can verify what he has been
20 saying. al Shorabi was told that is exactly what is
21 happening, and what Khallad and Shaikh Mohammad are saying is
22 not in line with what he has been saying."

23 Do you see that?

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1 A. Yes, I do.

2 Q. Now, the most logical explanation, given your
3 investigative experience and life history, is that -- for why
4 Grave de Peralta knows what Khallad and Shaikh Mohammad are
5 saying is that he has access to the CIA reporting, correct?

6 A. Yes, he has some access, correct.

7 Q. I'd like to direct your attention to AE 628CC
8 Attachment H, FBI-21253.

9 A. I'm on 21253.

10 Q. 21253 is a 302 created by Special Agent Ricardo
11 Grave de Peralta documenting his interrogation of Mr.
12 al Shorabi on 18 June 2003; would you agree?

13 A. Yes.

14 Q. And I'd like to direct your attention to the third
15 full paragraph which begins, "Observed during this interview."

16 A. Yes.

17 Q. In that paragraph, Special Agent Grave de Peralta
18 states: "al Shorabi insisted he knows those who have been
19 talking about him are being tortured to say things about him.
20 al Shorabi stated, if" -- redacted -- "are brought to him and
21 they tell him that they are not being tortured, then he will
22 tell everything he knows."

23 Do you see that?

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1 A. Yes.

2 Q. Okay. And then I'd like to direct your attention
3 to -- now, let me just ask you: al Shorabi has -- at the top
4 of this page, 21253, Special Agent Grave de Peralta includes
5 the various aliases for Mr. al Shorabi. Do you see that?

6 A. Yes, I do.

7 Q. And so those include Muhammad Ali Sa'id, Abu Khalil,
8 Musab, Barkat al-Ta'iz, and Souhail al Barra?

9 A. Yes, I see that.

10 Q. Okay. Now, I'd like to direct your attention to
11 628CC Attachment I, STA-440.

12 A. I'm on STA-440.

13 Q. And STA-440 is a summary of a CIA cable from
14 interrogation of Mr. Bin'Attash in early 2004?

15 A. Yes.

16 Q. The -- and the subject is -- and I'm in the first
17 paragraph. The subject about which Mr. Bin'Attash was
18 interrogated is whether he knew Abu al-Bara al-Ta'izi or
19 Shorabi, a/k/a Barkat?

20 A. Yes.

21 Q. And in the second paragraph, the interrogation of
22 Mr. Khallad relates to Mr. al Shorabi, also known as Mr. Abu
23 al Barra, his travel to Malaysia.

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1 A. Yes.

2 Q. And then finally in this loop, I'd like to direct
3 your attention to AE 628DD -- actually, I don't think that's
4 correct. I'm sorry -- AE 628CC Attachment I.

5 No, I was right the first time. I apologize. I
6 sincerely I apologize. It is in DD, AE 628DD.

7 A. Okay.

8 Q. Okay. FBI-20556.

9 A. Okay. I'm on 20556.

10 Q. Okay. And this is a -- 20556 is a -- an electronic
11 communication; is that right?

12 A. Yes, it is.

13 Q. It lists its drafter as Special
14 Agent Grave de Peralta?

15 A. Yes.

16 Q. To -- documenting his -- an FBI interview of detainee
17 Abdul al Shorabi in Guantanamo Bay.

18 A. Yes.

19 Q. And its date is 12 February 2004.

20 A. Yes, it is.

21 Q. The -- and I'll direct your attention to the bottom
22 paragraph, an unclassified paragraph, which says that in
23 addition to Special Agent Grave de Peralta, Special

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1 Agent Michael Miller of the Criminal Investigative Task Force,
2 was involved in the interrogation. Do you see that?

3 A. Yes, I do.

4 Q. Okay. And then I direct to you page 2.

5 A. Okay.

6 Q. All right. And then there's a redaction of more than
7 a line in the bottom paragraph. Do you see that?

8 A. I do.

9 Q. And then in -- following the redaction, in an
10 unclassified paragraph, Special Agent Grave de Peralta states:
11 "The interviewing agent reminded al Shorabi that it was al
12 Shorabi who stated that the interviewing agent should go and
13 talk with Bin'Attash regarding al Shorabi's involvement in
14 al Qaeda and the trip to Malaysia. The interviewing agent
15 told al Shorabi he had lived up to his end of the bargain, and
16 it was now up to al Shorabi to address the issues."

17 Do you see that?

18 A. Yes, I do.

19 Q. Here's my question: How did Special
20 Agent Grave de Peralta get access to Mr. Bin'Attash?

21 A. How did he -- like as far as passing information
22 or specifically?

23 Q. The interviewing -- "al Shorabi, who stated that the

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1 interviewing agent should go and talk with Bin'Attash
2 regarding al Shorabi's involvement in al Qaeda and the trip to
3 Malaysia. The interviewing agent told al Shorabi he had lived
4 up to his end of the bargain."

5 So I'll repeat the question and you can answer it in
6 whatever way you find appropriate. But how did Special
7 Agent Grave de Peralta gain access to Mr. Bin'Attash?

8 A. I don't know. I could speculate.

9 Q. Is your belief as to how Mr. -- how Special
10 Agent Grave de Peralta gained access to Mr. Bin'Attash
11 classified?

12 A. I don't think the answer would be classified.

13 Q. Okay. Is it based on your knowledge of the facts and
14 an inference from your investigative experience as applied to
15 your knowledge of the facts?

16 A. Yes. I think that's a fair way to categorize it.
17 And again, it is a -- it is an estimation on me because I
18 don't have specific knowledge, but ----

19 Q. Okay. And with that grounding ----

20 A. Yes.

21 Q. ---- what is your belief?

22 A. I believe he likely passed questions to the CIA. My
23 speculation is I don't believe he spoke to him in person.

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1 Although, I don't have personal knowledge of that.

2 Q. So one of the things you told us on Tuesday is that
3 if an FBI agent -- excuse me, one of the things you told us on
4 Tuesday is that an FBI agent is going to include a ruse or
5 information that is not true in a 302, it has to be
6 documented. Do you recall?

7 A. I recall you asking that, sir. I -- and I'd have to
8 look at the exact text of my answer. I think -- if I recall
9 correctly, it perhaps should be documented or it is helpful to
10 be documented. I don't know that there is a policy that
11 requires it to be documented.

12 So if I answered imprecisely, I apologize, but -- I
13 don't know there's a policy saying that it has to state in a
14 302 that a ruse is being used. I suspect it's good practice,
15 but ----

16 Q. Are you saying that it's FBI policy for FBI agents to
17 include information in 302s or ECs that is not true without
18 flagging it as such for their fellow agents?

19 A. No, I'm not. But in this specific case, when the
20 interviewing agent told Shorabi he lived up to his end of the
21 bargain, right? But so -- it's not necessarily a ruse if
22 Mr. Grave de Peralta effected communication with Khallad, and
23 if that effected communication was through cables, then he

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1 could say maybe this isn't a ruse, is what I'm saying.

2 Like looking at this, Mr. Grave de Peralta may have
3 passed information to the CIA, which was asked of Khallad, and
4 the information may have come back to Mr. Grave de Peralta;
5 thus, he had a reasonable basis for stating what he did, if
6 imprecisely.

7 Q. Sir, I'd like to move to another chapter.

8 LDC [MR. CONNELL]: May I have a moment?

9 Q. Sir, I'd now like to ask you some questions about
10 another topic that you asked Mr. al Baluchi about in your
11 interrogation, but was not a subject of your testimony on
12 direct examination, and that is Moshabab al Hamlan?

13 A. Yes.

14 Q. You asked earlier if I could orient you within the
15 LHM, and I'll give you the same ----

16 A. I have the -- I believe I have the LHM here, if that
17 helps.

18 Q. Yes. The LHM is found at 502SS Attachment XX.

19 A. Sir, the binders I have don't appear to have 502. I
20 have 628DD to RR. I have AE 628M, O, and S. I have the
21 Fitzgerald binder.

22 Q. Okay. No problem. It's only two sentences. I can
23 read it to you.

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1 A. Very good.

2 Q. Sir, there's a portion of your LHM where you document
3 the photographs that you showed to Mr. al Baluchi and his
4 comment, if any, upon them ----

5 A. Yes.

6 Q. ---- correct? And at page LHM-541 at -- you showed a
7 photograph numbered X22 and stated: "Photograph known to
8 investigators as Moshabab al Hamlan. Ali did not recognize
9 the individual in this photograph."

10 Does that seem a fair summary?

11 A. Yes.

12 Q. What photograph did you show him? It was not
13 attached to your LHM.

14 A. To the best of my knowledge, it's a photo -- a
15 photograph of Moshabab al Hamlan.

16 Q. Do you know where you got the photograph?

17 A. I believe -- I'm trying to think now. I don't know
18 if we got it from the United States or from a foreign
19 government.

20 Q. Okay.

21 A. Possibly from the United States, sir.

22 Q. Okay. When you interrogated Mr. al Hawsawi, you also
23 showed him a photograph of al Hamlan?

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1 A. Yes.

2 Q. Now, a little bit of background with respect to
3 Mr. al Hamlan. I'll turn your attention to AE 628DD,
4 FBI-20250.

5 MJ [Col COHEN]: Tell you what, Counsel, we're going to --
6 how many questions do you have here?

7 LDC [MR. CONNELL]: This -- there are a couple of
8 requirements related to this one, Your Honor, so it will take
9 a little while.

10 MJ [Col COHEN]: Okay. I think we're going to go ahead
11 and take the lunch recess now. It's 1228 hours.

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

13 MJ [Col COHEN]: General Martins?

14 CP [BG MARTINS]: Your Honor, I have some additional
15 information the commission was seeking relating to scheduling.

16 MJ [Col COHEN]: Okay.

17 CP [BG MARTINS]: Should I pass that now?

18 MJ [Col COHEN]: Let's go ahead and take these two minutes
19 then to address this and then I'll recess the court.

20 CP [BG MARTINS]: Your Honor, the military judge asked
21 that I inquire into the feasibility of the Joint Task Force
22 supporting proceedings from 8:00 a.m. to 6:00 p.m. I've done
23 so, and the JTF indicates that it can do so if and as deemed

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1 necessary by the military commission. If deemed necessary by
2 the military commission, the JTF could sustain such extended
3 hours for each of the five days next week.

4 The JTF did state that there are significant
5 operational constraints to supporting such hours, particularly
6 for a series of days; so the earlier they are given notice,
7 the better.

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

9 CP [BG MARTINS]: Let me also please clarify the
10 government's position on a session this Saturday to include
11 authorities and funding regarding civilian pay.

12 No one should construe my input regarding a Saturday
13 session during last night's R.M.C. 802 conference as an offer
14 to pay overtime further into the future. Such questions need
15 to be dealt with on a case-by-case basis, and we defer to the
16 professionals who deal with civilian employee pay on that.

17 To be clear, and I don't believe Your Honor
18 interpreted my input this way, neither I nor the commission
19 has the authority to commit funds. I was and remain prepared
20 to represent that, if the commission calls a session this
21 Saturday, 21 September, it should not consider funding for
22 civilian employee compensation that day as a barrier.

23 MJ [Col COHEN]: Thank you.

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1 CP [BG MARTINS]: That's the extent of my information.

2 As for a session this Saturday, the United States
3 requests that at least several hours of questioning of the
4 next witness occur before Monday morning.

5 MJ [Col COHEN]: Okay.

6 CP [BG MARTINS]: We have no preference regarding the
7 means by which that is accomplished, either going later
8 tomorrow evening or holding proceedings for part of Saturday.

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

10 CP [BG MARTINS]: Thank you, Your Honor.

11 MJ [Col COHEN]: I'll let the parties think about that.

12 All right. We're in recess until 1345 hours.

13 [The R.M.C. 803 session recessed at 1231, 19 September 2019.]

14 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1349,
2 19 September 2019.]

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

4 The parties are present.

5 Mr. Bin'Attash and Mr. Binalshibh did not join us
6 after the lunch break. The other three gentlemen remain.

7 Mr. Sowards.

8 LDC [MR. SOWARDS]: Yes, Your Honor. I just wanted to
9 briefly put something on the record, because General Martins
10 mentioned that if you were going to be considering something
11 on the weekend or next week, the sooner the better to let the
12 guard force know, so ----

13 MJ [Col COHEN]: Okay.

14 LDC [MR. SOWARDS]: ---- just to give you one other -- or
15 two other things for your consideration.

16 I understood the General to say that pay for the
17 weekend hours would not be a barrier, and I assumed what he
18 meant was somebody has told him they will authorize that part
19 of the budget for actual cash payments for salaries. The
20 problem is that we have apparently, as to the GS attorneys,
21 including at least one on our team, has reached her limit in
22 terms of actually being compensated for overtime -- because we
23 do work a lot of overtime in this case -- and so would not be

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1 eligible, even with General Martins' generous intervention,
2 would not be eligible for actual pay, which would then put her
3 in the category of getting what they call credits that you can
4 accumulate. And the problem, again because of the pace of
5 litigation that we have been pursuing, she has -- is up to her
6 maximum of, I believe it's 25 for a certain period after which
7 you then have to use those credits and have them exhausted
8 before you can start accruing new ones.

9 The sum total of all of that, as I understand it, is
10 that she would be, beyond anybody's control, working for free
11 on Saturday or Sunday, which apparently she is prohibited by
12 law from doing.

13 MJ [Col COHEN]: Okay.

14 LDC [MR. SOWARDS]: So there's that point.

15 The second one is, and I don't know if
16 General Martins meant Saturday as a preference when he
17 specified that as the day that we might meet on the weekend,
18 but I just wanted to make sure, because I didn't renew my
19 comments at the 802, that, as I understand it, this Saturday
20 is a travel day both for the spectators in the gallery as
21 well -- as well as other individuals; for instance, on our
22 team, paralegals and such, that would be swapped out, and so
23 we would not have their assistance.

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1 But in terms of people in the gallery, what that
2 would mean is we would essentially have a concern about a
3 public trial on Saturday; that those individuals would not be
4 here. And I think an equally important concern, perhaps for
5 you and all of us, is that there are a group of family members
6 who are traveling down, going to some -- some inconvenience to
7 their personal lives, to come down and watch these hearings.

8 So it would probably be better to schedule this for a
9 day, both in terms of the right to a fair -- to a fair and
10 public trial, but also for their benefit, to have that --
11 that, what would be for them, opening session scheduled at a
12 time when they would actually be here to observe it.

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

14 LDC [MR. SOWARDS]: Thank you.

15 MJ [Col COHEN]: Is this particular attorney someone who
16 appears here in court or is it someone who works on the staff?

17 LDC [MR. SOWARDS]: Yes. And I would tell you her name,
18 but I have trouble pronouncing it.

19 MJ [Col COHEN]: I understand. Thank you.

20 If the parties will please assist me in getting some
21 kind of guidance on what the flexibility is. I mean, anyone.
22 I just need some help on figuring out what my left and right
23 parameters are on issues with respect to credits and overtime.

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1 I need -- my inclination is, right now, is to not
2 work Saturday, but see how much longer we spend this
3 afternoon. If we can get into even an hour or more of closed
4 session sometime today, hour and a half, let's start that way.
5 Start in a closed session early tomorrow morning, and then
6 maybe get -- be able to reopen the court in the afternoon,
7 with potentially any -- any remaining redirect or recross, and
8 take some testimony so that the parties can have the Saturday
9 altogether and the transition and the shifting, all of that
10 kind of stuff, and go.

11 But it still doesn't address my concerns about what
12 the law will allow me to do. This is outside my lane, but
13 it's -- it's a decision that's impacting all of us -- all of
14 us here. So to the extent that there are some personnel folks
15 or if we can get some information from some personnel folks to
16 tell me what I can order within the law, I will do -- I will
17 do so.

18 LDC [MR. CONNELL]: Yes, sir. Surely WHS knows, and we'll
19 reach out to them.

20 MJ [Col COHEN]: Thank you. Yeah, that's the -- of all of
21 the attorneys I have on my staff, a person -- a labor law
22 attorney is not one of them. So, like I said, I would
23 appreciate anything from either the prosecution or the defense

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1 or any of those kind of things. Thank you. All right.

2 With that said ----

3 LDC [MR. CONNELL]: We're making good progress, sir. I'm
4 going ----

5 MJ [Col COHEN]: Like I said -- like I said, I don't want
6 to rush through this. This is important.

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

8 MJ [Col COHEN]: And I get that. So from my perspective,
9 we'll take as long as we need. You know, I've said that
10 multiple times. I knew this would be a process that continues
11 to build on itself. When I came up with the schedule for next
12 year, you can very well believe that I had exactly what's
13 going on right now in mind.

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

15 MJ [Col COHEN]: Because how many weeks we're going to
16 have to spend just taking testimony and why each one of those
17 weeks is so important to being able to -- just to take
18 testimony, at least initially, at least the first half of the
19 year.

20 I mean, when Mitchell and Jessen show up, we're going
21 to spend -- I don't know, we may spend the entire two weeks
22 just on those two alone.

23 LDC [MR. CONNELL]: Your Honor, we could spend it on

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1 Dr. Mitchell.

2 MJ [Col COHEN]: Yeah. That's what I'm saying. So all of
3 that went into my analysis when I set that 11 trips to take
4 witness testimony next week -- next month -- next year.

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

6 MJ [Col COHEN]: So you do what you need to do to
7 represent your client, like I said.

8 And, Mr. Groharing, I understood earlier -- I
9 understand that even if you as the trial counsel wanted to
10 say, yeah, I'm more than happy to let that do that, if we
11 actually put it on a piece of paper, it's going to have to go
12 through some kind of -- some -- at least some level of
13 classification review, and someone's going to have to agree
14 that we can put it on a piece of paper.

15 I'm also going to look at the rules and see if it's
16 not -- if it's at that level of classification, do I have any
17 authority as the judge to help the -- to help the parties out,
18 you know, on some of this kind of stuff.

19 Because I want to make -- I want to make the process
20 as easy as I can on the parties to present evidence that you
21 need to present and so that a public -- a publicly accessible
22 record can be created, and so that we only spend our time then
23 providing information, either in a closed session because it

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1 has to be in a closed session, or -- not putting necessarily
2 you or any other counsel from either side in a position where
3 the only way you can get that into the record is by reading it
4 all.

5 LDC [MR. CONNELL]: Yes, sir. And with that precise point
6 in mind, we did adopt that solution with respect to the
7 comparison of the CIA cables and the Moussaoui substitutions,
8 and I wanted to let you know that that process is being worked
9 right now.

10 MJ [Col COHEN]: Perfect. Thank you. Like I said -- so
11 that's kind of generally what I'm thinking. And, like I said,
12 I did want to let Mr. Groharing know that I did not take it as
13 you were being difficult. I understood that -- because
14 initially your answer was yes, and then I think you realized,
15 well, hold on a second, I may have to run this through
16 classification. So I get it. I understand the constraints
17 that we're in. And, like I said, we're going to see if we can
18 find some solutions to those types of constraints as well.

19 All right. Mr. Connell, your witness.

20 LDC [MR. CONNELL]: Thank you.

21 Your Honor, I have a couple of loose ends from before
22 lunch to tie up. The first is that one document was missing
23 from AE 628DD. The Bates number is FBI-23825 through 26 --

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1 excuse me, through 27. And that has now been marked and
2 provided to the court reporters as AE 628TT (AAA).

3 MJ [Col COHEN]: Thank you.

4 LDC [MR. CONNELL]: The second item is Your Honor directed
5 me to place the version of MEA-STA-1736, which I had
6 underlined the words "excellent management skills" and shown
7 to the witness. That is -- that document has been provided to
8 the court reporters and is now 628CC (AAA Sup).

9 MJ [Col COHEN]: Thank you.

10 **CROSS-EXAMINATION CONTINUED**

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

12 Q. And the last loose end is: Sir, Special
13 Agent Fitzgerald, you asked me before lunchtime about
14 reviewing your document, which is found in the record at AE
15 628DD FBI-20759, which is your electronic communication
16 relating to Mr. al Shorabi. I opened that up for you on your
17 binder. Did you have an opportunity to review that?

18 A. Yes, I did. Thank you.

19 MJ [Col COHEN]: Trial Counsel, you're aware that he was
20 doing that?

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

22 MJ [Col COHEN]: Just I -- just wanted to make sure
23 there's no surprises and things aren't -- again, thank you. I

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1 figured that was the case but it's better to put it on the
2 record. Thank you.

3 LDC [MR. CONNELL]: Thank you.

4 Q. And, sir, having reviewed it, do you recall that your
5 electronic communication was dated 5 June 2003?

6 A. I see that, yes.

7 Q. And obviously, you're the drafter?

8 A. Yes, I am.

9 Q. And its general subject matter is Souhail al Shorabi?

10 A. Yes, it is.

11 Q. All right. With that, sir, we'll return to the
12 subject of Mr. al Hamlan.

13 You had told us -- just for orientation, you had told
14 had shown photographs of Mr. al Hamlan to Mr. al Baluchi and
15 Mr. al Hawsawi in your January 2007 interrogations.

16 A. Yes.

17 Q. And I would like to turn your attention to AE 628DD.

18 A. Okay.

19 Q. FBI-20250.

20 A. Okay. I'm at 20250.

21 Q. And this is an electronic communication dated
22 11 August 2003 prepared by Robert F. Sassok?

23 A. Yes.

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1 Q. And if I recall correctly, Detective Sassok is a
2 New York City detective; is that right?

3 A. He was at that time, yes.

4 Q. He was. Okay.

5 I wanted to ask you just a few questions about this
6 document related to the unclassified paragraphs on it. Do you
7 understand?

8 A. Yes.

9 Q. The -- as background, Flight 93 hijacker Ahmed
10 al Nami applied for a visa in Jeddah, Saudi Arabia; is that
11 correct?

12 A. Yes.

13 Q. And the FBI analyzed the visa and application?

14 A. Yes.

15 Q. And under the box "Persons Traveling with You," he
16 listed "My friend Moshabab"?

17 A. Correct.

18 Q. And the FBI queried the Department of State visa
19 applications, and found -- and located the name Moshabab
20 al Hamlan?

21 A. Correct.

22 Q. And on 11 -- on or about -- oh, excuse me.

23 Prior to 4 August 2003, there was a request to

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1 foreign authorities to locate and interview Mr. al Hamlan?

2 A. I just have to find out where you're reading that,
3 sir.

4 Q. Yes. If you'll look at the third paragraph from the
5 bottom under "Details."

6 A. Okay, sir.

7 Q. Okay. And now I will orient you to the second page
8 of that document, which is 20251, the second full paragraph.

9 A. Yes.

10 Q. And a foreign partner located and interviewed
11 Mr. al Hamlan on 20 January 2003?

12 A. Yes.

13 Q. Using questions prepared by the PENTTBOM team?

14 A. Yes.

15 Q. The -- and all of that -- and then later -- later
16 investigative information was memorialized on this electronic
17 communication at 20250. I can't be more specific because of
18 classification, I think.

19 A. That's fine. Yes.

20 MJ [Col COHEN]: Sir, when you said "yes," was that -- you
21 just recognized what he was saying or you answered the
22 question?

23 A. No, I'm sorry. I recognized what you were saying.

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1 Could you restate the question, sir?

2 Q. Sure.

3 Following the 20 January 2003 interview, later
4 investigative action was memorialized in this electronic
5 communication. And if I could orient you to what the later
6 investigative action was, it's found in the very first full
7 paragraph under the word "Details."

8 A. Yes, that's correct.

9 Q. All right. And if I were to ask you the foreign
10 partner who conducted the investigative action, you could not
11 answer because of security -- national security privilege; is
12 that correct?

13 A. Correct.

14 Q. Okay. I'd like now to orient you to AE 628DD and
15 AE -- and FBI-23583.

16 A. Okay. I'm at 23583.

17 Q. All right. The -- this is an FBI Organizational
18 Message Form, or cable?

19 A. Yes.

20 Q. Dated 7 August 2003?

21 A. Yes.

22 Q. From the FBI?

23 A. Yes.

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1 Q. To the CIA?

2 A. Yes, it is.

3 Q. With a named individual listed in the pass line?

4 A. Yes.

5 Q. As well as redacted individuals in the pass line?

6 A. Yes.

7 Q. The -- if you'll flip to page 23585. Who is the
8 drafter of this document?

9 A. I am.

10 Q. And who are listed in the copy count?

11 A. Ms. Turchiano and myself.

12 Q. Would you agree that the general subject of this FBI
13 cable is a request from the FBI to -- or from you to the CIA
14 that named detainees be shown a photograph and queried
15 regarding their knowledge of Moshabab al Hamlan?

16 A. Yes.

17 Q. And if I could turn your attention to the second
18 page?

19 A. Yes.

20 Q. The named detainees, the persons to whom the
21 photograph should be shown and the questions put are
22 Mr. Mohammad, Mr. Binalshibh, Mr. al Hawsawi, and
23 Mr. al Baluchi; would you agree?

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1 A. Yes.

2 Q. And via e-mail, you digitally transmitted
3 photographs?

4 A. Yes.

5 Q. And then you listed seven -- excuse me, eight
6 specific questions that you would like put to the detainees?

7 A. Yes.

8 Q. Sir, I'll call your attention to AE 628DD, 23657.

9 A. I'm at 23657.

10 Q. And this is a cable from the FBI to the CIA?

11 A. Yes, it is.

12 Q. Dated 13 August 2003?

13 A. Yes.

14 Q. It lists a substantial number of organizations under
15 an action line?

16 A. Yes, it does.

17 Q. And would you take a moment and satisfy yourself that
18 otherwise this document is identical to the 7 August 2003
19 cable that you drafted?

20 A. Yes, it appears to be identical.

21 Q. Okay. And this is an example of a question which
22 came up earlier. Are the Organizational Message Form cables
23 internal to the FBI; and these cables which have a -- sort of

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1 a dot matrix printing-type layout to them, are those from FBI
2 to CIA, or are the organizational message forms from FBI to
3 CIA?

4 A. I -- I don't know. Like I know that when I -- the
5 organization -- the Organizational Message Form, which we
6 referred to before, is something that's familiar to me. This
7 is something like -- I don't -- I can't distinguish who does
8 what.

9 Q. Okay. Let me -- let me ask my question a different
10 way, then.

11 So the 23583 is the document that you drafted?

12 A. Correct.

13 Q. And it's actually on an FBI form, an FD-36?

14 A. Yes, it is.

15 Q. And is this the document that you drafted -- when you
16 drafted this ----

17 A. Yes.

18 Q. ---- this is what you would draft it on?

19 A. Correct.

20 Q. Okay. And you're saying that 23657, although the
21 substance is the same, the format is not one that you're
22 familiar with?

23 A. I won't say not familiar with. I don't know who to

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1 attribute it to. So I can't say I haven't seen this before --
2 this type of stuff before.

3 Q. Sure.

4 A. I guess what I'm saying is, I don't know who
5 specifically to attribute it to.

6 Q. Okay. And this included the same eight questions and
7 reference to photograph as the document that you specifically
8 drafted?

9 A. Yes, it does.

10 Q. Now, sir, I'd like to direct your attention to
11 AE 628CC Attachment I.

12 A. Okay. I'm at I.

13 Q. And it's STA-96.

14 A. Okay.

15 Q. This document is a summary of a CIA cable documenting
16 the information allegedly obtained from Mr. Mohammad in a
17 mid-2003 custodial interview; would you agree?

18 A. Yes, it does.

19 Q. And if you would take a moment to just look over it.
20 I'll direct your attention to paragraphs 3 and 4.

21 A. Okay. One moment. Okay.

22 Q. And this document is an example of one that provides
23 information about Mr. al Hamlan?

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1 A. Yes, it does.

2 Q. Sir, moving to the next chapter. Sir, I direct your
3 attention to -- excuse me just one second -- AE 628CC
4 Attachment B.

5 A. I'm at Attachment B.

6 Q. Do you -- I will direct your attention to document
7 16865.

8 A. Okay. I'm at 16865.

9 Q. Okay. I'd like to ask you about some of the
10 photographs that you showed on direct examination. You
11 testified on direct examination to some photographs; do you
12 recall?

13 A. Yes.

14 Q. Photographs of locations in Dubai?

15 A. Yes.

16 Q. And you -- for example, the Wall Street Exchange
17 Centre?

18 A. Yes.

19 Q. Or the U.A.E. Exchange Centre?

20 A. I don't think I showed any photos. I may have, but I
21 don't recall showing the U.A.E. Exchange Centre.

22 Q. Okay. Those photographs were taken on or about
23 16 February 2002; would you agree?

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1 A. Yes.

2 Q. And they were taken by Special Agents Drucker and
3 Perkins as escorted by members of another organization; would
4 you agree?

5 A. Yes.

6 Q. And if I were to ask you the names of the escorts to
7 Special Agent Drucker and Perkins, you could not answer
8 because of invocation of national security privilege; is that
9 correct?

10 A. That's correct.

11 Q. Sir, moving to another chapter, I want to ask you
12 material -- some questions relating to Abdullah Sindhi?

13 A. Okay.

14 Q. Abdullah Sindhi -- are you familiar with Abdullah
15 Sindhi?

16 A. A little bit. I don't know very much about him.

17 Q. All right. Let me do that -- start in the middle
18 then. Can I direct your attention to AE 628DD at FBI-23710.

19 A. I'm at 23710.

20 Q. And if I could -- 23710 is an FBI requirements cable
21 dated 19 February 2003. Do you see that?

22 A. 19 February 2003, yes.

23 Q. Okay. If you would turn to the last page of that

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1 document.

2 A. Okay.

3 Q. The "Drafted by Special Agent" -- and then there's a
4 redaction of the special agent. It's at ----

5 A. Yes. Yes.

6 Q. ---- 23716.

7 A. I have it.

8 Q. Yes. Of your own knowledge -- obviously, none of us
9 can tell because the special agent's name has been redacted --
10 but do you know whose responsibility -- whose investigative
11 focus Abdullah Sindhi fell under?

12 A. I do not know. Again, I could speculate, but I do
13 not know.

14 Q. Would your answer be based upon your investigative
15 experience and facts known to you or is it a complete guess?

16 A. It would be based upon some facts known to me.

17 Q. Okay. And so what is your belief?

18 A. I believe it's likely Special Agent Adam Drucker.

19 Q. Okay. Now, this document, 23710, is -- as far as --
20 if I represented to you that this is the earliest requirement
21 document that we have from the FBI, would that be consistent
22 with your other understanding of the documents we've reviewed,
23 19 February 2003?

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1 A. I wouldn't know.

2 Q. Okay. In the course of the documents we've gone
3 through, there's been none that were earlier than
4 19 February 2003, correct?

5 A. I -- I will accept your proposal of that date. It's
6 not something that I studied.

7 Q. Okay. If you wouldn't mind for a moment, keep your
8 finger there or something because we're going to come back
9 there. And I will turn your attention to AE 628CC
10 Attachment I.

11 MJ [Col COHEN]: Tell you what, Counsel, I will hand
12 him -- I will hand the witness a sticky.

13 LDC [MR. CONNELL]: That would be helpful. Thank you,
14 sir.

15 MJ [Col COHEN]: That was a blank blue sticky that I just
16 handed the witness.

17 A. Okay. Sir, which page am I going to?

18 Q. Within AE 628CC Attachment I, it is STA-2650.

19 A. I have that document here.

20 Q. All right. And this is -- this document is a CIA --
21 or is a summary of a CIA cable regarding a custodial
22 interrogation conducted in early 2003; would you agree?

23 A. Yes.

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1 Q. The -- and if you'll just read the first couple of
2 lines, it relates to statements purportedly made by Khalid
3 Shaikh Mohammad about Abdullah Sindhi.

4 A. Yes.

5 Q. I'll now direct your attention to same tab, which is
6 Attachment I, STA-2911.

7 A. Okay. I have that here.

8 Q. And this document is a summary of a CIA cable
9 relating to a custodial interrogation of Mr. Binalshibh
10 conducted in early 2003.

11 A. Yes, it is.

12 Q. And just reviewing the first couple of lines there,
13 you would agree that the topic matter is Abdullah Sindhi.

14 A. Yes.

15 Q. Now, if you would turn to your blue -- back to your
16 blue sticky at 628DD FBI-23710.

17 A. Yes.

18 Q. The 19 February 2003 requirements document.

19 A. Yes.

20 Q. Labeled to the CIA from the FBI.

21 A. Yes.

22 Q. And the subject matter of this document is a request
23 for detainees identified herein to be queried about identity

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1 and whereabouts of Abdullah Sindhi?

2 A. Yes.

3 Q. The named detainees -- or the persons to whom the
4 questions should be put are Ramzi Binalshibh?

5 A. Yes.

6 Q. Abdul Rahim al Nashiri -- Nashiri -- Nashiri?

7 A. Yes.

8 Q. And Abu Zubaydah?

9 A. Yes.

10 Q. And several others?

11 A. Yes.

12 Q. And then there's a list of 26 questions with some
13 sub-questions that are proposed for those prisoners; is that
14 right?

15 A. Yes.

16 Q. At this time -- and I'm asking only about February of
17 2003 -- did Special Agent Drucker have an especially strong
18 relationship with the CIA?

19 A. At some point around this time, I don't know ----

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

21 MJ [Col COHEN]: Counsel, basis?

22 TC [MR. GROHARING]: I think it calls for a classified
23 response.

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1 LDC [MR. CONNELL]: May I have a moment?

2 MJ [Col COHEN]: You may.

3 [Counsel conferred.]

4 LDC [MR. CONNELL]: Sir, I'm going to rephrase my
5 question.

6 MJ [Col COHEN]: All right. I'll -- let me just -- I'll
7 sustain then and allow you to re-ask. Thank you.

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

9 Q. It's fair to say that the author of this document,
10 likely Special Agent Drucker, was able to get requirements
11 from the FBI to the CIA; is that right?

12 A. Using the term "likely," I would accept that, but my
13 knowledge of his position at this time is based upon some
14 speculation as to date and specific assignment. But with
15 those caveats, I would say that's a fair statement at this
16 time.

17 LDC [MR. CONNELL]: Okay. Your Honor, I'm going to stop
18 there, and I'll take up the rest of that in closed session.

19 MJ [Col COHEN]: Copy. Thank you.

20 Q. Now, sir, I'd like to direct your attention AE 628CC
21 Attachment I.

22 A. Okay.

23 Q. STA-1810.

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1 A. I'm at STA-1810.

2 Q. This is a summary of a CIA cable reporting the
3 results of custodial interrogation of Mr. al Baluchi conducted
4 in mid-2003; would you agree?

5 A. Yes.

6 Q. And just reading a few -- the first couple of lines
7 there the topic is Abdullah al Sindhi?

8 A. Yes.

9 Q. Sir, I'd like to draw your attention to STA-628CC
10 [sic] Attachment I, same tab, and STA-1813.

11 A. I'm at 1813.

12 Q. 1813 is a summary of a CIA cable regarding custodial
13 interrogation of Ammar al Baluchi in mid-2003?

14 A. Yes.

15 Q. And scanning the first few lines there, the topic of
16 that interrogation was Abdullah al Sindhi?

17 A. Yes.

18 LDC [MR. CONNELL]: Sir, I have to finish that in closed
19 session as well.

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

21 Q. All right. Sir, you can close that. We're done with
22 that for a while.

23 Sir, I'd like to ask you now about a conference that

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1 the FBI held in Feb -- in May of 2003. Do you understand?

2 A. Yes.

3 Q. So in May of 2003, the FBI held a conference at
4 FBI Headquarters regarding reporting that was coming from
5 Khalid Shaikh Mohammad.

6 A. Okay. I accept your representation of that.

7 Q. Okay. Did you not know that?

8 A. I know -- in looking through and preparing for my
9 testimony, I saw something about a meeting, but I'm pretty
10 sure I was not at that meeting.

11 Q. Okay. Where were you in May 2003?

12 A. I was down in Washington, D.C., I believe. So I was
13 in -- I was down -- TDY down to the PENTTBOM team.

14 Q. Okay. But you were part of the -- but you were still
15 assigned to the New York Office?

16 A. Yes.

17 Q. Okay. And of courses, FBI Headquarters is in
18 Washington, D.C.?

19 A. Yes.

20 Q. Were you working out of the Headquarters building?

21 A. I likely would have been. I could have been at the
22 U.S. Attorney's Office, but I -- I was either in headquarters
23 or at the U.S. Attorney's Office.

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1 Q. And you will have to help me out here. What's the
2 name of that huge auditorium that the FBI has right there in
3 the headquarters?

4 A. Umm.

5 Q. You can't remember it either?

6 A. It's named after one of the directors, I think.

7 Q. Yes. But they have a huge auditorium there?

8 A. Yes.

9 Q. And this was a huge conference?

10 A. I -- I don't recall it, sir.

11 Q. Okay.

12 A. If you have something to refresh my memory, but I
13 don't ----

14 Q. Okay. Are you saying that you weren't invited?

15 A. I -- I don't know, sir. I don't -- I don't think I
16 know the conference you're referring to. I don't -- it
17 doesn't sound familiar to me. I don't have a recollection of
18 it. If there's something to refresh my recollection, I'm
19 happy to take a look.

20 Q. Okay.

21 A. But I don't recall it.

22 Q. Sir, I'll direct your attention to AE 628DD.

23 A. Okay.

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1 Q. FBI-23547.

2 A. I have 23528, and I have 23573.

3 Q. All right.

4 A. This is in DD.

5 LDC [MR. CONNELL]: May I approach counsel?

6 MJ [Col COHEN]: You may.

7 LDC [MR. CONNELL]: Your Honor, I'm just using this -- I'm
8 just using this to refresh, so I'm not going to make it a part
9 of the record unless the military commission directs me to.

10 MJ [Col COHEN]: My practice is if anything is shown to a
11 witness, it should be part of the record.

12 LDC [MR. CONNELL]: It's your courtroom, sir.

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

14 [Counsel conferred.]

15 MJ [Col COHEN]: We'll mark it at a later time. We can
16 just catch up the record.

17 LDC [MR. CONNELL]: Yes, sir. We'll get -- we'll change
18 the margins and send it to the court reporters.

19 MJ [Col COHEN]: All right, thank you.

20 LDC [MR. CONNELL]: May I approach the witness?

21 MJ [Col COHEN]: You may.

22 LDC [MR. CONNELL]: Sir, I'm showing the witness
23 MEA-FBI-23547. Do you want to assign it an AE number at this

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1 time?

2 MJ [Col COHEN]: Let's go ahead and hand that to him, and
3 I'll catch up here with the court reporters. Thanks.

4 [Mr. Connell conferred with the witness.]

5 MJ [Col COHEN]: Counsel, that will be AE 628UU (AAA).

6 LDC [MR. CONNELL]: Thank you.

7 WIT: Sir, may I look through this?

8 LDC [MR. CONNELL]: Yes, you may.

9 MJ [Col COHEN]: While he reviews that, just so the
10 parties know, I believe in creating a record, and so that's
11 why if you all intend to show a witness something, I will
12 likely expect that I will attach it to the record so no one
13 ever wonders, "Well, I wonder what he really saw." It may
14 create more paperwork for the record, but in the end, it may
15 answer a question that someone asks.

16 LDC [MR. CONNELL]: Yes, sir. That's fine.

17 MJ [Col COHEN]: All right.

18 WIT: I'm reviewing this, sir, and it's not familiar to
19 me. I do not believe that I attended this.

20 LDC [MR. CONNELL]: Thank you. I'll take it back from
21 you.

22 Court's indulgence for just one moment.

23 MJ [Col COHEN]: You may.

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1 LDC [MR. CONNELL]: Your Honor, may I consult counsel?

2 MJ [Col COHEN]: You may.

3 [Counsel conferred.]

4 LDC [MR. CONNELL]: Your Honor, I'm going to show the
5 witness what is MEA-FBI-23794. I -- we will catch up the
6 record, but I would request an AE number for it.

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

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

9 MJ [Col COHEN]: You may.

10 WIT: May I review this, sir?

11 LDC [MR. CONNELL]: Yes.

12 MJ [Col COHEN]: While he's reviewing it, it will be
13 AE 628VV (AAA).

14 LDC [MR. CONNELL]: Thank you.

15 MJ [Col COHEN]: You're welcome.

16 LDC [MR. CONNELL]: Just let me know when you're ready,
17 Special Agent.

18 WIT: Yes.

19 LDC [MR. CONNELL]: Take your ----

20 [Pause.]

21 WIT: Okay, sir. I've reviewed it.

22 LDC [MR. CONNELL]: Thank you.

23 [END OF PAGE]

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1 CROSS-EXAMINATION CONTINUED

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

3 Q. What's the date of that document, AE 628VV?

4 A. July 27, 2006.

5 Q. And that document is updated guidance on -- for FBI
6 special agents on how to submit requirements for high-value
7 detainees?

8 A. Yes.

9 Q. So here's my question: If that's the updated
10 guidance, when was the original guidance?

11 A. I have no idea.

12 Q. When was the first time you saw guidance on how to
13 submit requirements to detainees of the CIA?

14 A. I don't -- I don't know. I don't -- I don't recall
15 it.

16 Q. How did you know what form to use?

17 A. In the beginning, I really didn't. I was relatively
18 new to counterterrorism. Again, the process for sending a
19 cable, as I think I was stating yesterday, was laborious. I
20 had to provide a printed-out copy that had to be signed off.
21 I had a disc. And much of the format -- it was a
22 cut-and-paste job, so in the beginning I was very much
23 struggling to learn how to do those sorts of things.

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1 Q. And is it your testimony that, out of all the
2 requirement cables you sent to the CIA, you never saw any
3 responsive cable from the CIA?

4 A. I'm not saying I never saw any responsive cable. It
5 was just a difficult process for me to get a reply, to know
6 when a reply arrived, or to know -- know how to look for it.
7 Or sometimes things might be done -- maybe they answer one
8 question.

9 And again, at that time, for me, classification is a
10 significant issue. If they are disseminating an answer at a
11 classification that I don't have ready access to -- again,
12 with the understanding that there may be colleagues of mine
13 maybe who do have access to some of those things.

14 What I'm trying to say is there was not an easy or
15 formalized process in my case.

16 Q. So given its difficulty, it must have been a big deal
17 when you did get an answer.

18 A. My answer would be it depends.

19 Q. Well, you did all of this work on something you
20 considered so critical, and which is so critical. And when
21 you saw cables with responsive information from a CIA black
22 site detainee, that was something that would stand out in your
23 mind; wouldn't you agree?

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1 A. It could be significant. It depends on the
2 circumstances.

3 Q. But you wouldn't have written all those cables if you
4 didn't consider them investigatively significant, would you?

5 A. I definitely consider them significant, yes.

6 Q. And you would consider the answers to be significant?

7 A. Yes. They -- again, they could be. It depends on
8 the substance of the answer.

9 Q. Okay. And so what is an example of a cable -- and
10 you've seen a lot of them today. What is an example of a
11 cable where -- that you saw from the CIA that contained
12 information responsive to one of your requests?

13 A. I'd have to go back maybe to the Hamlan cable or
14 something like that. But again, I'm -- I'm trying to recall
15 where I might have received results. It would have to be
16 something that I sort of recently reviewed right now. Again,
17 it was a very difficult process.

18 Q. So you spend all of these hours on these cables,
19 you're not -- it's a difficult process.

20 A. Yes.

21 Q. Critical work?

22 A. Potentially, yes.

23 Q. And you're not getting answers.

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1 A. Again, in my position, it was difficult for me to get
2 answers or know when to expect them. As I think, I know this
3 guidance is classified, but it indicates that an agency may or
4 may not respond, and it may take some time. And that was part
5 of the issue, certainly, that I experienced, which was, I had
6 no idea if an answer would be forthcoming and, if so, when.

7 Q. All right. I'm not asking projectively. I'm asking
8 after having reviewed all of these documents looking back ----

9 A. Yes.

10 Q. ---- all right, not if you would get an answer, but
11 if you did get an answer. And so having spent all this time
12 on a critical matter on something that was very laborious, did
13 you ever go to, say, Special Agent Perkins and say, "Hey, you
14 may have better access than me. Did we ever get an answer on
15 these money transfers or the CityBird video, or the 20-page
16 hijacker request that I sent?"

17 A. I don't recall having that conversation with Agent
18 Perkins, and I know you used that as an example. Again, with
19 the 20-page cable that I wrote ----

20 Q. I know it wasn't well received, but ----

21 A. But again, I wasn't getting a lot of feedback. And
22 again, for a lot of these things, there were more people who
23 were sort of adding information than just myself. So there's

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1 a vast amount of information I expect coming from other
2 people.

3 So whether or not I get an answer or not is very
4 difficult, and it's -- I just don't recall receiving a lot of
5 stuff in a timely fashion that was helpful to me.

6 Q. So when you say you got a lot of information from
7 other people -- and let's take out -- let's take Special
8 Agent Perkins out of it. Let's put Special Agent Drucker in
9 it.

10 Did you ever go to Special Agent Drucker and say,
11 "Hey, we submitted this big document regarding -- not
12 regarding the hijacker activity, but regarding the CityBird
13 video and the money transfers and the Dubai Islamic Bank. Has
14 there ever been an answer?" Did you ever do that?

15 A. I may have. I don't specifically recall it, but I
16 may have.

17 Q. Okay. And what happened? What was the result?

18 A. Again, sir, what I'm saying is I have no specific
19 recollection, so I'm trying -- I can't guess on something that
20 I don't have a specific recollection on.

21 Q. Okay. So let's approach this problem a different
22 way. If you received investigative information back from the
23 CIA at a Top Secret level ----

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1 A. Okay.

2 Q. ---- where would you have kept it?

3 A. It would have had to have been kept in a safe. If I
4 was working in the headquarters building, it would have been
5 kept in a safe that we had in the room that I worked in early
6 on.

7 Q. Okay.

8 A. Later on, it was a little bit more difficult when I
9 worked out of the U.S. Attorney's Office because I don't --
10 I'm not exactly sure if there was -- they must have had some
11 ability to store Top Secret but more difficult.

12 Q. Okay. Because as I understand it, you're not denying
13 that you received information, a detainee reporting?

14 A. Correct.

15 Q. You're just saying you don't remember?

16 A. In general terms, yes. I'm agreeing that I don't
17 remember. Again, you've referenced a number of cables. I
18 didn't receive a lot of responses, but -- I don't know how
19 else to clarify that, sir, if you have additional questions.

20 Q. Yes. But let me give you my specific question, is:
21 If the military commission wanted to know the answer to this
22 question, what detainee reporting did Special Agent Fitzgerald
23 actually have access to, because we -- we've asked you, and

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1 you don't have a clear recollection, where would we look? If
2 the prosecution were to issue a subpoena, who would they issue
3 the subpoena to? Where can we go look to get an answer?

4 MJ [Col COHEN]: One second. Counsel?

5 TC [MR. GROHARING]: Changed my mind, Your Honor.

6 MJ [Col COHEN]: Fine. You may answer the question.

7 A. I don't have an answer for that, sir. Again, part of
8 the process -- part of the reason I can't answer that is at
9 that time it was more, in my specific case, an ad hoc process.
10 Where in general terms where I was working, in
11 FBI Headquarters, was not conducive to me receiving Top Secret
12 or compartmented information. So sometimes I could get an
13 answer, and sometimes I couldn't. And the manner in which I
14 would get an answer back, there's no clear example of that.

15 What I'm trying to do is I have a job of
16 investigating the hijackings -- again, starting off with
17 Flight 11 and getting into more detail with other hijackers
18 and certainly Moussaoui.

19 And when I see things from the case that I recognize
20 as potential threat information, I'm forwarding some of that
21 information to the CIA because I believe it might contain
22 threat information, and there were times when I might not
23 expect an answer back.

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1 Q. Is there any example, either that we've seen in the
2 past two days or any other time, of you forwarding threat
3 information, as you describe it, to the CIA without appending
4 questions?

5 A. I suspect most of times I put questions on it.

6 Q. Okay. So let's move forward.

7 The -- 2006 comes. You become a member of the
8 High-Value Detainee Prosecution Task Force along with some of
9 the people in this room, and people from other agencies.
10 October 17th comes, you're granted access to basically what is
11 essentially the case file, you know, for that kind of
12 organization.

13 How many -- no, let me say it a different way.

14 All of the documents that we have reviewed over the
15 past two days are contained within that file, correct?

16 A. I -- I didn't know that, sir, but I accept what
17 you're saying.

18 Q. Okay. Because that's the file that the prosecutors,
19 the CIA, the other FBI agents, the CITF agents, that's the
20 case file that they work from, correct?

21 A. I would say system.

22 Q. System?

23 A. Yes.

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1 Q. Case system they work from?

2 A. In general terms, that represents it, yes.

3 Q. Okay. So there was no, let's say, cable that you had
4 sent that you went and looked for that you didn't find; is
5 that right?

6 A. At that time in 2006?

7 Q. Yes.

8 A. If I'm understanding your question, did I go into the
9 database and look for something that I might have sent two
10 years before?

11 Q. No. I'm actually asking: Did you ever look for any
12 document and not find it?

13 A. What do you mean by "document," sir? Like the closed
14 system, searching ----

15 Q. Is there any case document that you looked for on
16 that closed system that you couldn't find?

17 A. I suspect there was, but it's difficult for me to
18 answer without a -- a specific document or example.

19 Q. Okay. Once you had access to that, what you're
20 calling a database, but let's, you know ----

21 A. Closed network.

22 Q. If you want "database," that's fine.

23 The -- once you go and look at that database, I --

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1 you looked for a number of documents, obviously?

2 A. Looked -- or requested? Like are you talking about
3 requesting use authority?

4 Q. No, I'm saying finding the document in the first
5 place.

6 A. Okay.

7 Q. Okay. You found a number of documents there?

8 A. Yes.

9 Q. Some six to twelve of them you requested use
10 authority? We've already been over that.

11 A. That -- in general terms, that's correct. There
12 might be multiple items on a specific request.

13 Q. Sure. Okay. So six to twelve requests, some with
14 multiple items?

15 A. Correct. To the best of my recollection, sir.
16 Again ----

17 Q. I understand.

18 And my question is: Was there ever a time when you
19 went and looked for any document related to the case that you
20 couldn't find it in that database?

21 A. I suspect, yes, but -- I'm not arriving at a specific
22 example, but I suspect yes.

23 Q. When was that?

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1 A. It would have to be down -- back, again, maybe 2008,
2 2009. I'm guessing, sir. It's -- I suspect there were
3 documents that I looked for there that I couldn't find, but
4 again, I'm -- I'm now speculating on something that I don't
5 have a direct recollection of.

6 Q. So let me just summarize this area. You, sir, don't
7 have a specific recollection of which, if any, detainee
8 reporting you had access to, and in your testimony, there's no
9 way for anyone to find out?

10 A. I don't know that -- I don't know that there is a way
11 for someone to find out. Again, talking about a time frame.
12 Are you talking about in 2007 ----

13 Q. No.

14 A. ---- or are you talking about post?

15 Q. No. I'm talking about prior to 2006.

16 A. I don't think there's a way of knowing, sir.

17 Q. Okay. Was that by design? Did they do that on
18 purpose?

19 A. I think you're talking about a very different time
20 after September 11th, when agencies were trying to figure out
21 how to work. And so I don't think there was any malice or
22 design.

23 Q. All right. I didn't say malice.

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1 A. I understand, but ----

2 Q. We are talking about intelligence work here.

3 A. But it's -- it's -- I think people tried the best
4 they could to make the system work, however that system was.

5 Q. Sir, I'd like to move on to another chapter. I'd
6 like to ask you about your 2009 interview of Mr. Tesqui.

7 A. Yes.

8 Q. During your interrogation of Mr. al Baluchi -- did he
9 mention Mr. Tesqui to you in your interrogation?

10 A. He may have.

11 Q. Or was that just in the CSRT?

12 A. He may have. He may have mentioned him. I remember
13 seeing Mr. Tesqui's name in some of the -- I have to think
14 about when, but I think his name is certainly in some of the
15 financial documents that we've received. So Tesqui's name is
16 mentioned in the financial documents. It's also mentioned in
17 the CSRT.

18 Q. Okay. And so you're aware that Mr. al Baluchi
19 requested Mr. Tesqui as a witness for his CSRT?

20 A. Yes, I am.

21 Q. Okay. And then when did you first locate Mr. Tesqui
22 to interview him?

23 A. Roughly 2009. Again ----

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1 Q. And did you ----

2 A. I know there are documents out there articulating
3 when I interviewed him, so I'll say roughly 2009.

4 Q. Yes, sir. You interviewed him on 21 April, 2009?

5 A. That sounds right.

6 Q. In Mississauga, Ontario?

7 A. Yes.

8 Q. Along with Mr. Groharing?

9 A. Yes.

10 Q. And Special Agent McClain?

11 A. Yes.

12 Q. Now, your -- you didn't memorialize that in a 302
13 until 12 August 2009. Why wait so long?

14 A. A 302 or an EC? I believe this might have been
15 memorialized in an EC.

16 Q. Okay. Let's check. Sir, if I could direct your
17 attention to AE 628CC Attachment B, page FIN-16804.

18 A. Okay. I'm at B16804.

19 Q. And that's the 1A to the EC?

20 A. Yes.

21 Q. And the actual -- and you're right, it is an EC, not
22 a 302. The actual EC is found at FIN-16842.

23 A. Okay. I have that.

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1 Q. And the date of the EC is 12 August 2009?

2 A. Yes, that's correct.

3 Q. And the date of the interview is 21 April 2009?

4 A. Correct.

5 Q. So returning to the question, why did it take so
6 long?

7 A. It you will just allow me one moment, sir, to review
8 this.

9 Q. Of course.

10 A. There are two things that I note, sir. I see it's a
11 relatively long report; it's about nine pages. And I know
12 that some of the information that we presented to Mr. Tesqui,
13 I had to get clearance from the CIA for intelligence equities
14 to show.

15 So there were two issues: Again, for me, a
16 relatively lengthy report, and the issues with the evidence,
17 to make sure that I'm representing things properly and I'm
18 not -- that I -- I'm not compromising anything as far as
19 intelligence equities.

20 Q. Right. So much of the evidence that you showed is
21 evidence that was -- is evidence whose origin -- over whose
22 origin the government has invoked national security privilege
23 that we talked about earlier, correct?

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1 A. I'd have -- I don't know if it's much of it, but ----

2 Q. I can help you out.

3 A. Okay.

4 Q. So you showed him the CityBird video?

5 A. Yes.

6 Q. Where the CityBird video was originally seized in a
7 raid, who -- some of whose participants are the subject of
8 national security privilege?

9 A. Yes.

10 Q. You showed him the -- Mr. al Baluchi's passport?

11 A. Yes.

12 Q. And the origin of that passport is the subject of
13 invocation of national security privilege?

14 A. Yes.

15 Q. You showed him the Jebel Ali Free Trade Zone
16 authority card?

17 A. Yes.

18 Q. And the origin of that card is the subject of an
19 invocation of national security privilege?

20 A. Yes. I -- I take your point, sir, yes. It makes
21 sense.

22 Q. Okay. So I can keep going, if you want, but you got
23 it.

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1 MJ [Col COHEN]: We're good, Counsel. We're good.

2 LDC [MR. CONNELL]: Got it. Okay. All right.

3 Q. All right. Pause that.

4 When did you first hear the name Elbert Cruz?

5 A. Excuse me, sir?

6 Q. When did you first hear the name Elbert Cruz?

7 A. I don't recall that name right now, sir.

8 Q. Okay. You were involved in an investigation of

9 Mr. Harrington, weren't you?

10 A. Not Mr. Harrington, no.

11 Q. You were involved in an investigation of the

12 Binalshibh team, weren't you?

13 A. I was not.

14 Q. Were you involved in an investigation of some

15 particular member of the Binalshibh team?

16 A. I know where you're going with this, sir. I could

17 explain what happened, and perhaps that would provide some

18 clarity.

19 Q. Great.

20 A. At some point, I received a telephone call from an

21 agent, I believe in Philadelphia. That agent advised me that

22 he had a sub-source, so not an informant, but for lack of a

23 better term, an informant of an informant, who was providing

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1 information.

2 And the substance of what I can recall -- and again,
3 I have not reviewed any of these documents, I haven't ----

4 Q. I don't have any documents or I would show you.

5 A. Okay. But what I remember in substance from
6 something which happened a number of years ago is the agent
7 from Philadelphia said to me, words to the effect of, someone
8 from a -- I presumed defense team, I think he said defense
9 team. Someone from a defense team, there's a translator who
10 may be leaking Top Secret documents. And I asked him to stop
11 right there because I knew I couldn't be part of it.

12 This next part is speculation. I believe the reason
13 this person called me is because my name is associated with
14 the 9/11 case, so he presumed -- the Philadelphia agent
15 presumed I would be a logical connection. But I advised him
16 immediately that this -- quote, these allegations had to be
17 investigated by someone else, and I suggested he go to a local
18 field office.

19 So when you say being part of the investigation, that
20 phone call was made to me in the beginning, but I -- that's
21 how I'm advising that I was not part of an investigation.

22 Q. Okay. Were you involved in any later interviews of
23 Mr. Tesqui?

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1 A. After 2009?

2 Q. Yes, sir.

3 A. No.

4 Q. All right. So changing books. I would like to ask
5 some questions about the process of the interrogation at
6 Echo II.

7 A. Okay.

8 Q. You previously testified that you first learned of
9 the upcoming interrogations by receiving a call from your
10 former New York supervisor.

11 A. That is what I recall, yes.

12 Q. And who was that person?

13 A. Joan-Marie Turchiano.

14 Q. Where were you physically when that happened?

15 A. I have no idea.

16 Q. Where were you assigned when that happened?

17 A. I was assigned in New York.

18 Q. Was that before or after President Bush's speech on
19 6 September 2006?

20 A. I -- I assume that it was after, but ---- I don't
21 know how it could have been before, but I -- I don't know
22 exactly when it was.

23 Q. Okay. Was it on an unclassified line?

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1 A. It was on a cell phone. Yes.

2 Q. Yeah. So what was the next thing that happened after
3 that phone call related to your coming to Guantanamo to
4 interrogate Mr. al Baluchi?

5 A. I have no idea.

6 Q. What do you mean?

7 A. When you say what is the next thing that happened,
8 like ----

9 Q. Yes.

10 A. ---- did I ----

11 Q. What happened next?

12 A. I have no -- I have no recollection. Like did I
13 later talk to somebody or meet somebody? Of course, I'm sure
14 that I did. But I don't have a specific recollection of
15 exactly what my next action was.

16 Q. Okay. What's the next action that you remember?

17 A. At some point, I agreed to come down and be a part of
18 the teams who were going to re-interview the high-value
19 detainees. At some point, there would have been coordination
20 with New York, my office, and then I came down TDY to -- to
21 Virginia to begin that.

22 Q. Okay. So at some point, and this is probably a
23 matter of record, you were reassigned from -- or you were

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1 TDY'd from the New York Office to the office in Virginia,
2 which co-locates the high-value prosecution -- the High-Value
3 Detainee Prosecution Task Force?

4 A. In general terms, yes.

5 Q. The -- and we know that that time was sometime before
6 17 October 2006, right?

7 A. I don't know because -- what I don't know is, once I
8 agreed to be part of this team, I don't know if, for instance,
9 my supervisor, Ms. Turchiano, forwarded my name for access or
10 if they waited until I came down first. So I don't know in
11 what order that would have happened.

12 Q. Okay. The -- you testified in December 2017 that
13 there were a lot of meetings about this topic. Can you tell
14 us about some of those meetings?

15 A. A lot of meetings about which specific topic, sir?

16 Q. A lot of meetings regarding the upcoming
17 interrogations.

18 A. I ----

19 Q. Maybe I haven't oriented you properly. All of my
20 questions now are going to be about the lead-up to the -- to
21 your travel to Guantanamo for the interrogations at Echo II.

22 A. I understand.

23 Q. Do you understand?

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1 A. Yes.

2 Q. So when I ask about meetings, what I mean is meetings
3 regarding plans, constraints, rules, guidelines,
4 brainstorming, or anything else relating to the upcoming
5 interrogations.

6 A. I understand. I did not keep a specific log of those
7 things, so it's difficult for me to recall them.

8 Q. Did you take any notes?

9 A. I don't think I took any notes as far as what
10 meetings I attended when. I don't recall doing so.

11 Q. Did you take any notes at the meetings?

12 A. I don't recall doing so.

13 Q. Okay. So what meetings do you remember?

14 A. I remember a meeting at an offsite down in Virginia.

15 Q. What does that mean, "an offsite"?

16 A. It's a -- what I would consider a classified
17 government offsite. Its public purpose is not known.

18 Q. Okay. And so what you mean by that is a location
19 over which the government has invoked national security
20 privilege?

21 A. Yes.

22 Q. Okay. So ----

23 A. So I recall a meeting there. It was a large meeting

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1 with most of the agents that I can recall being involved in
2 the later interrogations of high-value detainees, both FBI and
3 Department of Defense Criminal Investigative Task Force.
4 Certainly, there were CIA people there as well; prosecutors, I
5 believe. So that's probably the meeting that stands out to me
6 most readily.

7 Q. Okay. What was the subject or the topic of that
8 meeting?

9 A. To the best of my recollection is trying to divide up
10 into different teams as to who was going to interrogate whom.

11 Q. Okay. Who wound up on your team?

12 A. Myself, Abigail Perkins, and Special Agent McClain.

13 Q. Any prosecutor?

14 A. In general terms, I know I worked some with
15 Mr. Groharing. I worked with Thomas Swanton. Those are names
16 I most readily recall.

17 Q. Okay, any CIA officer?

18 A. Umm.

19 Q. You don't have to give me a name.

20 A. I understand. No CIA officer. I know that there
21 were CIA attorneys who were present. I didn't -- they
22 certainly weren't on the team, in other words, what I would
23 call the interviewer/interrogation team. I know the CIA

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1 obviously was there offsite. They had employees there. But
2 my team, I would consider myself, Abigail Perkins, and Steven
3 McClain.

4 Q. Were there any linguists present at the meeting?

5 A. I don't recall, sir.

6 Q. Okay. And I take it you don't -- do you have any
7 idea of what month that meeting took place in?

8 A. I don't.

9 Q. Was it cold?

10 A. Umm, I -- I don't -- what -- I don't recall snow, so
11 I don't think it was winter, so.

12 Q. Do you recall before or after Christmas?

13 A. I don't know, sir.

14 Q. Okay. Before or after Thanksgiving? I mention those
15 only -- they're big events that some people can ----

16 A. I understand. Obviously, it's some time ago. I just
17 don't recall. Again, safe to say sometime in the fall of 2006
18 is my best estimation, but I -- I can't do better than that
19 right now.

20 Q. Okay. At that -- before that meeting or at that
21 meeting, had it already been decided that FBI and CITF teams
22 would have access to the detainees, like were they talking
23 about it like it's a done deal? You are -- you are going to

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1 be able to interview them?

2 A. That's my impression, sir.

3 Q. Okay. Are you aware of a 29 November 2006 meeting to
4 decide the question of whether FBI/CITF teams will be allowed
5 access?

6 A. I may have heard of it, sir. It's -- I don't have a
7 specific recollection of it.

8 Q. Okay. What did you hear?

9 A. No, I said I may have heard of it, sir. Like I'm --
10 I -- without knowing the -- having more information about the
11 meeting, and ----

12 Q. I can give you a little bit more. That meeting I do
13 have a little bit of information about, which is that
14 there's -- it's a meeting convened by the office of the
15 Director of National Intelligence with deputy-level
16 representation to discuss the question of, among other things,
17 who, if anyone, was going to be allowed access to the
18 high-value detainees.

19 One of the proposed groups for access was combined
20 law enforcement teams -- law enforcement/military teams of DoD
21 and -- and Department of Justice or FBI and CITF. Does that
22 help at all?

23 A. I don't think I attended that meeting.

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1 Q. Okay. I don't think you attended it either, but the
2 actual question is: Did you hear about it?

3 A. I may have, sir. I don't have recollection of it. I
4 don't recall hearing about that meeting. So someone may have
5 referred to something back at that time, and not attending the
6 meeting, I might not have known the import or the relevance or
7 the reference to it. So I just don't recall it.

8 Q. Was there ever a time where somebody came to you and
9 said, okay, we're a go?

10 A. I don't recall that, no.

11 Q. Okay. The big meeting, the big prosecution, FBI,
12 CITF, CIA meeting that you just talked about, was that before
13 or after the briefing that you testified about earlier?

14 A. Which briefing was that, sir?

15 Q. You testified earlier about a briefing on handling
16 requirements, don't give Miranda, use the CIA laptop. Those
17 kinds of things.

18 A. It was before that meeting.

19 Q. So the big meeting was before the briefing?

20 A. Yes.

21 Q. Okay. And other than those two meetings, what other
22 meetings do you recall?

23 A. I recall a meeting, I believe it was in

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1 FBI Headquarters -- to the best of my recollection, I believe
2 it was in FBI Headquarters, and it concerned gathering
3 documentary evidence regarding the detainees.

4 Q. Okay. Any other meetings you recall?

5 A. Not offhand.

6 Q. So when did you first see the 10 January 2007
7 memorandum telling you that you were not going to provide
8 Miranda warnings?

9 A. I don't have a specific recollection of that.

10 Q. Did you see it before its promulgation, like in draft
11 form?

12 A. I don't recall seeing it in draft form.

13 Q. So that would mean that it would be after 10 January?

14 A. Again, sir, I don't have a recollection of exactly
15 when I saw the document, and I -- I certainly do not recall
16 seeing it in draft form.

17 Q. When did you travel to Guantanamo?

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

19 Q. When was your first interrogation?

20 A. 17 January 2007.

21 Q. Approximately how far in advance of 17 January was
22 it?

23 A. Couple days.

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1 Q. Couple days. Okay.

2 And ----

3 A. Maybe a week. I -- I don't have a specific
4 recollection. Something on the order of a couple of days to a
5 week, maybe.

6 Q. Okay. And so something -- well, the big meeting that
7 you talked about, that was at the offsite in Virginia. Where
8 was the briefing that you described? Where was it held?

9 A. The one that I'm referring to on the -- the OGC
10 memo ----

11 Q. Yes.

12 A. ---- that one?

13 Q. Yes, I guess.

14 A. I recall that meeting being here at Guantanamo.

15 Q. Here at Guantanamo?

16 A. Yes.

17 Q. Okay. When was the first time that you saw Echo II?

18 A. I don't recall. I don't think that I saw it before I
19 went -- I don't think we drove by it. So I'm not exactly
20 certain, sir. It would have been sometime either the day
21 of -- that we arrived there on the day that we did the first
22 interview on 17 January, or perhaps we went there before to
23 orient ourselves, but I don't recall that.

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1 Q. Okay. Did anyone ever tell you anything about
2 Echo II before you went in it?

3 A. No. They did not.

4 Q. Okay.

5 MJ [Col COHEN]: Counsel, I ----

6 A. Correction.

7 MJ [Col COHEN]: Is this going to be a lengthy ----

8 LDC [MR. CONNELL]: Yeah, this is like the last part of
9 the -- of my cross, so if you want to break, that's fine.

10 MJ [Col COHEN]: Yeah. Let's go ahead and take a recess
11 and then we'll give you time when we come back.

12 All right. We're in recess ----

13 WIT: Sorry, I did have one correction.

14 MJ [Col COHEN]: Please be seated. I don't want the
15 witness to forget what he's going to say.

16 WIT: Apologies.

17 MJ [Col COHEN]: You may answer.

18 WIT: Apologies, Your Honor.

19 You asked me about what my knowledge was of Echo II
20 prior, and the one thing that I recall is on the
21 admonishments, there was some detainees I understood who had
22 been there to Echo II before, so I was aware of that.

23 LDC [MR. CONNELL]: Okay.

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1 MJ [Col COHEN]: All right. Then we'll take a recess at
2 this point. Thank you.

3 [The R.M.C. 803 session recessed at 1509, 19 September 2019.]

4 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1528,
2 19 September 2019.]

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

4 The parties are present.

5 Mr. Connell, the government -- we -- I expect that
6 the government will not do a redirect once you've concluded
7 with your cross. What are you anticipating with respect to
8 your -- it's approximately 1528 right now. When do you
9 think -- like I said, no pressure intended, just a general
10 guideline.

11 LDC [MR. CONNELL]: 45 more minutes.

12 MJ [Col COHEN]: Okay. Then what we will do then is if we
13 conclude approximately 1615 hours or so 1620, we will take
14 a -- at least a 30-minute, if not a 45-minute break so that we
15 can swap out, get the stenographers down here for a closed
16 session, and we will reconvene for at least one hour in a
17 closed session this evening, to the extent that we can.

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

19 MJ [Col COHEN]: We will conclude today by 1800.

20 LDC [MR. CONNELL]: All right.

21 MJ [Col COHEN]: All right. You may proceed.

22 LDC [MR. CONNELL]: I don't know if that break is for me
23 or for somebody else, but I'm ready on the classified cross,

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1 so I ----

2 MJ [Col COHEN]: No, I know that the -- I have talked with
3 the court reporters. I have to allow them some time to switch
4 out some stuff, and so I need to make sure that we have that
5 time.

6 LDC [MR. CONNELL]: Sure.

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

8 **CROSS-EXAMINATION CONTINUED**

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

10 Q. All right, sir. Shortly before we broke, you
11 mentioned one other meeting which was a meeting at
12 headquarters about collecting documentary evidence?

13 A. Yes. What I recall at FBI Headquarters was, in
14 general terms about the documentary evidence -- in my specific
15 case, I try not to speak for other -- other people or other
16 investigators -- the collecting of documentary evidence to
17 present to the detainee, in this case Mr. Ali.

18 Q. Who was present at that meeting?

19 A. I don't have a specific recollection. It would have
20 been the -- at least the FBI agents assigned to the -- to this
21 project, the High-Value Detainee Prosecution Task Force.

22 Q. And any prosecutors?

23 A. I don't recall them there, sir.

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1 Q. And any CIA officials?

2 A. I don't recall CIA officials there either.

3 Q. Also, shortly before we broke, you testified about
4 the effort to re-interview the detainees. Do you recall that?

5 A. Yes, I may have used that term.

6 Q. All right. And the reason why it would be
7 re-interviewing them is that they had been interviewed so many
8 times by the CIA?

9 A. Correct.

10 Q. And you -- when you started on this project, you knew
11 that?

12 A. I knew that they had been interviewed or interrogated
13 by the CIA, yes, over a period of time.

14 Q. Right. And although you may not recall specifically
15 what, if any, access you had to their reporting, you knew that
16 other members of the PENTTBOM team had access to their
17 reporting?

18 TC [MR. GROHARING]: Objection, asked and answered.

19 LDC [MR. CONNELL]: Not on the other members.

20 MJ [Col COHEN]: I'll overrule this one. Thank you.

21 A. I certainly knew that other people may have had
22 access to CIA detainee reporting, yes, and obviously, expected
23 some of them did have access. And in what form or format that

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1 would be, I'm uncertain, but I -- clearly some people had some
2 access.

3 Q. The clarification that you made just before we broke
4 was that you had been informed on the 10 January 2007
5 memorandum that some of the -- some of these men that you
6 might be interrogating, that you would be interrogating, some
7 of them had been at this location before?

8 A. Yes.

9 Q. And so you knew that that meant that they had been
10 there while they were in the custody of the CIA?

11 A. I presumed that, yes.

12 Q. Because there's no other rational explanation for why
13 they would have been there before, right?

14 A. Not necessarily. They could have been there under
15 the DoD custody. I didn't think that was the case, but
16 certainly, they could have been there for some other reason
17 that I didn't know of.

18 Q. Okay. So in your view, it was either in CIA custody
19 or some unknown reason?

20 A. Fair enough, for now, yes.

21 Q. Okay. Sir, I'm showing you now AE 628AA
22 Attachment QQQ [sic] , which is the -- if I may have access to
23 the document camera. This is the picture that Mr. Groharing

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1 showed you of part of an Echo II cell?

2 MJ [Col COHEN]: You may publish to the gallery.

3 A. Yes, I recognize that photograph.

4 Q. Okay. And so in this photograph -- you testified on
5 direct examination that there was a -- that this cell had a
6 cage portion. That's not visible at all in this photograph,
7 is it?

8 A. It is not.

9 Q. And, sir, I'm going to show you the second page of
10 Attachment QQQ, the reverse. Now, on this picture, on the far
11 left-hand side, you can see a white -- what would you call
12 that? Fence? Cage?

13 A. Metal -- metal mesh.

14 Q. Metal mesh. You can see a white metal mesh.

15 And that's the only portion of the cage that is
16 visible in this picture; is that correct?

17 A. Yes.

18 Q. And on the other side, which is not on the
19 government's exhibit -- on the other side of this metal mesh
20 is a -- I think you described it as a space about one-third of
21 the total or about one-half of the room that we're looking at
22 right now; is that fair to say?

23 A. In approximate terms, the best I can estimate, yes,

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1 sir, roughly.

2 Q. And that section includes a slab?

3 A. Like a ----

4 Q. Like a slab that you could put a foam thing on, to be
5 like a -- I mean, it's not really a bed?

6 A. A sleeping bed, yes.

7 Q. A sleeping slab.

8 And it includes a prison metal sink?

9 A. To the best of my recollection, yes, sir.

10 Q. A toilet?

11 A. Yes.

12 Q. And did it at that time include a shower?

13 A. I don't have a specific recollection. I -- I believe
14 it had a shower, but -- yeah, I don't have a specific
15 recollection. It may not have.

16 Q. Okay. It includes a door that opens, also made out
17 of this same heavy metal mesh?

18 A. Yes, it does.

19 Q. That's lockable from the outside?

20 A. Yes.

21 Q. So it's clearly a space in which a person could be
22 locked inside?

23 A. Yes, it is.

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1 Q. The -- when you interviewed Mr. al Hawsawi, he told
2 you that he recognized the place, correct?

3 A. It's been a while since I reviewed that particular
4 testimony.

5 Q. Okay. I can help you out. The -- just one moment,
6 sir. I'm sorry I didn't write it down.

7 A. Sir, I accept your representation that he said that.

8 Q. Okay. The -- and when he said that, you understood
9 that to -- you connected that with your other idea to be that
10 he had been in custody in this place at some time?

11 A. That was my assumption at that time.

12 Q. Okay. And so what, if anything, did you ask him
13 about that?

14 A. I didn't ask him anything about it.

15 Q. Okay. And for the same reason as Mr. al Baluchi,
16 just didn't seem a good way to begin an interview?

17 A. I think that was a different thing. I think I was
18 talking about -- again, a similar thing, perhaps, but
19 regarding the circumstances of his detention in the CIA in
20 that case. But, no, it didn't seem like a great way to start
21 an interrogation.

22 Q. Okay. How many days that you interviewed -- you
23 interrogated Mr. al Hawsawi for three days or four?

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

2 MJ [Col COHEN]: Counsel, response.

3 LDC [MR. CONNELL]: Can I do so outside of the presence of
4 the witness or maybe I just tell counsel? It doesn't seem
5 that hard, but ----

6 MJ [Col COHEN]: Okay. I'll let you tell -- I'll let you
7 have a talk with counsel rather than having the witness
8 removed from the witness stand.

9 [Counsel conferred.]

10 LDC [MR. CONNELL]: Is that acceptable, Counsel?

11 MJ [Col COHEN]: Counsel, do you withdraw your objection?

12 TC [MR. GROHARING]: For now, yes, Your Honor.

13 MJ [Col COHEN]: Okay.

14 LDC [MR. CONNELL]: Okay.

15 Q. The reason that you didn't ask him anything further
16 about that is that you didn't want to elicit information about
17 his CIA detention, correct?

18 A. No, my focus was on talking about the information
19 that I had in my possession.

20 Q. Okay. And so I think my actual question that
21 elicited the objection was: How long was your interrogation
22 of Mr. al Hawsawi? Was it three days or four?

23 TC [MR. GROHARING]: Objection, Your Honor. That --

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1 relevance.

2 MJ [Col COHEN]: Okay. What is the relevance of that,
3 Counsel?

4 LDC [MR. CONNELL]: I'll show you. I'll just skip over
5 that question.

6 MJ [Col COHEN]: Okay. Sustained.

7 Q. So your testimony is that was not a good way to begin
8 an interrogation, but your interrogation of Mr. al Baluchi --
9 of Mr. al Hawsawi lasted multiple days?

10 A. Yes, it did.

11 Q. And in all of that time you didn't ask him anything
12 about his statement that he recognized this place?

13 A. I did not.

14 Q. And the reason for that was that you did not want to
15 elicit information about his CIA detention, correct?

16 TC [MR. GROHARING]: Objection, asked and answered.

17 LDC [MR. CONNELL]: Not yet.

18 MJ [Col COHEN]: Overruled.

19 A. I wanted to focus on whether or not he was willing to
20 ask -- or answer any questions that we had at that time,
21 specifically Agent Abigail Perkins and myself and the CITF
22 agent, whether or not he was willing to answer -- so those
23 questions regarding the documents that we had.

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1 Q. All right.

2 A. So I was focused on is he willing to answer questions
3 about these items.

4 Q. And you didn't have any questions about his prior CIA
5 detention, correct?

6 A. What do you mean by "any questions"?

7 Q. I mean, you didn't ask him any questions about his
8 CIA detention?

9 A. I did not.

10 Q. And for that reason, because you didn't want to have
11 any answers about his former CIA detention, you didn't ask him
12 "What do you recognize about this place?"

13 A. No, my objective was something different. My
14 objective was to see if he would talk to me about the
15 information that I presented.

16 Q. All right. And your objective was ----

17 A. Or in this case, Special Agent Perkins.

18 Q. I'm sorry. And your objective to obtain information
19 about 9/11 attacks was exclusive of obtaining information
20 about CIA detention?

21 A. Not necessarily.

22 Q. Okay. So what questions did you ask about CIA
23 detention?

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1 A. I did not.

2 Q. In what sense is that not exclusive?

3 A. Because if he stated -- if he complained about the
4 circumstances of his treatment, mistreatment, torture, I would
5 have recorded those things, as I have testified to before.

6 Q. You're saying if he volunteered information, you
7 would have recorded it, but you weren't going to ask any
8 questions about it?

9 A. I did not elicit it.

10 Q. Now, when you were at Echo II for the interrogation
11 of Mr. al Baluchi, did you have to drive through a checkpoint
12 to get there?

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

14 MJ [Col COHEN]: Counsel?

15 LDC [MR. CONNELL]: Sir, we may have different
16 understandings of what exactly Echo II encompasses. And so in
17 an unclassified session, I'm trying to create an unclassified
18 boundary around the space that I can ask for without having to
19 describe exactly what Echo II is so that we don't have to
20 all -- so that I can ask him who else was present.

21 So the reason for -- the question for the checkpoint
22 is on the far side of the checkpoint is a good -- like way to
23 have an unclassified geographical boundary.

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1 MJ [Col COHEN]: Is there not a map somewhere?

2 LDC [MR. CONNELL]: Not an unclassified one, sir.

3 TC [MR. GROHARING]: Judge, I ----

4 MJ [Col COHEN]: I guess, Counsel, I'm not understanding.

5 LDC [MR. CONNELL]: I'll go a different way. That's fine,
6 sir.

7 MJ [Col COHEN]: All right. Thank you. I'll sustain it.

8 Like I said, that one, I can't -- I'm not tracking with you.

9 Q. What do you understand Echo II to be? Like how do
10 you define Echo II?

11 A. There's a fenced border. Within that fenced border
12 is -- when you go you through the front gate, for lack of a
13 better term, there is a building there. That building
14 contains a foyer. If you go through the foyer out the back,
15 there are a number of cells, like this one, individual cells
16 in the camp of Echo II. So it's like a small camp.

17 Q. Okay. So can we agree that everything within the
18 fenced border is Echo II?

19 A. Yes.

20 Q. Okay. Good. That's better.

21 The -- during the time that you were in -- in Echo II
22 interrogating Mr. al Baluchi, who else was in Echo II?

23 A. Prosecutors.

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1 Q. Okay. Let's start there. Which prosecutors?

2 A. Then-Major Groharing. I'm not sure which other
3 prosecutors would have been there. Possibly Thomas Swanton,
4 although I don't know when he was there. The FBI agents that
5 I spoke of.

6 Q. Before we move off -- before we move to that, how
7 about Mr. Swann?

8 A. I believe he was there, yes, as well.

9 Q. Okay. How about Mr. Trivett?

10 A. I don't have a specific recollection. I believe he
11 was there, but I don't think he was directly involved in this
12 right now. He may not have. I'm not exactly sure when and
13 where I may have seen him ----

14 Q. Okay.

15 A. ---- at that time.

16 Q. Is there any other prosecutor that you recall?

17 A. That's all I'm recalling at this time.

18 Q. Okay. Who else? I'm going to lead you through one.

19 A. Yeah.

20 Q. The Camp VII commander was there?

21 A. That may have been the case. I was not introduced to
22 anybody known as the Camp VII commander, so ----

23 Q. Well, yes, of course, because it's a pseudonym.

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1 A. Okay.

2 Q. But no one briefed you on that pseudonym?

3 A. No.

4 Q. Forty-five hours with Mr. Groharing, and he didn't
5 brief you on the pseudonym?

6 A. I had no awareness until you just said that that the
7 Camp VII commander was there ----

8 Q. All right.

9 A. ---- so -- there were Navy personnel ----

10 Q. I'll cover it in the closed session. Sorry.

11 Navy personnel?

12 A. Yes.

13 To the best of my understanding, the Navy personnel
14 were masters-at-arms there to transport the detainees.

15 Q. How about Commander McCarthy?

16 A. I don't recall that name.

17 Q. The SJA?

18 A. Maybe he was there. I remember meeting
19 Commander McCarthy at some point. I don't specifically recall
20 his face right now. He may have been there. I don't have a
21 specific recollection.

22 Q. How about Colonel Davis, Colonel Morris Davis?

23 A. I don't recall seeing him.

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1 Q. And those -- those people that you just described --
2 let's take the masters-at-arms, that sort of escort or
3 transport team, let's take them out of it for a moment.

4 But the others, the prosecutors that you mentioned,
5 you -- where in Echo II were they?

6 A. In that front building that I just described.

7 Q. Okay. Were they in the foyer or were they in a
8 different room?

9 A. To the best of my knowledge, they were in the foyer.

10 Q. The -- were you aware of audio monitoring capability
11 within the cells at Echo II at that time?

12 A. Yes, I was.

13 Q. Okay. And how did you become aware of that?

14 A. At some point when I -- maybe I knew before, I don't
15 recall now. But certainly at Echo II, I knew that there was a
16 monitoring room.

17 Q. Okay. And did you ever see any of those other
18 people -- did you ever see anyone in the monitoring room?

19 A. I'm sure I saw people go in the monitoring room. I'm
20 trying to recall. I don't have a specific recollection of
21 persons in there, but I -- obviously, people were in there.

22 Q. Okay. Did you see any of the prosecutors that you
23 described? Did you see them go into the monitoring room?

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1 A. I do not recall seeing them going in there.

2 Q. How about FBI attorneys, were there any FBI attorneys
3 present?

4 A. There was. I don't think I can recall the name, but
5 I know we had FBI attorneys on island.

6 Q. Okay. How about linguists?

7 A. Yes.

8 Q. Present there in Echo II?

9 A. Yes.

10 Q. Okay. How many?

11 A. At least two, maybe more. I don't know exactly, but
12 more than one.

13 Q. And was there anyone there that you knew to be a CIA
14 official?

15 A. No.

16 Q. The -- I'd like to talk now to you a little bit about
17 Miranda warnings.

18 A. Okay.

19 Q. You started your career as a state trooper?

20 A. Yes, I did.

21 Q. And you told us that -- or you testified previously
22 that you made a number of traffic stops?

23 A. Yes.

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1 Q. And including you testified that you sometimes
2 stopped people whose first language was not English?

3 A. Yes.

4 Q. And that happened a couple of dozen times, you
5 testified?

6 A. That sounds right.

7 Q. And sometimes you made arrests?

8 A. Yes.

9 Q. And sometimes during those arrests, you would
10 administer Miranda warnings; is that fair to say?

11 A. Yes.

12 Q. Did your training as a state trooper include the idea
13 that you should administer Miranda warnings when you conduct a
14 custodial interrogation?

15 A. Yes.

16 Q. When a person's first language was not English, did
17 you enlist the assistance of an interpreter?

18 A. If it was possible.

19 Q. The -- I'd like to talk to you now about -- you
20 testified that you attended the academy at Quantico?

21 A. Yes, I did.

22 Q. And one of the things they teach at Quantico is the
23 Agents Legal Handbook?

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1 A. Yes.

2 Q. And the Agents Legal Handbook provides that an FBI
3 agent should give Miranda warnings whenever conducting a
4 custodial interrogation?

5 A. Yes.

6 Q. I take it you had some training on the law
7 surrounding criminal investigation while you were at Quantico?

8 A. Yes.

9 Q. And that included the idea that, when conducting a
10 custodial interrogation, you should give Miranda warnings?

11 A. Yes.

12 Q. Were you also trained on the requirement of prompt
13 presentation to a neutral magistrate?

14 A. Yes.

15 Q. The idea that when a person was placed into custody,
16 after a reasonable amount of time, they need to be taken to
17 some sort of a judicial officer, correct?

18 MJ [Col COHEN]: Counsel, one second.

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

20 MJ [Col COHEN]: I see the relevance. Totality of the
21 circumstances with respect to what went on there and whether
22 or not it's voluntary. That is directly relevant. In fact,
23 it may be some of the most relevant testimony we're going to

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1 have. Overruled.

2 WIT: Okay. Sir, could you state the question again,
3 please?

4 Q. Sure. In Quantico, you received legal training
5 on ----

6 MJ [Col COHEN]: Don't make faces, Counsel. Carry on.

7 Q. Sir, at Quantico you received training on -- I'll ask
8 my foundation question first, which is the requirement of
9 prompt presentation?

10 A. Yes.

11 Q. And the requirement of prompt presentation is that
12 when an FBI agent -- when someone is taken into custody ----

13 MJ [Col COHEN]: Counsel?

14 TC [MR. GROHARING]: Objection, argumentative. This is
15 proper argument on the motion; we don't dispute that for a
16 second, Your Honor. This is not a matter that's in dispute;
17 therefore, it's not appropriate to question this witness about
18 it.

19 LDC [MR. CONNELL]: Sir, may I be heard?

20 MJ [Col COHEN]: You may.

21 LDC [MR. CONNELL]: The -- one of the arguments that the
22 government has made in the 628 series is that it is anomalous
23 and impracticable to extend Fifth Amendment protections to

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1 these detainees. My arguments -- my questions go to the --
2 establishing whether it is anomalous and impracticable to
3 extend the -- these protections which are at the foundation of
4 democracy to these men.

5 MJ [Col COHEN]: I will allow you to ask questions with
6 respect to what was or was not done and why, for example, a --
7 you know, why you might want to read someone their Miranda
8 rights, those types of things ----

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

10 MJ [Col COHEN]: To the extent that you can avoid the
11 lengthy intros to the questions ----

12 LDC [MR. CONNELL]: Sure.

13 MJ [Col COHEN]: ---- that would be appreciative. Thank
14 you. I'll sustain it but allow you to go down that line.

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

16 Q. What do you understand the prompt presentation
17 requirement to be?

18 A. When someone is arrested, I present them before a
19 magistrate as efficiently, as quickly as possible.

20 Q. And typically the Federal Rule for that is within six
21 hours; is that right?

22 A. Yes.

23 Q. The -- with exceptions for circumstances outside your

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1 control?

2 A. Correct.

3 Q. The -- why -- or in your training, what did you learn
4 as the reason for providing Miranda warnings?

5 A. If someone makes a statement, it's -- you want a
6 knowing, informed, and voluntary statement if you wish to use
7 that statement in a court of law later on.

8 Q. Okay. And what is the relationship between the
9 Miranda warnings -- well, I'm on direct -- I mean, sorry, I'm
10 on cross.

11 The relationship between Miranda warnings is that you
12 want to make sure the person knows that they have the right to
13 remain silent, right?

14 A. Correct.

15 Q. You want to make sure that they know that anything
16 that they say can and will be used against them in a court of
17 law, correct?

18 A. Correct.

19 Q. You want to make sure that they know that they have
20 the right to an attorney?

21 A. Correct.

22 Q. And typically, in your time as a state trooper or
23 your other time as an FBI agent, after providing Miranda

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1 warnings, you would ask whether the person was willing to
2 waive their Miranda rights, correct?

3 A. Yes.

4 Q. And typically, you would memorialize that waiver of
5 Miranda rights in writing?

6 A. Yes. I would fill out a form or if they --
7 obviously, they don't have to sign it, but yes.

8 Q. Sure. Assuming they want to waive their Miranda
9 rights -- and, in fact, the FBI has a form for -- a Miranda
10 waiver form, correct?

11 A. Yes.

12 Q. They even have a version of it in other languages?

13 A. Yes, they do.

14 Q. The -- but in this situation, you understood the
15 10 January 2007 memorandum to be a direction to you not to
16 provide Miranda warnings; is that correct?

17 A. I believe the -- at that time I understood the
18 authority to be based upon the Military Commissions Act of
19 2006, so ----

20 Q. I'll give you a chance to explain. My question is:
21 Did the 10 January 2007 memorandum instruct you not to provide
22 Miranda warnings?

23 A. I don't know -- I -- if it affirmatively told me not

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1 to. I'd have to read that exact language. Clearly, I was
2 doing something different.

3 LDC [MR. CONNELL]: May I have the court's indulgence?

4 MJ [Col COHEN]: You may.

5 [Counsel conferred.]

6 LDC [MR. CONNELL]: I see it. Attachment C. I got it.
7 It's C. Thank you.

8 Q. Sir, do you have the government's AE 628AA binder in
9 front of you?

10 A. Yes, I do.

11 Q. All right. Could you turn to Attachment C?

12 A. Yes. I have it here.

13 Q. And I'm going to put it up on the screen. It's not
14 the greatest copy in the world, but we'll see what we can do.
15 Although this is marked LES, the government had it reviewed to
16 be showed.

17 MJ [Col COHEN]: The version I have is marked
18 UNCLASSIFIED, Counsel.

19 LDC [MR. CONNELL]: Oh, perfect. That's better than my
20 version. Or maybe it is. The double-marking sometimes
21 confuses me.

22 Q. So, sir, this is the -- when you said you would need
23 to review the memo, this memo is the one you were referring

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1 to, right, sir?

2 A. Yes.

3 Q. Okay. So this document has a -- this is an EC?

4 A. Yes, it is.

5 Q. Okay. And under the "to" line it lists

6 counterterrorism, correct?

7 A. Yes.

8 Q. And then it has a redaction for the "attention." Why

9 is that?

10 A. I have no idea.

11 Q. What would ordinarily be under there?

12 A. A sub-unit within the Counterterrorism Division.

13 Q. Did you belong to a sub-unit within Counterterrorism

14 Division?

15 A. As a practical matter, I worked with the High-Value
16 Detainee Prosecution Task Force, even though I was assigned to
17 New York.

18 Q. Is that a sub-unit of the Counterterrorism Division?

19 A. The High-Value Detainee Prosecution Task Force was.

20 Q. Okay. So do you recall, when you received this, did
21 it say "High-Value Detainee Prosecution Task Force" under it?

22 A. Don't recall.

23 Q. Okay. This is a pre -- approved by three separate

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1 people.

2 A. Yes.

3 Q. Who was Billy Joseph, Jr.?

4 A. Joseph Billy, but he was one of the -- I may have the
5 rank wrong, but an assistant director, someone of that level.

6 Q. And who was Valerie Caproni?

7 A. She was the general counsel.

8 Q. And who was Arthur Cummings?

9 A. Again, either a deputy assistant director or someone
10 of an SES level.

11 Q. Who was Richard Van Veldhuisen?

12 A. He was an FBI attorney.

13 Q. And you understood this to be your directions from
14 higher as to how to conduct the interrogations, correct?

15 A. Yes.

16 Q. And so, for example, under the synopsis, it says
17 these procedures are guidance for FBI personnel conducting
18 interviews of the HVDs?

19 A. Yes.

20 Q. Sir, I'm going to direct your attention to
21 paragraph 4 on the second page of the document?

22 A. Yes.

23 Q. Zoom in a little bit if I possibly can.

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1 And that document says, "Other than the advisement of
2 Miranda, interviews of the detainees are subject to the same
3 rules that govern FBI agents who conduct custodial interviews
4 in the United States."

5 A. Yes, I see that.

6 Q. And is it fair to say that you and your colleagues
7 interpreted that to mean that, obviously, you couldn't hit or
8 threaten the detainees?

9 A. Correct.

10 Q. But at the same time, you should not provide them
11 Miranda warnings?

12 A. What I understood was that a modified rights
13 advisement would be provided.

14 Q. Okay. And the modified advisement would not include,
15 say, the right to remain silent?

16 A. You'd have to pull that document up for me first,
17 sir, for me to review the specific language on that.

18 Q. Okay. So let's just -- I will do that, but let's
19 look at the next paragraph. The interviewing agents are not
20 required to advise the detainee of Miranda warnings?

21 A. Yes.

22 Q. Did you interpret "are not required" to give you
23 discretion to give Miranda warnings?

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1 A. I don't think so.

2 Q. I'll ask it a different way. Did you feel that it
3 was within your discretion -- that it was your decision
4 whether or not to give Miranda warnings?

5 A. I don't think it was in my discretion.

6 Q. Right. So, in fact, you felt that you were
7 prohibited from giving Miranda warnings; it was not within
8 your discretion?

9 A. It doesn't sound like the proper characterization,
10 but perhaps.

11 Q. Okay. And what you mean by "perhaps" is it was your
12 belief that you could not provide -- that your directions were
13 not to provide Miranda warnings, correct?

14 A. I focused on something different, which was at the
15 time they did not have the right to an attorney, so that
16 that -- it was the law was different in this case.

17 Q. Well, that brings us to the question: Was it your
18 decision not to give Miranda warnings or was it FBI higher
19 decision not to give Miranda warnings? That's what I'm trying
20 to find out.

21 A. I sort of focused on the same thing from a different
22 angle, sir, which was, they were not entitled to an attorney,
23 so I interpreted that to mean that I should not advise them

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1 because they did not have that right.

2 Q. Okay. So you're saying that it was your decision.

3 A. No, I don't think that's a fair characterization.

4 Q. Okay. You're saying that it was general counsel's
5 decision?

6 A. I wouldn't say general counsel. I would say
7 somewhere in FBI management.

8 Q. You're saying it was FBI management's decision?

9 A. To the best of my ability, yes, to estimate someone
10 above me making that decision.

11 Q. Okay. Just so we're clear, you're saying that it was
12 FBI management decision not to provide Miranda warnings?

13 A. I will say it was FBI management decision that we
14 provide a modified advice of rights.

15 Q. Which was not Miranda warnings?

16 A. That's correct.

17 Q. Okay. So just to put it all together, you would
18 agree that it was FBI management decision not to provide
19 Miranda warnings?

20 A. I'll say affirmatively, it was FBI management's
21 decision to provide a modified advice of rights.

22 Q. So it was FBI management's decision, as I understand
23 what you're saying, to employ an alternate legal regime to

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1 Miranda?

2 A. It was FBI management's position to follow the law of
3 the Congress, of the Military Commissions Act of 2006.

4 Q. Excellent. So where does the Military Commissions
5 Act of 2006 address this question?

6 A. Got me, sir.

7 Q. Well, I -- it's your testimony, sir.

8 A. It is, and it's based upon representations from my
9 leadership.

10 Q. What representations were those?

11 A. That the right to an attorney at that time did not
12 attach until someone had been charged in a military
13 commission.

14 Q. So we went over ad nauseam the various briefings and
15 meetings that you had. Earlier, you didn't mention any legal
16 claims about rights to any counsel. When did this advice
17 about right to counsel come?

18 A. I don't have a specific recollection right now. I
19 could try to recall it.

20 Q. Please.

21 A. It's -- it's -- I'd need something to refresh my
22 memory, sir. Certainly it's ----

23 MJ [Col COHEN]: How about the paragraph right below you?

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1 WIT: Okay. Okay. That's the bottom paragraph.

2 Q. Is that where your idea -- that idea comes from?

3 A. At this point, sir, to the best of my recollection,
4 that is certainly one of the ways that that could have come to
5 me.

6 Q. All right. So can we just look at the full
7 paragraph, and I'll show you on the next page, too, the
8 paragraph to which we're referring is: "If the detainee asks
9 for an attorney, the agent should inform the detainee that,
10 since he has not been charged with a crime by the military,
11 the detainee does not have the right to speak to" -- I'm on
12 the next page -- "an attorney, and there is no attorney
13 immediately available for consultation."

14 A. That's fair.

15 Q. Okay. And is that the source of your understanding
16 that the Military Commissions Act of 2006 provides that these
17 men did not have the right to an attorney?

18 A. That is certainly a source. I'm not saying that I
19 might not have heard that before that, but I don't have a
20 recollection of it.

21 Q. Okay. Now, over the course of your, at that point,
22 13-year career as a law enforcement officer, had you ever
23 refused to provide Miranda warnings to someone simply because

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1 they had not yet been charged with a crime?

2 A. No.

3 Q. In fact, when you're a state trooper and you pull
4 someone over and arrest them, give them Miranda warnings, ask
5 if they want to waive and make a statement, at that point
6 they've not yet been charged with a crime, right?

7 A. Correct.

8 Q. And so it's fair to say that you did not inform
9 Mr. al Baluchi that he had a right to an attorney?

10 A. That's correct.

11 Q. Now, at that time, you said that you knew
12 Mr. Trivett. And you know at that time that for several
13 years, Mr. Trivett had been involved in the Hamdan case; is
14 that fair to say?

15 A. I believe I knew he was involved in the Hamdan case
16 at that time, to the best of my recollection.

17 Q. And you knew that, for example, Mr. Hamdan had
18 attorneys, Lieutenant Commander Swift and Lieutenant
19 Commander -- or maybe it was Mr. Swift and Lieutenant
20 Commander Mizer.

21 A. I had heard Swift's name before, possibly Mizer's.
22 But I certainly have heard Commander Swift's name before.

23 Q. Okay. And so you knew that Mr. Hamdan had attorneys?

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1 A. Yes.

2 Q. You knew that there was some sort of defense attorney
3 office?

4 A. Yes.

5 Q. And, in fact, Military Commission Order #1 back in
6 2003 had set up the office, right?

7 A. I -- I wasn't aware that Military Order #1 was set up
8 in 2003, but I accept your representation.

9 Q. I'll just say there's a distinction between Military
10 Order #1, and Military Commissions Order #1, and I'm referring
11 to Military Commissions Order #1.

12 MJ [Col COHEN]: Counsel, you're getting -- for my
13 benefit, you're getting a little bit askew of the facts and
14 circumstances surrounding this.

15 LDC [MR. CONNELL]: Yes, sir. All right. I'll make
16 sure -- I'll reorient.

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

18 Q. So you knew there were military commissions defense
19 attorneys?

20 A. Yes.

21 Q. The other thing that you did not inform
22 Mr. al Baluchi is that any statement that he made can and
23 would be used against him in a court of law, correct?

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1 A. I did not inform him of that, that's correct.

2 Q. And, in fact, the guidance to you from FBI higher was
3 that if the detainee asks whether his statements can be used
4 against him at a future proceeding, the agent should inform
5 the detainee that such use of his statement is a possibility?

6 A. Correct.

7 Q. And that's only if the detainee asks?

8 A. Correct.

9 Q. The -- and you did also not inform him that he had a
10 right to remain silent, correct?

11 A. Can we review the form again, sir, to make sure that
12 there's no other legal equivalent?

13 Q. I'm sorry. I was just moving back to that part.

14 Instead, you were supposed to find out if he was
15 willing to voluntarily answer questions.

16 A. Yes.

17 Q. And so you did not inform him that he had a right to
18 remain silent?

19 A. I did not say the words, "You have a right to remain
20 silent."

21 LDC [MR. CONNELL]: May I have the court's indulgence for
22 just one moment?

23 MJ [Col COHEN]: You may.

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1 Q. Now, prior to or around the time of interrogating
2 Mr. al Baluchi, you also interrogated Mr. Ghailani?

3 A. No.

4 Q. The ground rules ----

5 MJ [Col COHEN]: Counsel, you're away from the mic.

6 Q. Sir, I am placing on the document camera AE 628AA
7 Attachment D, which is the checklist.

8 MJ [Col COHEN]: I see it.

9 Q. Okay.

10 A. Sir, concerning Ghailani, I'm wondering if I did not
11 speak to him at some other time. I don't have any specific
12 recollection right now; I'm trying to recall if I did. But I
13 know to answer that question more accurately, I'd have to
14 review something.

15 Q. Sir, I just remembered that my -- the only version of
16 the letterhead memorandum I have for Ghailani was not provided
17 in discovery, it was in public under FOIA, so it doesn't have
18 your -- it doesn't have any names in it. So it wouldn't help
19 you to. So I'll move on from that.

20 I will look instead at the checklist.

21 A. Yes.

22 Q. So the first question on your checklist is to "Assure
23 the detainee that the agents do not work for and are

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1 independent of any organization that previously held the
2 detainee." Correct?

3 A. Yes.

4 Q. Now, FBI agents at this time had been detailed to the
5 CIA, correct?

6 A. Yes.

7 Q. And they were -- at that time those FBI agents were
8 part of an organization that previously held the detainee,
9 correct?

10 A. Are you considering the FBI agents to be part of the
11 CIA?

12 Q. Yes. Isn't that what happened?

13 A. I don't think that's a fair characterization, sir.
14 They're a liaison. So I give it a different distinction.

15 LDC [MR. CONNELL]: May I have a moment?

16 MJ [Col COHEN]: You may.

17 [Counsel conferred.]

18 LDC [MR. CONNELL]: Sir, I'll explore that in the
19 classified session.

20 MJ [Col COHEN]: Thank you.

21 Q. The second thing you were supposed to do is to
22 "Ascertain the detainee's belief or knowledge regarding his
23 changed circumstances and remind the detainee that he is in

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1 the, quote, custody, quote, of the Department of Defense."

2 What did you understand the scare quotes around
3 "custody" to mean?

4 A. At the time, I didn't notice the quotes about
5 custody, and my belief was that Mr. Ali was in the complete
6 control of the United States Military.

7 Q. When did you hold that belief?

8 A. I held that in 2007, up until maybe a year or two
9 ago.

10 Q. Okay. The third advisement says that -- to, "Tell
11 the detainee that the agent is aware that the detainee may
12 have made statements in the past."

13 We're going to stop right there for a moment, okay?

14 A. Yes.

15 Q. Okay. So the only place that the -- these detainees
16 may have made statements in the past is to the CIA, right?

17 A. Yes.

18 Q. Okay. So you're supposed to tell the detainees that
19 you know about their CIA time?

20 A. No. They made statements before, yes.

21 Q. To the CIA?

22 A. Yes.

23 Q. And that you're not interested in any of those?

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1 A. Yes.

2 Q. Like you don't care how much they've spilled their
3 guts before?

4 A. Correct.

5 Q. You just want them to do it again?

6 A. I want their current recollection, if they're willing
7 to talk to me.

8 Q. Okay. Now, for Mr. al Baluchi in particular, you
9 have lined through "For those detainees who may have been
10 questioned by FBI agents in the past, the interviewing agent
11 will reiterate that even though the detainee may have already
12 spoken with the FBI, this interviewing agent is not interested
13 in that questioning or any answers the detainee may have
14 given."

15 You lined through that, right?

16 A. Yes.

17 Q. Why?

18 A. I was under the impression that Mr. Ali had not been
19 questioned by FBI agents in the past.

20 Q. Who told you that?

21 A. No one told me that. I just -- I had no basis to
22 think that he had been interviewed by FBI agents in the past.

23 Q. But now you know that's not true?

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1 A. I know he was interviewed by an FBI agent as part of
2 another, I'll call it, task force or organization.

3 Q. As part of another task force?

4 A. Well, maybe task force is the wrong word.

5 I understand that an FBI agent spoke to him, but I
6 also -- again, this is not at this time, but at a
7 significantly later time. I understand that the FBI agent who
8 spoke to him was with the CIA and not -- I'm trying to think
9 of the proper way to term it.

10 So he was -- he talked to them as part of a CIA team,
11 but was not ----

12 [The security classification button was pushed in the
13 courtroom which caused the video feed to terminate at 1615,
14 19 September 2019.]

15 [The Military Commission resumed at 1616, 19 September 2019.]

16 MJ [Col COHEN]: Counsel, would you like the opportunity
17 to confer with Mr. Groharing?

18 [Counsel conferred.]

19 LDC [MR. CONNELL]: Sir, my understanding is that the
20 witness' last answer should be redacted from the public
21 transcript. We would ask that it remain part of the full
22 record, the classified transcript. I mean -- because every
23 transcript that the court reporters take begins life as

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1 classified. And I think -- I asked counsel what he was asking
2 for, and I think that's what he's asking for.

3 MJ [Col COHEN]: Okay.

4 LDC [MR. CONNELL]: I mean, he can speak for himself.

5 MJ [Col COHEN]: Mr. Groharing.

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

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

8 **CROSS-EXAMINATION CONTINUED**

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

10 Q. So we had moved on and were talking about the legal
11 case?

12 A. Yes.

13 Q. The -- is the ----

14 MJ [Col COHEN]: Mr. Groharing?

15 TC [MR. GROHARING]: We are back on the record, right,
16 Your Honor?

17 MJ [Col COHEN]: We are back on the record. Right.

18 Thanks for checking. And I understand it takes a 50-second
19 cycle for us to get back on, so.

20 LDC [MR. CONNELL]: Okay. So we have a feed to the
21 gallery again? Okay. Great.

22 Q. So you said that al Baluchi had asked about his legal
23 case?

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1 A. Yes.

2 Q. And I guess the implication of that is -- well, let
3 me ask you that a different way. Did you document that in
4 your 302 -- in your letterhead memorandum?

5 A. Yes.

6 Q. Didn't you actually document that he asked about his
7 official case?

8 A. I would have to review.

9 Q. Yeah, let's do that. In fact, I can show it to you.
10 The item that -- so in quotations -- excuse me.

11 You ask -- not in quotations -- you document, "At the
12 third day of interviews, January 19, 2007, Ali inquired as to
13 whether this interview was part of his legal case or process."

14 A. Yes.

15 Q. All right. And then in quotations, you have, "Ali
16 was reminded of his conversation on the first day of
17 interviews when he described the presence of the FBI as his,
18 quote, official case."

19 A. Yes.

20 Q. Okay. The -- Mr. al Baluchi also asked you -- and so
21 the reference prior to the interrogation -- at the beginning
22 of the interrogation, was to an official case?

23 A. Yes. In that respect, yes.

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1 Q. Okay. The -- you can cut the document feed.

2 The -- Mr. al Baluchi also -- you asked him about
3 the -- understanding the difference between the FBI and the
4 CIA?

5 A. Yes.

6 Q. Did you address with him the detailing of FBI agents
7 to work for the CIA?

8 A. I did not.

9 Q. Or the detailing of CIA agents to work for the FBI?

10 A. I did not.

11 Q. Did you -- when he said the CIA's external and the
12 FBI is internal -- do you recall that?

13 A. Yes.

14 Q. And you told him actually the FBI is a law
15 enforcement agency.

16 A. I said that, yes.

17 Q. And do you remember when Mr. Ruiz suggested you to --
18 to you that the FBI was a law enforcement agency, you
19 corrected him and said, oh, no, FBI is also an intelligence
20 agency?

21 A. I said "also an intelligence agency," correct.

22 Q. And it's part of the intelligence community?

23 A. I advised that the FBI -- Mr. Ruiz the FBI was law

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1 enforcement and an intelligence agency.

2 Q. In fact, it's defined as such by Executive Order?

3 A. Yes.

4 Q. But you didn't want Mr. al Baluchi to know that the
5 FBI was also an intelligence agency.

6 A. There's -- that's implying that I was trying to
7 withhold that from him, and that is certainly not the case.
8 It was never something that I considered.

9 Q. Oh. So you told him, look, we do law enforcement and
10 intelligence; that's why we're not giving you Miranda?

11 A. I did not say that.

12 Q. Okay. Did you tell him anything about the FBI's role
13 as intelligence?

14 A. I did not.

15 Q. Despite having sent maybe a dozen or more
16 intelligence cables yourself to the CIA?

17 A. I did not say anything -- I did not tell
18 Mr. al Baluchi of any intelligence function.

19 LDC [MR. CONNELL]: That's the end of my questions, sir.

20 MJ [Col COHEN]: All right. Thank you. Questions for
21 counsel? I have some questions that I have of the witness
22 myself. Do the parties want me to go ahead and ask those
23 now -- there aren't very many -- so then you can address them

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1 in redirect, or do you want me to do it later?

2 How would -- Mr. Groharing, how would you prefer?

3 TC [MR. GROHARING]: We would prefer now, Your Honor.

4 MJ [Col COHEN]: Okay.

5 LDC [MR. CONNELL]: That's fine.

6 MJ [Col COHEN]: All right. My questions are subject to
7 the same objections of any party. And so if you wish to
8 object to a question, you may do so.

9 **EXAMINATION BY THE MILITARY COMMISSION**

10 **Questions by the Military Judge [Col COHEN]:**

11 Q. Who told Mr. Ali what to write on the documents that
12 you showed him? I don't mean to imply that -- how did what he
13 wrote get on there, I guess is the better way to say that?

14 A. I said to him in the beginning of the interview, "If
15 you recognize a document and it's yours, please sign and date
16 it," when I was referring to specific documents that I thought
17 he might have ownership of. There are other cases in
18 photographs where, if he recognized the photograph, I said,
19 "If you recognize the person in the photograph, please sign
20 and date it." And in some cases, he wrote the names. I don't
21 recall if I specifically asked him to write the names if he
22 recognized them, but I may have.

23 Q. What about for the documents, any comments that he

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1 made about the documents, were those -- did someone ask him to
2 write that language or did he choose that language on his own?

3 A. I did not dictate any language. Mr. al Baluchi did
4 that on his own.

5 Q. At the time that you interviewed Mr. Ali, were you
6 aware -- or were you -- or, I guess, Mr. al Hawsawi to a
7 certain extent, were you aware of what they may have said
8 previously about any documents that you showed them?

9 A. I made statements to the effect of they may have seen
10 some of these documents before -- if I'm answering your
11 question, Your Honor -- but I wasn't concerned with anything
12 they may have stated. I was concerned with what their
13 recollection was at this time.

14 Q. I understand. Were you personally aware of anything
15 they may have said about those documents at the time you did
16 the interview?

17 A. I don't recall a specific instance, Your Honor. If
18 you'll give me a moment to think.

19 Q. That's fine.

20 A. I may have seen a cable, I don't have a specific
21 recollection, and I don't believe that I had a recollection at
22 the time. But I cannot rule out the possibility I may have
23 seen a cable that may have articulated something like that.

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1 Q. How were you able to discern whether or not Mr. Ali
2 was being truthful or consistent during the interview?

3 A. When I was presenting documents, I presented
4 documents that I believed he should have some sort of
5 information about, the documents that were found in an
6 apartment associated with Mr. al Hawsawi, and those documents
7 were obtained circa 2002. So I knew investigatively there was
8 very likely an association with Mr. Ali and Mr. Hawsawi.

9 So when I presented those documents and he advised
10 information about them, it was consistent with what I knew
11 from the investigation, as an example.

12 Q. Okay. Thank you. What was your understanding of the
13 purpose of obtaining the 2007 LHM statements?

14 A. The purpose was to see if we could have a -- if there
15 would be a useable statement in a military commission
16 proceeding if someone was willing to speak to us.

17 Q. And I understand what the general rules are with
18 respect to the guidance you were given, all those kinds of
19 things. I'm just looking at the interests of the totality of
20 circumstances-type situation here.

21 Under normal circumstances, if you were conducting a
22 second interrogation of a suspect because the previous
23 statements had been deemed either inadmissible or obtained

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1 improperly, what would be your normal procedures for how you
2 would start that interview?

3 A. In a completely law enforcement situation?

4 Q. Correct.

5 A. I would want a gap in time, a change in
6 circumstances. So let's say I had -- a police officer, when I
7 was a state trooper, if I took a statement from a person in a
8 police station and it was a bad statement. And if I want to
9 then re-Mirandize, I would get different officers, I would get
10 a different location, and as much change in time and
11 circumstances as possible.

12 What I mean by that is, in an arrest situation --
13 like if someone confesses to an officer in the booking room
14 and there's been no proper application of Miranda, or -- I
15 want to do something so that that person understands that
16 they're not answering the same questions to the same police
17 officer so they feel compelled or they feel that he already
18 knows the answers. I want a change in as much as possible in
19 time and circumstances and in officers.

20 Q. Okay. And what would you tell them about the
21 previous statements in that circumstance?

22 A. I'd say that those -- those circumstances are -- you
23 know, I don't care what you said to that officer. Those

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1 are -- you know, essentially, that's an unwarned statement, so
2 that does -- those can't be used against you.

3 Q. Did you tell Mr. Ali anything along -- that --
4 anything -- did you only tell him what was in the document
5 with respect to, you're not interested in what they said, but
6 did you ever mention anything about anything he said
7 previously wouldn't be used against him in this case?

8 A. I did not say that.

9 Q. Okay. Anything like that, did you say anything
10 similar -- did you say anything -- was it the same situation
11 with Mr. al Hawsawi?

12 A. To the best of my recollection, that's correct, sir.

13 Q. Thank you. On the occasion -- I believe I understood
14 your testimony that it was likely that on occasions that you
15 did obtain information from the CIA in furtherance of your
16 investigation here stateside; is that correct?

17 A. In furtherance of the investigation, but a
18 significant portion of it is -- at the time the overriding
19 impetus was to generate intelligence to stop an attack.

20 Q. Copy. All right. And I can understand the varying
21 interests there.

22 I guess the question I would have is for purposes of
23 this criminal trial: What did you do with the information

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1 obtained via the CIA interrogations with respect to Mr. Ali or
2 any of the others?

3 A. In other words, sir, if I'm understanding, did I,
4 say, take a statement that they may have made in CIA custody
5 and then use the substance of that information in my interview
6 or interrogation?

7 Q. Correct.

8 A. I have no recollection of doing that, number one.
9 And number two, I knew that that was not the design or the
10 intent of these interrogations.

11 Q. What steps, if any, or actions did you take to make
12 sure that any statements or information you may have received
13 as a result of those CIA interrogations did not make its way
14 into how you formulated your questions or did your
15 interrogation in January of 2007?

16 A. I tried to keep the interrogation focused on
17 documents, things where I could present a document or a
18 photograph, what I considered essentially a neutral item, and
19 ask questions about that.

20 Q. I just want to make sure I understood your testimony
21 on direct examination. Is it your testimony that all of the
22 documents that you showed him that day were obtained by the
23 FBI based on leads, et cetera, that occurred prior to any of

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1 the five accused being captured?

2 A. I would say obtained or identified. And what I mean
3 by that specifically, sir, is in the case of, say, an e-mail
4 address, an e-mail address had been identified prior to the
5 arrest, the detention of Mr. Ali. I'm aware of a preservation
6 order on that e-mail address.

7 I believe the content was obtained after he was
8 arrested, but I knew that the FBI knew about the existence of
9 it before. So I would say identified or obtained.

10 Q. All right. Thank you. Prior to the interrogation in
11 2007, did you have any personal knowledge or had you been
12 briefed at all on the conditions of confinement prior to the
13 interviews?

14 A. The conditions of confinement of?

15 Q. For -- for Mr. Ali in particular, or Mr. al Hawsawi,
16 those who you directly interviewed.

17 A. So for conditions of confinement, the distinction
18 that I would ask, sir, is -- I know I testified of the
19 briefing regarding some of the EITs, so I knew about that. I
20 didn't know specifics about confinement. So I certainly have
21 heard rumors over the years about where people may have been.
22 I don't think that I knew with certainty and certainly didn't
23 ask where someone may have been.

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1 And so I don't -- I didn't know their specific
2 circumstances of confinement, their day-to-day life, things
3 like that; for instance, what a black site was like.

4 Q. During the entirety of the -- the days of interviews,
5 what was Mr. Ali's general demeanor like?

6 A. He was engaged, made eye contact, seemed interested
7 in what we had, the documents. He seemed interested in the
8 documents. He was -- I've used -- I believe I've used the
9 word "professional" before, but -- which it's a tough
10 characterization, but he was a calm demeanor, I think, taking
11 in what I presented. He seemed rational, engaged, made eye
12 contact. I was ----

13 Q. Did you ever notice any periods of aloofness or
14 incoherence?

15 A. Not at all, Your Honor. No, not at all. He
16 seemed -- when I asked questions, I received a coherent,
17 reasoned response.

18 Q. Do you believe that you were receiving -- obtaining a
19 voluntary statement?

20 A. I believed I was, sir.

21 Q. And what factors did you -- as you look back on that,
22 what -- what indicated to you as a law enforcement
23 investigator that you had someone who was voluntarily talking

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1 to you?

2 A. Based in part upon his demeanor, based in part upon
3 the evidence presented. Sometimes it's -- in my experience,
4 it's hard when people are faced with things that are -- appear
5 to be undeniably theirs, it's -- people find it hard to deny
6 them. And so I took his demeanor and his reactions to be
7 assessing, okay, they have this, they have this, they have
8 this.

9 And where there were items where he didn't know
10 something, I believed that that was forthright, and I believed
11 he was saying these things voluntarily. I don't believe he
12 felt any compulsion to answer. I think he felt free -- we
13 asked him many times, "Are you willing to talk to us? Are you
14 willing to come back?"

15 And so based upon especially those statements, you
16 know, his willingness to talk to us for multiple days and
17 asking can we come back led me to believe that it was a
18 voluntary statement.

19 MJ [Col COHEN]: I have -- that's the sum of my questions.

20 Let's go ahead and we'll go into recess at this
21 point. As soon as the court reporters can be ready, we will
22 begin with closed session testimony. We're in recess.

23 [The R.M.C. 803 session recessed at 1638, 19 September 2019.]

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