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1 [The R.M.C. 803 session was called to order at 1249,  
2 20 September 2019.]

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

4 Trial Counsel, for this open session, will you please  
5 announce who is here.

6 CP [BG MARTINS]: Good afternoon, Your Honor.

7 MJ [Col COHEN]: Good afternoon, sir.

8 CP [BG MARTINS]: All counsel representing the United  
9 States remain the same as when the commission was last in open  
10 session.

11 MJ [Col COHEN]: All right. Thank you. Appreciate it,  
12 sir.

13 I notice that none of the accused are here. We'll  
14 take that up momentarily.

15 Mr. Sowards, I recognize your team to be the same as  
16 in the previous closed session; is that correct?

17 LDC [MR. SOWARDS]: Correct, Your Honor. Good afternoon.

18 MJ [Col COHEN]: Good afternoon.

19 Ms. Bormann, your team is slightly different from the  
20 last closed session. If you'd please indicate who is no  
21 longer here.

22 LDC [MS. BORMANN]: Yes. Missing, Mr. Perry,  
23 Mr. Montross; and I forgot to put on the record earlier that

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1 Captain Caine is actually, as you are aware, traveling back to  
2 the United States.

3 MJ [Col COHEN]: Yeah. I hope that works out for him and  
4 his family. Thank you.

5 LDC [MS. BORMANN]: We all do. Thank you.

6 MJ [Col COHEN]: Mr. Connell, is -- any changes to your  
7 team from the closed session?

8 LDC [MR. CONNELL]: All counsel are present, sir.

9 MJ [Col COHEN]: All right. Thanks.

10 Mr. Ruiz, same question to you.

11 LDC [MR. RUIZ]: Judge, Ms. Lachelier is currently absent  
12 on other business.

13 MJ [Col COHEN]: Okay. Thank you, sir. Appreciate it.

14 Okay. We had the closed session testimony this  
15 morning. We are now going back into an open session. Before  
16 we do so I need to see if there's a witness with respect to  
17 the absence of the --

18 Oh, excuse me. Mr. Harrington, I forgot to ask about  
19 your team.

20 LDC [MR. HARRINGTON]: Easy to forget, Judge.

21 MJ [Col COHEN]: Sir, not necessarily, sir.

22 LDC [MR. HARRINGTON]: Judge, Ms. Cline is still not here.  
23 She'll be joining us in a little while.

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1 MJ [Col COHEN]: All right. Thank you, sir. I apologize  
2 for missing you.

3 CP [BG MARTINS]: Captain, if you'll please proceed to the  
4 witness stand, remain standing and raise your right hand for  
5 the oath.

6 CAPTAIN, U.S. AIR FORCE, was called as a witness for the  
7 prosecution, was sworn, and testified as follows:

8 DIRECT EXAMINATION

9 Questions by the Chief Prosecutor [BG MARTINS]:

10 Q. You are a captain in the United States Air Force?

11 A. Yes, sir.

12 Q. And you are assigned as an assistant staff judge  
13 advocate for the Joint Task Force?

14 A. Yes, sir.

15 TC [MR. SWANN]: Your Honor, before we begin, I have  
16 provided the witness with what's been marked as Appellate  
17 Exhibit 660V, 660W, 660X, 660Y, and 660Z, each consisting of  
18 three pages. Normally, I would provide a copy to the defense  
19 counsel in this case prior to the testimony; but in this  
20 instance, we are running a few minutes late. So I have shown  
21 each of the learned counsel the actual document. In the case  
22 of Mr. Hawsawi, I showed that to Colonel Williams.

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

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1 TC [MR. SWANN]: And we'll get a copy of these documents  
2 into the hands of defense counsel immediately, or sometime  
3 this afternoon.

4 MJ [Col COHEN]: All right. Thank you, sir. I appreciate  
5 the update. You may proceed.

6 **Questions by the Trial Counsel [MR. SWANN]:**

7 Q. All right. Let's take Khalid Shaikh Mohammad first.  
8 What time did you advise Mr. Mohammad of his right to attend  
9 this afternoon's proceeding?

10 A. Around 1005 this morning.

11 Q. What did he indicate he wished to do?

12 A. He indicated that he wanted to voluntarily waive his  
13 right to attend.

14 Q. All right. Did he execute the English or the Arabic  
15 version?

16 A. He executed the English version, sir.

17 Q. Do you believe he understood his right to attend this  
18 afternoon's session?

19 A. Yes, sir.

20 Q. With respect to Khallad Bin'Attash or Walid  
21 Bin'Attash, what time did you advise him?

22 A. Around 1129 this morning, sir.

23 Q. Did he indicate -- did you use the English or the

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1 Arabic form?

2 A. He signed the Arabic form, but I read him his rights  
3 in English.

4 Q. Do you believe he understood his right to attend?

5 A. Yes, sir.

6 Q. With respect to Ramzi Binalshibh, again a three-page  
7 document, did he execute the English or the Arabic version?

8 A. He signed the English version, sir.

9 Q. With respect to Ali Abdul Aziz Ali, three-page  
10 document, did he execute the English or Arabic version?

11 A. English version, sir.

12 Q. And with -- finally, Mustafa Ahmed Adam al Hawsawi,  
13 did he execute the English or the Arabic version?

14 A. The English version, sir.

15 Q. All right. You've done this in the past with these  
16 gentlemen?

17 A. Yes, sir.

18 Q. Do you believe that each of them understood their  
19 right to attend today's proceeding and that they voluntarily  
20 waived that right to attend today's proceeding?

21 A. Yes, sir.

22 TC [MR. SWANN]: Subject to your questions, sir.

23 MJ [Col COHEN]: All right. Thank you, sir. I'll take

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1 the exhibits.

2 WIT: Yes, sir.

3 MJ [Col COHEN]: Thank you. I'll note the standing  
4 objection to the identity of the witness. I'll ask the  
5 question in a little bit different way today to potentially  
6 preclude any of you from having to stand up if you don't have  
7 anything to say.

8 So what I'll say this time is: If any defense  
9 counsel has not seen the document that was presented to me in  
10 support of this, this testimony, or -- then the defense  
11 counsel should so state. Similarly, if any defense counsel  
12 wishes to ask questions of this witness, the defense counsel  
13 also should similarly state.

14 LDC [MR. SOWARDS]: I'm sorry, Your Honor. You were so  
15 close to sparing me this.

16 MJ [Col COHEN]: That's all right, Mr. Sowards.

17 LDC [MR. SOWARDS]: Actually, we didn't have the pleasure  
18 of Mr. Swann's company last week, so he's not current on  
19 events. He did show it to Mr. Nevin, who assures me  
20 everything is fine.

21 MJ [Col COHEN]: Okay. Thank you, Mr. Sowards. I  
22 appreciate it.

23 I will take the silence from the other defense

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1 counsel as an indication that they have both seen the  
2 documents and they do not have any questions.

3 Handing the exhibits to the court reporter.

4 You are temporarily excused. Thank you very much for  
5 your testimony.

6 WIT: Yes, Your Honor.

7 **[The witness was excused.]**

8 MJ [Col COHEN]: Are there any other matters to take up  
9 before we call the witness back for additional testimony?

10 LDC [MR. CONNELL]: No, sir.

11 MJ [Col COHEN]: Mr. Connell.

12 LDC [MR. CONNELL]: But I did just want to let the  
13 military commission know that I know that the government would  
14 very much like that Special Agent Perkins be able to leave on  
15 the -- on tomorrow's flight.

16 Showing that the parties can, in fact, negotiate  
17 successfully, Mr. Groharing and I have come up with a division  
18 of time that we hope will lead to completing Special  
19 Agent Perkins' testimony today.

20 MJ [Col COHEN]: Perfect. Like I said, that works out.  
21 Like I said, I laud both of you if you have been able to do  
22 that.

23 All right. Please call the witness.

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1 TC [MR. SWANN]: Your Honor, before the witness comes in,  
2 could I get you to make findings regarding ----

3 MJ [Col COHEN]: Oh. Thank you for reminding me of that.  
4 I do find that the accused in this case have knowingly and  
5 voluntarily their waived -- waived their right to be here this  
6 afternoon. Mr. Swann, thank you for the reminder.

7 Special Agent Fitzgerald, please take your seat.

8 **[The witness resumed the witness stand.]**

9 MJ [Col COHEN]: I recognize you as the same Special  
10 Agent Fitzgerald who's previously testified in these  
11 proceedings. I remind you that you are still under oath.

12 WIT: Yes, Your Honor.

13 MJ [Col COHEN]: Thank you.

14 Your witness.

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

16 **REDIRECT EXAMINATION**

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

18 Q. Good afternoon, Special Agent Fitzgerald.

19 A. Good afternoon.

20 Q. You have just testified for almost five days, and the  
21 military judge has had the opportunity to observe the tone and  
22 tenor of your voice throughout your testimony. How does the  
23 tone and tenor of your voice demonstrated in this courtroom

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1 compare to that used with your interview with Mr. Ali?

2 A. I would describe it as basically the same.

3 Q. At any point during the 30-plus hours you spoke with  
4 Mr. Ali, were you concerned that he did not understand exactly  
5 what you were saying?

6 A. I don't recall any specific times where I was  
7 concerned with what he said. I may have asked clarifying  
8 questions. But I have confidence that he understood me, and I  
9 understood him.

10 Q. Did you ever have any problem whatsoever with  
11 understanding what he was saying?

12 A. I don't recall any difficulty understanding anything  
13 he was saying. And again, if I did, I was able to ask  
14 clarifying questions.

15 Q. During your testimony, you mentioned that Mr. Ali  
16 asked if the interview was part of his official investigation.  
17 Do you recall that testimony?

18 A. Yes, sir. I believe he used the term "legal."

19 Q. His legal?

20 A. Yes.

21 Q. Were those words that he used or that you used?

22 A. I believe he used the word "legal," sir.

23 Q. Okay. And when he asked that, how did you respond?

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1           A. I reminded him of the admonishments that we provided  
2 in the beginning of the interview. I reminded him that I  
3 worked for the FBI, which was a law enforcement organization,  
4 and I believe the term I used was "official."

5           Q. And throughout your testimony, you used both the  
6 terms "interview" and "interrogation."

7           A. Yes.

8           Q. How would you define those terms?

9           A. I think the word "interrogation" has a more  
10 adversarial connotation to it. Interrogation, you think of  
11 something on TV, a particularly difficult interaction between  
12 either police or law enforcement and a subject. So  
13 interrogation, in my mind, oftentimes brings up images like  
14 that.

15                   An interview, in my mind, I often describe as  
16 something that seems less tense.

17           Q. How would you describe your interactions with  
18 Mr. Ali, as an interview or an interrogation?

19           A. While I understand I was interrogating him for  
20 information, the tenor of it was more of what I would describe  
21 as an interview.

22           Q. Did you confront Mr. Ali at any point over the course  
23 of the four days when you thought he was lying or being

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1 untruthful?

2 A. I don't recall confronting him regarding him lying or  
3 being untruthful. There were times when I thought he might  
4 have been holding back some information, but based upon the  
5 totality of his statements, I believed them to be credible.

6 Q. Mr. Connell asked you about FBI objections to  
7 techniques being used by military intelligence at Guantanamo.  
8 More specifically, he asked you about the FBI advocating for a  
9 rapport-based approach. Would you say that you used that same  
10 rapport-based approach with Mr. Ali?

11 A. Yes. I would concur with that.

12 Q. Are you trained about the difference between  
13 open-ended and closed-ended questions?

14 A. Yes.

15 Q. What types of questions did you use with Mr. Ali?

16 A. I used both.

17 Q. You indicated that it was -- the interview was  
18 document based.

19 A. Yes.

20 Q. What does that mean, "document based"?

21 A. What I meant when I said that is, in general terms,  
22 as I initiated and carried through the interview, I presented  
23 a document, let Mr. Ali review it, asked him if he was

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1 familiar with the document and, if so, if he would explain  
2 what his familiarity was.

3 Q. Did you ever tell him to write anything in particular  
4 on the document?

5 A. What I stated to Mr. Ali was, "If you -- upon  
6 reviewing a document, if you recognize it and it's yours, I  
7 would ask you to sign and date it." There are occasions when  
8 he wrote words on there that I did not direct him to do.

9 Q. Mr. Connell asked you about e-mails that you may have  
10 sent throughout your time at the FBI. With regard to a case,  
11 would it have been your practice to include substantive  
12 case-related information in an e-mail?

13 A. It would depend. It would depend, sir.

14 Q. And if you did, what, if any, requirement would there  
15 be for you to make sure that substantive information made it  
16 to the case file?

17 A. I would have to comply with the same discovery  
18 requirements.

19 Q. And so if you -- during the case, if you sent  
20 something that was -- that also should be documented into the  
21 case file, if you sent that via e-mail, what would you do then  
22 to make sure it makes it to the case file?

23 A. In general terms, I -- I am aware of and try to be

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1 aware of discoverable information. A lot of times on an  
2 e-mail, to speak in a generalization, I'm regurgitating  
3 information that may have already been in an official FBI  
4 report, like an EC or a 302, so that I know that information  
5 would have been discoverable -- reviewable and discoverable  
6 via that method.

7 As to whether or not -- if there were new information  
8 in an e-mail, in other words, if I created something that was  
9 discoverable, I would have that same obligation to bring that  
10 to the prosecutors and provide it. I don't recall any e-mails  
11 having to do that.

12 Again, the bulk of what I recall are the relevant  
13 information had already been -- to the best of my  
14 recollection, had already been memorialized in FBI documents.

15 Q. Okay. I want to ask you a little bit about your  
16 practices in conducting interviews.

17 Have you ever in your career conducted a telephonic  
18 interview?

19 A. Yes.

20 Q. Have you ever conducted an interview of someone who  
21 is represented by counsel?

22 A. Only if it was allowed. So in other words, if  
23 someone's represented by counsel, there may be a circumstance

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1 where I could not talk to them, so ----

2 Q. Would you approach that person directly or would you  
3 approach their counsel, or would someone else approach their  
4 counsel?

5 A. Either I or -- I would likely, again hypothetical,  
6 talk to a prosecutor if I knew someone was represented. And  
7 it would obviously be a very different route.

8 Q. If you needed to interview an individual who you knew  
9 to be a covert officer of the CIA, would you approach them in  
10 public, show your credentials, and ask to speak with them  
11 about their covert activities?

12 A. I would not.

13 Q. Why not?

14 A. It would seem to fly in the face of them being a  
15 covert employee.

16 Q. If you were conducting an investigation that involved  
17 information at the TOP SECRET//SCI level that involved current  
18 and former covert CIA officers, what would you do to attempt  
19 to interview the relevant witnesses?

20 A. I'd speak to their general counsel first.

21 Q. Are you aware of any efforts by foreign terrorist  
22 organizations to target CIA officers?

23 A. Yes.

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1 Q. What are those?

2 A. In this specific case, one that comes to mind most  
3 readily is a statement made by Mr. Ali regarding targeting CIA  
4 employees in another country.

5 Q. Are you aware of any other instances where al Qaeda  
6 or any other terrorist organization attempted to target CIA  
7 officers?

8 A. In general terms, yes. I'm not thinking of a  
9 specific plot, but in general terms, yes.

10 Q. Okay. I want to talk about the organization of the  
11 Prosecution Task Force. The CIA officers -- or the CIA  
12 individuals that were involved with the task force, what were  
13 their duties?

14 A. To the best of my knowledge and reflecting now upon  
15 the employees I had the most interaction with, they were  
16 attorneys representing the CIA. I also had contact with  
17 IT-type people, but in general terms, attorneys.

18 Q. What was the role of the attorneys, best -- as far as  
19 from your perspective?

20 A. The attorneys are there to provide guidance regarding  
21 CIA intelligence equities.

22 Q. Did they ever offer any suggestions on what questions  
23 you might ask during the interview of Mr. Ali?

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1 A. They did not.

2 Q. You also talked about an attorney from the NSA who  
3 interacted with the HVD PTF. What was his role?

4 A. My understanding of his role was he reviewed, in my  
5 experience, FBI document to see if they reflected any -- I'll  
6 call it an intelligence equity, something that the NSA felt  
7 might compromise -- even though it's not their information, it  
8 might compromise something that they were afraid of.

9 Q. Did he offer any suggestions on what questions to ask  
10 during the interview?

11 A. He did not.

12 Q. Did you consider either CIA Office of -- attorneys  
13 from either CIA Office of General Counsel or NSA as part of  
14 the prosecution team?

15 A. I did not.

16 Q. You testified about a significant number of financial  
17 documents, including some that were obtained overseas. Would  
18 the FBI investigation that resulted in obtaining those  
19 materials be a typical FBI investigation?

20 A. I would term it typical in the respect, if the FBI  
21 had to conduct liaison with a foreign country to attempt to  
22 get financial documents, yes. Obviously, it is an atypical  
23 case, but the FBI obtaining financial documents or requesting

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1 financial documents from a government overseas is typical.

2 Q. Is it common for the FBI to work with foreign  
3 partners to obtain evidence for use in criminal trials?

4 A. Yes.

5 Q. Have you done that throughout your career?

6 A. Yes.

7 Q. Did the FBI do that in this case?

8 A. Yes.

9 Q. In some cases, you indicated that the FBI had records  
10 certified.

11 A. Yes, I did.

12 Q. Could you please describe that practice for the  
13 military judge.

14 A. In this specific instance there were financial  
15 records that originated from financial institutions overseas.  
16 Those financial institutions were -- the documents were  
17 obtained by the FBI. Then the FBI went back to a foreign  
18 country, interacted with their central bank, and sought  
19 certification, business record certification, of those  
20 documents. And then we did that again in roughly 2008.

21 Q. And for any of the documents where the FBI went back  
22 to get a certification, were those materials first obtained or  
23 had the FBI become aware of those materials prior to Mr. Ali's

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1 capture?

2 A. Yes.

3 Q. Do you have any recollection of using any statement  
4 that you may have read from Mr. Ali's time in the RDI program  
5 during your interview with Mr. Ali?

6 A. I do not have any recollection of using any  
7 statement.

8 Q. Do you have any recollection of asking the assigned  
9 prosecutor for permission to use a prior statement made by  
10 Mr. Ali during your 2007 interview?

11 A. No.

12 Q. You testified about certain items that were seized  
13 from an apartment associated with Mr. al Hawsawi.

14 A. Yes.

15 Q. Do you have any reason to question the authenticity  
16 of the documents provided by the foreign government from the  
17 apartment associated with Mr. al Hawsawi?

18 A. I do not.

19 Q. Were you ever concerned that any of the documents  
20 provided by the foreign government may have been faked up?

21 A. I do not.

22 Q. Was there any information on these documents that you  
23 could use to corroborate other information -- or strike that.

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1           Was there any other information that you had during  
2 the investigation that you could use to corroborate the  
3 location of where those documents were obtained?

4           A.    Yes.

5           Q.    And did Mr. Ali also indicate -- provide any  
6 information that corroborated the location where those  
7 documents were obtained?

8           A.    Yes, he did.

9           Q.    What did Mr. Ali say, if anything, during his  
10 interview to you about how those documents ended up with  
11 Mr. al Hawsawi?

12          A.    He stated words to the effect of he was leaving on --  
13 on or about September 10th. He went to the airport. He had,  
14 to my recollection, two pieces of luggage. He could not take  
15 one of those pieces of luggage with him. He gave that piece  
16 of luggage to Mustafa al Hawsawi, and he continued his travel  
17 to Karachi, Pakistan.

18          Q.    And are you familiar with any utility bills that were  
19 found in that apartment?

20          A.    Yes, I am.

21          Q.    Whose name was on the utility bills?

22          A.    Mustafa al Hawsawi.

23          LDC [MR. CONNELL]: Your Honor, objection to scope, only

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1 because if we start getting into the redirect -- into the  
2 utility bills, then we have to go through this whole cycle  
3 again; they weren't in the direct, they weren't in the cross.

4 TC [MR. GROHARING]: Your Honor, I would only say  
5 that ----

6 MJ [Col COHEN]: Counsel.

7 TC [MR. GROHARING]: ---- counsel challenged to some  
8 degree the authenticity of the documents. This is in response  
9 to that, and that's all of the questions that I have on that  
10 matter.

11 MJ [Col COHEN]: Okay. Then -- all right. Sounds good.  
12 Because you're moving on, then I'll just -- we'll let it be  
13 where it is.

14 Q. Turning your attention to Mr. al Qahtani.  
15 Mr. Connell asked you a series of questions regarding the  
16 requirements that you sent regarding Mr. al Qahtani.

17 A. Yes.

18 Q. Why did you expect Mr. al Hawsawi to have information  
19 about Mr. al Qahtani?

20 A. Based upon Mr. al Qahtani's travel, based upon  
21 documents that were photocopied which were in Mr. al Qahtani's  
22 possession on or about August 4th, 2001, so prior to  
23 September 11th. There was a phone number on that document

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1 which, again, was photocopied prior to 9/11.

2 After the events of 9/11, that phone number could be  
3 associated via financial documents with Mr. al Hawsawi. And  
4 that was at least part of the reasoning.

5 Q. And what did you hope to do with any information you  
6 received in response from the CIA regarding the questions you  
7 sent about Mr. al Qahtani?

8 A. I'd have to review those questions again to try to  
9 determine my exact intent. There may have been some  
10 investigative imperative. And also, again without reviewing  
11 them, it's difficult to recall any exact intend ----

12 Q. Okay.

13 A. ---- it may have been an intent to pass along  
14 intelligence as well.

15 Q. Okay. When you interviewed Mr. Ali in January 2007,  
16 had any military commission charges been sworn against him at  
17 that time?

18 A. No.

19 Q. Mr. Connell asked you if you were aware of the Hamdan  
20 trial and the fact that Mr. Hamdan had attorneys at the time  
21 of the trial.

22 A. Yes.

23 Q. Do you recall that?

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1 A. Yes.

2 Q. Were you aware that Mr. Hamdan had subsequent  
3 voluntary statements to the FBI admitted against him in his  
4 trial that had been given -- that had been made prior to when  
5 he was given access to an attorney?

6 A. I'm not precisely aware of that. I was aware at some  
7 point that Mr. Hamdan had been charged, but that's -- unless  
8 there's an additional question, that's my current  
9 recollection.

10 Q. Okay. When the hijackers received money from Mr. Ali  
11 or communicated with him by telephone, was the FBI able to  
12 gather the United States side of that transaction or phone --  
13 of those transactions or phone calls?

14 A. Regarding the money transactions, regarding the six  
15 transactions, money transactions that I spoke of, yes. And  
16 regarding any telephone calls, the FBI did obtain domestic  
17 records which relate to telephone calls. Again, there was --  
18 we don't have content, but ----

19 Q. Right.

20 A. ---- there are toll records, essentially.

21 Q. Did those documents provide leads to ask for foreign  
22 government assistance in finding the other side of those  
23 transactions?

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1 A. Yes.

2 Q. Do you recall when that was -- assistance was  
3 requested in relation to when Mr. Ali was captured?

4 A. When the request for like financial documents and  
5 telephonic records?

6 Q. Yes.

7 A. It was prior to his capture.

8 Q. Are you familiar with evidence that was found at  
9 Dulles Airport on September 11th, 2001?

10 A. September 11th or September 12th, yes.

11 Q. Are you familiar with a package that was being sent  
12 to P.O. Box 19738 in the United Arab Emirates?

13 A. Yes, I am.

14 Q. What was in that package?

15 A. I don't recall immediately, sir. It's -- there ----

16 Q. Okay. You testified about a wall that existed  
17 between the FBI and CIA pre-September 11th. What did you  
18 understand that wall to be?

19 A. The wall, in general terms, as my understanding was,  
20 was in place so as to not have, in this case, FBI agents use  
21 national security tools, specifically a national security  
22 letter or a FISA, as a way to get around a criminal subpoena  
23 or criminal search warrant. Again, that's my understanding of

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1 it.

2           And thus, because of that, agents were, in general  
3 terms, prevented from sharing certain types of information so  
4 as to not essentially establish a way around criminal process,  
5 in a certain sense improperly, by using an intelligence tool.

6           Q. Did it result in a restriction in information flow  
7 between the intelligence community and the law enforcement  
8 community?

9           A. That's my understanding, sir. I didn't start working  
10 counterterrorism matters until after 9/11, so I'm basing that  
11 on what I heard, not what I experienced.

12          Q. Is it fair to say that, after September 11th, there  
13 was increased emphasis on information sharing?

14          A. Yes, there was.

15          Q. What was the FBI's primary mission after  
16 September 11th, 2001?

17          A. To stop another attack.

18          Q. Do you recall the FBI being criticized for not  
19 stopping the September 11th, 2001 attacks?

20          A. Yes.

21          Q. Mr. Connell asked you about a 20-page document that  
22 included a number of questions that you drafted in the hopes  
23 that they would be sent to the CIA. Do you recall that

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1 discussion?

2 A. Yes, I do.

3 Q. And those -- that document asked questions regarding  
4 the hijackers' movements in the United States, right?

5 A. In general terms, that's correct.

6 Q. What information were you looking to learn by sending  
7 that document?

8 A. In that document, I attempted to codify areas in  
9 which the FBI investigation left questions; in other words,  
10 travel to a certain location by hijackers or actions by the  
11 hijackers for which the FBI had no explanation.

12 So those intelligence gaps I attempted to put down in  
13 a cable to share it with the CIA to try to gain threat  
14 information, to try and identify were the hijackers traveling  
15 to a certain place or doing certain things in an attempt to  
16 prepare for another attack.

17 So it was an attempt to identify gaps in  
18 investigation and obtain intelligence to stop another attack.

19 Q. Fair to say, you were trying to find other people who  
20 might have assisted the hijackers?

21 A. As well, yes.

22 Q. Were you interested in trying to learn the tradecraft  
23 employed by the hijackers?

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1 A. Yes.

2 Q. Why?

3 A. It might lead to identification of additional people  
4 in the United States.

5 Q. Was there a concern at the time that there may have  
6 been al Qaeda sleeper cells in the United States?

7 A. Yes.

8 Q. How did that impact your duties? First, what is a  
9 sleeper cell?

10 A. It's a cell -- in just a general sense, it's a cell  
11 in the United States, in the example that I'm referring to,  
12 where -- sent by an organization such as al Qaeda, that does  
13 not take any acts that are -- that would cause it to be  
14 noticed by domestic law enforcement, and -- but in essence  
15 they're in the United States to lie low until they have a  
16 chance or the opportunity to attack.

17 So that -- to get back to your question, that  
18 influenced myself in that I wanted to identify anybody who  
19 might be in the United States to attempt to identify and  
20 apprehend them before they could attack, if there was an  
21 attack pending.

22 Q. One of the questions was: "Did al Suqami conduct  
23 reconnaissance of Disney World?" Do you remember that

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1 question?

2 A. Yes.

3 Q. Why would you be concerned about that?

4 A. I know that al Qaeda targets things for sometimes  
5 political or military or commercial reasons. I knew that in  
6 that case he had traveled to the area of Orlando, and I was  
7 concerned, based upon him traveling to that location, that he  
8 could be gathering intelligence. And it seemed like it's a  
9 possibility that could have been a target. Again,  
10 speculation, but I wanted to try and find out more.

11 Q. Based on your experience, would such an attack be  
12 inconsistent with al Qaeda's methods?

13 A. No.

14 Q. If the CIA had learned of an imminent threat inside  
15 the United States, what agency's responsibility would it be to  
16 thwart it?

17 A. The FBI's and local law enforcement.

18 Q. Is that one of the reasons why the CIA would  
19 disseminate intelligence to the FBI?

20 A. Certainly that is a reason, yes.

21 Q. Is that one of the reasons why you would send  
22 questions to the FBI in the hopes of getting information in  
23 return?

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1 A. Yes.

2 Q. Yesterday you answered a question from the judge that  
3 the FBI was aware of all the documents -- or at least the  
4 information in the documents at the time Mr. Ali was captured.  
5 Do you remember that question?

6 A. Yes. I believe I stated, had either identified or  
7 obtained those business records, and -- I believe I explained  
8 at that time. I know what you're referring to, yes.

9 Q. Assuming that in 2003, immediately after Mr. Ali was  
10 captured, that you would have received the same guidance that  
11 you received in this case from the Office of General Counsel,  
12 would you have conducted your interview in any different way  
13 than you did in January 2007?

14 A. No.

15 Q. Why not?

16 A. As I previously stated, the interview was based  
17 around documentary evidence which I had gathered at that time.  
18 So I simply would have presented those documents in the same  
19 fashion.

20 TC [MR. GROHARING]: All right. Thank you, Your Honor.  
21 That's all I have.

22 MJ [Col COHEN]: Thank you, Counsel.

23 Any recross?

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1 LDC [MR. CONNELL]: Only one area, Your Honor, that was  
2 new.

3 MJ [Col COHEN]: Okay. That would be fine.

4 LDC [MR. CONNELL]: 29.

5 **RE CROSS-EXAMINATION**

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

7 Q. Sir, you were asked a question on redirect about if  
8 you were conducting an investigation of persons who were in a  
9 covert status. Do you recall that question?

10 A. Yes.

11 Q. If you were conducting an investigation and were  
12 interviewing relevant witnesses, how would you know if some of  
13 them were covert?

14 A. I may not. It depends on the circumstance.

15 LDC [MR. CONNELL]: Okay. That's all I have, Your Honor.  
16 Thank you.

17 MJ [Col COHEN]: Thank you, Counsel.

18 Any redirect based on that question?

19 TC [MR. GROHARING]: No, Your Honor.

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

21 Counsel, although I will allow the witness to leave  
22 the island, is there any objection to me holding him subject  
23 to recall?

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1 TC [MR. GROHARING]: We anticipate that he'll be called  
2 again for Mr. al Hawsawi ----

3 MJ [Col COHEN]: Okay.

4 TC [MR. GROHARING]: ---- Your Honor.

5 MJ [Col COHEN]: Excellent. Then I'll just hold him  
6 subject to recall.

7 TC [MR. GROHARING]: Yes, sir.

8 MJ [Col COHEN]: Special Agent Fitzgerald, you are not  
9 required to remain on the island; you may return to the  
10 continental United States, wherever your duties may take you.  
11 While you are subject to recall, you should not discuss this  
12 case with anyone other than the prosecution and the defense.

13 WIT: Understood, Your Honor.

14 MJ [Col COHEN]: All right. Thank you, sir. You are  
15 excused.

16 [The witness was warned, excused, and withdrew from the  
17 courtroom.]

18 TC [MR. GROHARING]: Your Honor, we're just making sure  
19 the witness is available.

20 MJ [Col COHEN]: Okay. I tell you what. Why don't we go  
21 ahead, it's after lunch, everyone was in a rush to get here,  
22 which I appreciate significantly, and for the first time in  
23 this whole week, we are ahead of schedule.

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1           So I'm going to take advantage of this and say let's  
2 take a 15-minute recess. And we'll get back on the record  
3 at -- I'll just make it -- we'll get back on the record at  
4 1345.

5           All right. We're in recess.

6 [The R.M.C. 803 session recessed at 1329, 20 September 2019.]

7 [The R.M.C. 803 session was called to order at 1345,  
8 20 September 2019.]

9           MJ [Col COHEN]: The commission is called to order.  
10 Parties are present.

11           Mr. Connell, I understand that you and the government  
12 have agreed to -- for you to call your witness at this point.

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

14           MJ [Col COHEN]: All right. You may do so.

15           LDC [MR. CONNELL]: Before I do that ----

16           MJ [Col COHEN]: One second.

17           LDC [MR. CONNELL]: ---- Your Honor, I have one quick  
18 matter -- and this will come out of my time, it's 1:48 -- the  
19 question arose over the closed hearing about whether the  
20 defense had requested and whether the government had denied  
21 Brian Antol as a witness.

22           I just want to point the military commission to  
23 AE 628F, page 10, and in which the government lists a fairly

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1 good collection of the sort of witness who is like Brian Antol  
2 and demonstrated -- and he was our witness number 17 that we  
3 had requested that the government denied. So I just wanted to  
4 point you to that.

5 I'll also put on the open record that the government,  
6 over the course of the closed session, agreed to produce Brian  
7 Antol as a witness.

8 MJ [Col COHEN]: All right. Thank you, sir. That is an  
9 accurate summary of generally what transpired, is that there  
10 was a discussion about whether or not he should be produced;  
11 and that's my understanding as well, is that the parties  
12 reached an agreement that he would.

13 LDC [MR. CONNELL]: Yes.

14 MJ [Col COHEN]: Thank you.

15 LDC [MR. CONNELL]: We're now ready for the witness.

16 CP [BG MARTINS]: Sergeant, please inform the witness to  
17 come to the courtroom.

18 Ma'am, if you could please proceed to the witness  
19 stand, remain standing, and raise your right hand for the  
20 oath.

21 [END OF PAGE]

22

23



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1 ABIGAIL L. PERKINS, civilian, was called as a witness for the  
2 defense, was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the Chief Prosecutor [BG MARTINS]:

5 Q. Please be seated.

6 MJ [Col COHEN]: Ma'am, if I could ask you to put your  
7 badge inside a pocket, please. Thank you.

8 WIT: Yes.

9 Q. Would you please state your full name and then spell  
10 it.

11 A. Abigail Leigh Perkins, A-B-I-G-A-I-L, Leigh,  
12 L-E-I-G-H, Perkins, P-E-R-K-I-N-S.

13 Q. What is your current -- your state of residence?

14 A. Virginia.

15 Q. And what is your current occupation?

16 A. I'm a contractor with the Department of Energy,  
17 supporting the Department of Energy.

18 CP [BG MARTINS]: Thank you. Your witness.

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

20 Q. Good afternoon, ma'am.

21 A. Good afternoon.

22 Q. I'm not sure if we've met before, but my name is  
23 James Connell. I'm attorney for Ammar al Baluchi.

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1 A. Okay.

2 Q. I'd like to -- you're a former special agent with the  
3 FBI?

4 A. Yes, sir.

5 Q. And you were previously associated with the PENTTBOM  
6 team responsible for the 9/11 investigation?

7 A. Yes.

8 Q. And you're now employed as a contractor with the  
9 Department of Energy, did I understand?

10 A. Yes.

11 Q. I'd like to -- you may have heard this, but counsel  
12 and I have come up with a plan to try to allow you to leave on  
13 tomorrow's flight.

14 A. Thank you, sir.

15 Q. So I -- if I move too quickly -- I will move quickly.  
16 If I move too quickly, please let me know. I just ask you,  
17 listen carefully to the answer -- to the question, answer it  
18 as straightforward as you can, and then we won't have to chase  
19 each other around and waste a lot of time.

20 A. Okay.

21 Q. So I'd like to begin with some -- and I'll just tell  
22 you that the cross-examination is -- has a structure to it.  
23 I'll tell you what book I'm giving in the cross-examination

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1 and what structure -- what chapter. So each time I change  
2 topics, I will let you know. Can we agree to that?

3 A. Sure.

4 Q. Yes. And the purpose of that is to help you  
5 understand the questions and give the most productive answer  
6 for the military commission. Does that make sense?

7 A. Yes.

8 Q. On some occasions, witnesses will meet with me, and I  
9 go over these -- an outline in advance. On this occasion, you  
10 declined my opportunity to meet with me, correct?

11 A. That's correct.

12 Q. And the -- so you haven't heard these questions  
13 before?

14 A. I have not.

15 Q. Okay. The first chapter will be ground rules for our  
16 conversation. Can we agree that I have structured these  
17 questions in such a way as to avoid eliciting classified  
18 information?

19 A. Yes, sir.

20 Q. And, for example, if I ask the question, do you know  
21 a fact, that's a yes-or-no question, which might be laying the  
22 basis for a later question in a classified session. Does that  
23 make sense?

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1 A. Understood.

2 Q. And the military judge has ruled that everyone in the  
3 courtroom is -- can raise an objection as to classified  
4 information. If I ask you a question that you think calls for  
5 a classified answer, will you simply state "M.C.R.E. 505(i)."  
6 You can write that down if you want to.

7 A. I'll try. I don't have a pen. Okay. What was that  
8 again?

9 Q. M.C.R.E. 505(i), like India.

10 A. Okay.

11 Q. And can we agree that if there's a question, someone  
12 asserts a classified information privilege, or makes any  
13 objection for that matter, you'll wait until the military  
14 judge tells you to proceed before you answer the question?

15 A. Yes.

16 Q. Have you been briefed on the -- did you meet in  
17 advance with the prosecution?

18 A. Yes.

19 Q. And for approximately how many hours total?

20 A. Probably two and a half.

21 Q. Have you been briefed on the procedure for invocation  
22 of national security privilege?

23 A. For the invocation of it?

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1 Q. Yes.

2 A. By them?

3 Q. Yes.

4 A. Preceding this hearing?

5 Q. During -- really during the hearing.

6 A. Oh, during the hearing. Their invocation, that they  
7 have the ability to invoke that?

8 Q. Yes.

9 A. Yes, I understand that.

10 Q. Have you been briefed on the convention that we  
11 decided on for asking questions?

12 A. So I reviewed a document that laid out the parameters  
13 of things that would be qualified as national security, so  
14 those -- those parameters I have reviewed.

15 Q. So, ma'am, I'll represent to you that we have worked  
16 out more or less a convention where if I want to ask you a  
17 question for purposes of the record that I understand that the  
18 government will be invoking national security privilege under  
19 the terms of that document that you just referred to, I will  
20 ask you -- if I were to ask you, whatever the question is, you  
21 could not answer because of national security privilege. Do  
22 you understand?

23 A. Okay.

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1 Q. Okay. The idea is that it allows the defense to make  
2 a record, but it allows the classified information to be  
3 protected.

4 A. Understood.

5 Q. If you don't understand one of my questions, I invite  
6 you to ask me to clarify.

7 A. Okay.

8 Q. Okay. And I may refer to Ammar al Baluchi. Can we  
9 agree that Ali Abdul Aziz Ali and Ammar al Baluchi are the  
10 same person?

11 A. Yes.

12 Q. The -- also, before I go any further, do I understand  
13 that you -- do I understand that you went to the nation's  
14 oldest and greatest law school, William and Mary?

15 A. Yes, I did.

16 Q. Excellent. I think we missed each other by a year.

17 The -- I'd like to ask you about your prior  
18 testimony. Am I correct that you testified before a grand  
19 jury in United States v. Moussaoui?

20 A. Yes.

21 Q. In the Eastern District of Virginia?

22 A. Yes.

23 Q. And that you testified -- would that be twice? Did

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1 you testify twice?

2 A. Once.

3 Q. Once. Okay. And that you testified once before the  
4 Southern District of New York grand jury, correct?

5 A. For a different case.

6 Q. Different case.

7 A. Yes.

8 Q. That was for East Africa Bombing case, correct?

9 A. Yes.

10 Q. And did you testify in the Moussaoui trial itself?

11 A. I did not.

12 Q. And did you testify at any later point in the East  
13 Africa Bombing proceedings?

14 A. I did.

15 Q. And what was the subject of that testimony?

16 A. There was a specific hearing regarding SAMS measures  
17 regarding a particular defendant, and so I testified in that  
18 matter.

19 Q. And have you ever testified about the 9/11  
20 investigation on any other occasion than we've talked about?

21 A. Other than -- no.

22 Q. So only the Moussaoui grand jury?

23 A. That's all I recall, yes.

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1 Q. Ma'am, I'd like to ask you a little bit about that  
2 East Africa embassy bombing investigation that you were  
3 involved in.

4 A. Okay.

5 LDC [MR. CONNELL]: Sir, I'll represent to you that I have  
6 cut an enormous number of questions which were related to the  
7 hostilities question. If the military judge acts favorably on  
8 our request, it may be necessary to recall the witness.

9 MJ [Col COHEN]: Okay.

10 LDC [MR. CONNELL]: But I've -- I'm not going to make the  
11 government object to all the questions.

12 MJ [Col COHEN]: No, I understand. That makes perfect  
13 sense. Thank you.

14 LDC [MR. CONNELL]: Thank you.

15 MJ [Col COHEN]: I'm not ruling on it right now, but I'm  
16 saying I understand what you're doing and that I may have to  
17 re-look at recalling the witness.

18 LDC [MR. CONNELL]: Yes.

19 MJ [Col COHEN]: Thank you.

20 Q. Ma'am, can you just tell us briefly what your role  
21 was in the East Africa embassy bombing?

22 A. So originally when I responded, it was on the 9th of  
23 August, a number of agents were sent from New York as well as

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1 Washington, D.C. We were -- I was on the ground as just an  
2 investigator like everyone else looking for who had done the  
3 attacks, sort of the who, what, when, where, how of the  
4 attacks.

5           And then subsequent to that at some point, I was  
6 designated as one of the case agents on the Tanzania portion  
7 of that bombing.

8           Q. Can you explain to us what a case agent is?

9           A. So the case agent has additional responsibilities  
10 that a regular investigator would not. You're sort of guiding  
11 and directing other investigators, putting the case together.  
12 You're really responsible for everything from evidence to  
13 interviews to strategies to sort of guiding, you know, that to  
14 what would be a hopeful prosecution, or finding fugitives,  
15 what have you.

16          Q. Sure. And when you said 9 August, that was -- the  
17 year was 1998?

18          A. Yes, '98.

19          Q. The -- part of your role as an investigator was  
20 interviewing witnesses; is that correct?

21          A. Yes.

22          Q. And when you were interviewing witnesses, you knew  
23 they might be called later in a criminal prosecution?

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1 A. Yes.

2 Q. The -- you knew it was important to follow standard  
3 procedures in interviewing witnesses?

4 A. Yes.

5 Q. And did you conduct those witnesses in person?

6 A. Yes.

7 Q. And why did you conduct those witnesses -- those  
8 interviews in person?

9 A. I find that to be the most effective way to get good  
10 information from people and to establish relationships with  
11 them.

12 Q. And that's true even if one has to travel a  
13 substantial distance in order to conduct the interview; is  
14 that fair to say?

15 A. If possible, I would do the interview in person, yes,  
16 regardless of where.

17 Q. And in the course of the investigation, of course,  
18 some witnesses became suspects, correct? Or some people  
19 became suspects, let me say it that way.

20 A. During the course ----

21 Q. I'll give you a different question.

22 A. Yes.

23 Q. Did you develop suspects in the course of your

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1 investigation?

2 A. We did.

3 Q. And when you were interrogating those suspects, you  
4 and your colleagues knew that they might be prosecuted in a  
5 U.S. court?

6 A. I wouldn't say I've interrogated people, I have  
7 interviewed people; but yes, knowing that they would end up in  
8 federal court in the United States.

9 Q. Can we agree on the word "questioning"?

10 A. Yes.

11 Q. Okay. And you knew it was important to follow  
12 standard procedures when you were questioning suspects?

13 A. Yes.

14 Q. The ----

15 A. When possible.

16 Q. When possible. Now, ma'am, one of the suspects in  
17 the case was Mohammed Saddiq Odeh?

18 A. Yes.

19 Q. And he was arrested in Pakistan?

20 A. He was.

21 Q. And he was returned to Nairobi, Kenya?

22 A. Yes.

23 Q. And as I understand it, you personally did not

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1 participate in the interrogation of Mr. Odeh?

2 A. I didn't participate in his interview, no.

3 Q. And in your role as case agent, however, you were  
4 aware of the questioning taking place by other agents,  
5 correct?

6 A. Yes.

7 Q. You reviewed the 302s, for example, afterward?

8 A. Yes.

9 Q. And Mr. Odeh was given a modified Miranda warning; is  
10 that correct?

11 A. As I recall, yes.

12 Q. And the -- it included the right to remain silent?

13 A. Yes.

14 Q. It included the right to stop answering questions at  
15 any time?

16 A. If you have the document, I can affirm that, but it's  
17 been many, many years. But if you have something to refresh  
18 my recollection as to what it was ----

19 LDC [MR. CONNELL]: Just one moment.

20 MJ [Col COHEN]: You may.

21 Q. Ma'am, I know you have a number of binders in front  
22 of you. They can get a bit unwieldy. But if you see one that  
23 says on it "Record Binder."

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1           A.    I don't see a "Record." I see a "Notice of  
2 Exhibits," "Perkins Binder."

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

4           MJ [Col COHEN]: You may.

5           LDC [MR. CONNELL]: Your Honor, the 302 of the questioning  
6 of Mr. Odeh is already in the record at AE 502EEE. May I  
7 approach counsel, show them a copy of this document?

8           MJ [Col COHEN]: You may. You may approach. Counsel has  
9 now handed the document to the witness.

10          A.    Okay. I've reviewed the first -- the one main  
11 paragraph.

12          Q.    Okay. Mr. Odeh was advised that if he chose to  
13 speak, anything he said could and would be used against him in  
14 a U.S. court or elsewhere; is that correct?

15          A.    Yes.

16          Q.    And he was advised -- and the modification comes in  
17 that he was advised that, once he reached the United States,  
18 he would have a right to counsel, correct?

19          A.    Yes.

20          Q.    And that he could have counsel -- that he could have  
21 counsel present during any questioning once he was in the  
22 United States?

23          A.    Yes.

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1 Q. And that if he could not afford an attorney, one  
2 would be provided to him in the United States?

3 A. I didn't read that, but I think that's probably  
4 right.

5 Q. Okay. Ma'am, to make this a little bit quicker, I  
6 have some questions about the questioning of Khalfan Khamis  
7 Mohamed. Would it be helpful to you -- would it refresh your  
8 recollection if I were to give you the 302?

9 A. Yes.

10 MJ [Col COHEN]: Counsel, when you -- if you'll just pick  
11 up that one when you give her the other one. Thank you.

12 LDC [MR. CONNELL]: Sir, the document that I'm about to  
13 provide to the witness is already contained in the record at  
14 AE 502CCC.

15 MJ [Col COHEN]: Thank you.

16 A. So this refers to reading him a rights form. Is it  
17 on here or attached in some way?

18 Q. I'm afraid it's not, ma'am. But I can point you to  
19 your prior testimony, if that would be helpful.

20 A. We can -- you can ask and see if I recall.

21 Q. Sure. Of course.

22 You questioned Khalfan Khamis Mohamed on  
23 5 October 1999. Does that sound correct?

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1 A. Yes.

2 Q. In Capetown, South Africa?

3 A. Yes.

4 Q. And initially he was in South African custody?

5 A. He was.

6 Q. And not in U.S. custody at that time?

7 A. Correct.

8 Q. And at that time you advised him that he was not in  
9 U.S. custody, and that even though he was not in U.S. custody,  
10 he was entitled to certain rights, and you wanted to explain  
11 those to him?

12 A. That's correct.

13 Q. And you provide what -- what you have described as a  
14 modified Miranda warning?

15 A. Yes, sir.

16 Q. And that was actually on a form called Advice of  
17 Rights?

18 A. Yes.

19 Q. And it was in English?

20 A. Yes.

21 Q. And you asked him -- for example, you asked him  
22 specifically did he understand what the word "rights" meant?

23 A. Yes.

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1 Q. And he answered you?

2 A. He did.

3 Q. And you asked him if he knew what a lawyer was?

4 A. Yes.

5 Q. And he answered you?

6 A. Yes.

7 Q. You also showed him a Swahili printed version of the  
8 English form that you had read to him; is that correct?

9 A. Yes.

10 Q. And you made all of his rights clear to him?

11 A. Yes.

12 Q. You asked him if he understood his rights?

13 A. Yes.

14 Q. You asked him to sign both the English and the  
15 Swahili forms?

16 A. Yes.

17 Q. And you signed the form as well?

18 A. Yes.

19 Q. On the next day, on 6 October of 1999, you questioned  
20 him again?

21 A. Yes.

22 Q. And you advised Mr. Mohamed of his rights again?

23 A. Yes.

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1 Q. And he signed two more forms?

2 A. Yes.

3 Q. The English and Swahili versions of the Advice of  
4 Rights?

5 A. Right.

6 Q. And the -- it was, in fact, not your decision as to  
7 whether to modify the Miranda warnings, that was provided to  
8 you by the Department of Justice; is that correct?

9 A. Yes.

10 Q. And the modification was that, as in the other  
11 situation, you did not advise him of his right to counsel in  
12 that location, in Capetown.

13 A. As I recall, yes.

14 Q. And the reason was that, because Mr. Mohamed was not  
15 in U.S. custody, he did not have the right to an American  
16 attorney?

17 A. Right.

18 Q. And, for example, if he could not afford an attorney,  
19 there was no way the United States could appoint an attorney  
20 for him in the South African system.

21 A. Right.

22 Q. You did advise Mr. Mohamed of his right to remain  
23 silent?

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1 A. Yes.

2 Q. And you did advise him that anything he said would be  
3 used against him in a court of law?

4 A. Yes.

5 Q. And you did ask him if he wanted to waive those  
6 rights?

7 A. Yes.

8 Q. And in that situation, he actually waived his right  
9 to remain silent?

10 A. He did.

11 Q. Now, at some point, Mr. Mohamed came into U.S.  
12 custody; is that fair to say?

13 A. Yes.

14 Q. And he was put on a plane to the United States?

15 A. He was.

16 Q. And specifically to Stewart Air Force Base?

17 A. Yes.

18 Q. Once he was on the plane, you advised Mr. Mohamed of  
19 his full Miranda rights, correct?

20 A. That's correct.

21 Q. And -- because he was in U.S. custody?

22 A. Yes.

23 Q. And you advised him of his right to remain silent?

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1 A. Yes.

2 Q. You advised him that anything he said would be used  
3 against him in a court of law?

4 A. Could be, yes.

5 Q. You advised him of the right to an attorney?

6 A. Yes.

7 Q. You advised him that if he could not afford an  
8 attorney, one would be appointed for him?

9 A. Yes.

10 Q. And you asked him if he wished to waive those rights?

11 A. Yes.

12 Q. You did so and you gave him a form in Swahili as well  
13 as in English?

14 A. Yes.

15 Q. And the -- did he sign the form at that time?

16 A. I think he did.

17 Q. And that right actually came early in the flight; is  
18 that fair to say?

19 A. Yes. When -- as soon as we got on the flight -- as  
20 soon as we got on the flight and sat down to speak with him,  
21 that would have been the first thing we did.

22 Q. Sure. And that was before the flight U.S. -- reached  
23 U.S. airspace; is that fair to say? Because you took off from

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1 South Africa.

2 A. Right, it would be somewhere in between. In the air,  
3 probably not on the ground, but yes, somewhere in between.

4 Q. Sure. And on each occasion, Mr. Mohamed stated that  
5 he understood his rights and was willing to speak with you?

6 A. Yes.

7 Q. The -- did you find -- on that occasion, in advising  
8 Mr. Mohamed of his rights, did you find any difficulty in  
9 going over the form with him?

10 A. No.

11 Q. Did you find any difficulty in explaining his rights  
12 to him?

13 A. I don't recall encountering any difficulty, no.

14 Q. Okay. And the modified Miranda form you said earlier  
15 had been provided to you by the Department of Justice?

16 A. Yes.

17 Q. And did you have any difficulty working with the  
18 form, like using it and showing it to him?

19 A. I mean, I read it to him.

20 Q. Okay. And then -- and he used it -- he actually  
21 signed it?

22 A. He did.

23 Q. And you had a Swahili interpreter, I assume?

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1 A. No.

2 Q. No. How did you show him the Swahili form?

3 A. We showed him the Swahili form and asked him to read  
4 it, and that if it represented the same as the English form  
5 that he had been read to or read first; so from him, not from  
6 a Swahili person translating.

7 Q. Sure. And that Swahili form had been provided to you  
8 also by the Department of Justice?

9 Or it had been provided to you by someone in this  
10 process?

11 A. Yes.

12 Q. You don't speak Swahili?

13 A. I do not.

14 Q. And he read the form and he signed that one, too?

15 A. Yes.

16 Q. Okay. Was -- did you find that significantly more  
17 difficult than the ordinary Miranda rights advisements that  
18 you've no doubt made many times in your career?

19 A. I think it was longer, but -- longer, more  
20 information, I think, contained in that, more qualifications;  
21 but otherwise ----

22 Q. Otherwise easy to use?

23 A. It was not -- not too hard to use, no.

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1 Q. Sure. The -- certainly didn't pose any obstacle to  
2 your later conversation with Mr. Mohamed?

3 A. I -- no.

4 Q. Now, once Mr. Mohamed was returned to -- once he was  
5 taken to New York, it was one of your responsibilities -- you  
6 were one of the case agents on the prosecution as well as the  
7 investigation; is that fair to say?

8 A. Yes.

9 Q. And you were responsible for assisting attorneys with  
10 the preparation of the case for trial?

11 A. Yes.

12 Q. And during the course of that, there was a challenge,  
13 a suppression challenge to some of the statements; is that  
14 fair to say?

15 A. Yes.

16 Q. And the -- in the course of that challenge, you were  
17 aware that the district court who was hearing the case held  
18 that the -- that Mr. Mohamed and these other men had a right  
19 to self-incrimination?

20 A. Had a right to self-incrimination?

21 Q. Had a right against self-incrimination.

22 A. As I recall, yes. Yeah.

23 Q. Ma'am, I'd like to move forward now to the events of

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1 September 11th.

2 A. Okay.

3 Q. The -- what was your employment on September 11th  
4 itself?

5 A. I was an FBI agent in the New York Office.

6 Q. And in what -- I'm not very good at the nomenclature  
7 of the FBI, so I'm going to say in what squad -- on what squad  
8 were you working? If there's a different phrase, feel free to  
9 correct me.

10 A. So at that point, I would have been working on Squad  
11 I-45, it would have been the squad responsible for East Africa  
12 bombings and that prosecution at that point. I think we had  
13 just finished in maybe May on that case in chief and were  
14 probably preparing then for penalty phase.

15 Q. Okay. And there were -- there were two defendants,  
16 as I recall, in that case who were subject to the possible  
17 death penalty; is that right?

18 A. That's correct.

19 Q. And their penalty phases were conducted separately?

20 A. Yes.

21 Q. The -- how -- on -- immediately after September 11th,  
22 were you moved from that responsibility to another  
23 responsibility?

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1 A. So on the day of 9/11, we all responded, ran down to  
2 the Trade Center. And from that point forward, I worked on  
3 the 9/11 investigation up until the time that I left it.

4 Q. Okay. And just so we have some left and right  
5 limits, when did you leave the 9/11 investigation?

6 A. And I'm guessing because I'm trying to reconstruct  
7 history here a little but I think from ----

8 Q. From late ----

9 A. ---- from 9/11/01 to about July of '03 I returned to  
10 the New York Office.

11 Q. All right. And took up other responsibilities  
12 related to the East Africa bombing?

13 A. Correct.

14 Q. So after the initial period when an enormous number  
15 of agents were working on the 9/11 case, did there come a time  
16 where you became part of the PENTTBOM team, which was a more  
17 narrow set of agents working the case?

18 A. Yes.

19 Q. And how was that team structured? Like did you have  
20 a boss?

21 A. Oh, yes. We had a supervisor. We had an assistant  
22 special agent in charge. I think at that time -- I'm not sure  
23 if it went higher than that. It could have been someone even

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1 higher than that. But we were -- when the team was set up, we  
2 originally set up in New York and the team was established.  
3 And then a group of us went down to our Headquarters and would  
4 have worked out of the basement of Headquarters as the  
5 PENTTBOM squad. And there, we would have had one, at times  
6 two, supervisors as well as an assistant special agent in  
7 charge onsite with us working the investigation.

8 Q. Okay. And at that time that you became the PENTTBOM  
9 squad working out of Headquarters, who else was on the  
10 PENTTBOM squad?

11 A. Eighteen years ago, so I'll do my best.

12 Q. All right. Can I help you out with a few?

13 A. Sure.

14 Q. Special Agent Fitzgerald?

15 A. Yes, sir.

16 Q. Special Agent Maguire?

17 A. Yes.

18 Q. Zebley?

19 A. Yes.

20 Q. Drucker?

21 A. Yes.

22 Q. Who else?

23 A. Shelly Dougherty.

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1 Q. Dougherty?

2 A. Brian Getson, Matt Walsh, Kathy Green, Rich Quinn.

3 Q. I'm sorry, I didn't hear that last name.

4 A. Rich -- Rich Quinn.

5 Q. Quinn?

6 A. There were others that I'm just not recalling their  
7 names right now.

8 Q. Okay. And within the ----

9 A. I'm sorry. Joan-Marie Turchiano. Mary Galligan.  
10 Amy Lyons was the special agent in charge.

11 Q. Lyons, L-Y-O-N-S?

12 A. L-Y-O-N-S.

13 Q. And was there -- within the PENTTBOM squad, was there  
14 further substructure? Were you divided into groups?

15 A. Yes.

16 Q. And how was it divided?

17 A. So you had agents responsible for particular flights;  
18 there were agents responsible for phones; for airlines; for  
19 financial aspects; for overseas aspects; maybe dealing with  
20 particular countries like what happened in Germany, what  
21 happened in the United Arab Emirates, or what happened in  
22 Saudi Arabia. So it would be broken down by topic then from  
23 there.

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1 Q. Okay. And what was your topic?

2 A. Financial and overseas, Middle East.

3 Q. Okay. So essentially financial and UAE, which are  
4 closely related in the case, obviously?

5 A. Yes. And some work in Saudi.

6 Q. Were there personnel from other agencies who were  
7 assigned to task forces with the FBI?

8 A. Sitting with us down in the PENTTBOM?

9 Q. So I don't know where people sit. So -- but  
10 where ----

11 A. You mean sitting next to us in PENTTBOM, like as part  
12 of our team down there?

13 Q. Let's start there. Sure. Let's start there.

14 A. Other government agencies?

15 Q. Yes.

16 A. I don't recall other ----

17 Q. We are allowed to say "CIA" in this area, so just so  
18 you know, but ----

19 A. Yeah. I don't recall the CIA being in our space down  
20 there. There was another government's law enforcement  
21 official that sat with us, so I don't know if that's a  
22 classified thing or not. Another government with us that  
23 would have been important for us to leverage.

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1 Q. A foreign partner government?

2 A. A foreign partner government, yes.

3 Q. Okay.

4 A. Beyond that, I don't recall there being outside  
5 agencies.

6 Q. Okay.

7 A. Government -- U.S. Government.

8 Q. All right. Do me a favor, don't answer this question  
9 until we hear the position of the prosecution.

10 What partner government was involved?

11 TC [MR. GROHARING]: Just a moment, Your Honor.

12 MJ [Col COHEN]: You may. Counsel, let's get an answer to  
13 that and we'll figure it out. Thanks.

14 [Counsel conferred.]

15 MJ [Col COHEN]: Mr. Groharing, may the witness answer the  
16 question?

17 TC [MR. GROHARING]: No objection, Your Honor.

18 MJ [Col COHEN]: You may answer.

19 WIT: Can you ask again?

20 Q. Sure. What government was involved with the foreign  
21 partner?

22 A. Germany.

23 Q. Germany. The -- now, you do -- let me tell you that

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1 I'm not a person who tries to surprise witnesses or anything  
2 else. I'm going to walk you through documents. If you would  
3 prefer to see the documents before you answer this next  
4 question, that's fine, but I'm interested in your general  
5 recollection right now.

6 A. Okay.

7 Q. The -- what was the -- how was information conveyed  
8 back and forth between CIA and FBI during that period of time?

9 A. So circa 2001, post ----

10 Q. Or into 2002.

11 A. Into 2002? Cables, as I recall, would have been  
12 shared back and forth. That's how we communicated with one  
13 another, and it's sort of a separate system. So it wouldn't  
14 have been a system that I could search or one that I recalled  
15 being able to type into. There was sort of a process around  
16 doing that. And it would be typing what you wanted, I  
17 believe, giving it to someone else to put the -- put it into  
18 the appropriate format, and then a whole 'nother system by  
19 which we would communicate with the agency and then back.

20 Q. Okay. So let me just make sure that I understand it.  
21 Somebody would -- an agent who have an investigative need  
22 would prepare a cable or a draft of a cable, perhaps ----

23 A. The substance, right.

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1 Q. The substance of the cable. They would provide it to  
2 someone else within the FBI who would format it and put it in  
3 the proper format ----

4 A. Macro or whatever. Yeah, macro.

5 Q. And then it would be conveyed to the other agency  
6 through a formal process, and then the agency would --  
7 would -- would the CIA send cables back?

8 A. Not always, but that would be the goal ----

9 Q. Right.

10 A. ---- for them to send something back, yes.

11 Q. Okay. So let me ask about information -- so I  
12 understand the formal information flow from the FBI to the  
13 CIA, and we're going to look at some of your cables. So I'm  
14 not trying to surprise you. I'm not going to ask you the  
15 content without showing you the document.

16 A. Uh-huh.

17 Q. The -- was the information flow from CIA to FBI  
18 more -- sort of diffused, if you will? In fact, they wouldn't  
19 send you a cable that said, here's the answers to your  
20 questions, right; it didn't work like that?

21 A. I don't recall it working like that, no.

22 Q. It was more that some people on the PENTTBOM team had  
23 access to databases that could -- that could query

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1 information; is that fair to say?

2 A. I would say they had access. Like I said, it would  
3 be a formal system by which we would communicate back and  
4 forth. So I don't know -- I mean maybe other people had  
5 access to things that I'm not aware of, but that it would go  
6 over formally through the system and then back through that  
7 system. So you would have a place to go to find, if there was  
8 a response from the agency, to see if there was a response.

9 Q. I see.

10 A. I think. I didn't do that part of it, the work, but  
11 other people would have had access to that return. And then  
12 hopefully we would get that either handed to us or shared with  
13 us.

14 Q. Okay. And so what -- what -- what other people  
15 had -- who were the people who had access to that sort of set  
16 of information?

17 A. I couldn't answer that -- who had access to the  
18 transmitting part?

19 Q. To the answers.

20 A. To the answers? So it could have been provided to an  
21 analyst on the squad or the analyst may have, you know, been  
22 gathering responses from the agency. I don't recall having  
23 direct access to that sort of information. And beyond that,

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1 we had CIA liaison that we could also leverage for information  
2 if we needed it.

3 Q. Okay. And with respect to the analysts, would it be  
4 fair to say that they had sort of higher-level accesses, or at  
5 least had access to better tools than the ordinary  
6 special agents, and that's where they could gather those  
7 responses?

8 A. I would say that, yeah, that's likely. They had ----

9 Q. And then those analysts would distribute that  
10 information sort of on a need-to-know basis?

11 A. Right. If it was something that we were working on  
12 and they knew about it, certainly we would have shared that  
13 and they would have attempted to get us the information we  
14 required that was relevant to us, yes.

15 Q. Right. So, for example, for you, you're working on  
16 Middle East, you're working on financial. Information comes  
17 back about financial or Middle East or UAE or maybe a little  
18 bit of Saudi pieces, that information would be distributed to  
19 you by the analyst?

20 A. Correct.

21 Q. And then the second method you said was that there  
22 was a CIA liaison?

23 A. Yes.

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1 Q. And it's well known, unclassified, previously been  
2 testified to here that after September 11th there was exchange  
3 of liaisons between -- in fact, even before, but there was  
4 exchange of liaisons between FBI and CIA. And that's what you  
5 mean when you say CIA liaison was available to you?

6 A. Yes.

7 Q. The -- we're -- was the CIA liaison in Headquarters  
8 with you? This is kind of the sitting part.

9 A. Yes, sat on the floor in Headquarters; not in our  
10 PENTTBOM room, but on another floor.

11 Q. Okay. So when you said that you could leverage them,  
12 what would that mean?

13 A. If I had something significant -- you know, as I  
14 recall, this individual was not sort of a line person, like  
15 sitting next to me, but he was a higher-level person. So if  
16 it was significant information we were requiring, we might go  
17 with the assistant special agent in charge and go and make  
18 that request to him directly.

19 Q. Okay. And is it fair to say that he was not covert;  
20 that he was there in an official capacity?

21 A. I don't know whether he was under a name not his own.

22 Q. That's all right. We can -- we can solve that in a  
23 different way.

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1           What was the name -- don't answer this question until  
2 we have a chance to see. What was the name that you knew him  
3 by?

4           TC [MR. GROHARING]: Your Honor, I believe it's okay to  
5 answer this question, assuming -- I had a discussion with the  
6 witness about a particular name that's okay to discuss in this  
7 forum. Assuming that's the answer, then it's fine.

8           Q. Do you know the name to which Mr. Groharing is  
9 referring?

10          A. Yes.

11          MJ [Col COHEN]: Okay. Then you may answer the question.

12          A. So as I recall, it was Tom Wilshire.

13          Q. Wilshire.

14          MJ [Col COHEN]: Counsel, once again, I thank both of you  
15 for the way you handled that. Thank you.

16          Q. And Tom Wilshire's involvement in 9/11 investigation  
17 is sort of well-known public fact, so ----

18          A. May be true, yeah.

19          Q. Okay. The -- were there also FBI who were assigned  
20 to the CIA -- to their location?

21          A. Yes.

22          Q. Okay. And were you able to use those as liaisons as  
23 well?

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1 A. Yes. That's -- yes.

2 Q. Okay. How would that process work? What was the  
3 method for -- did you just pick up the phone and call them and  
4 say, "Hey, can I have help with this?" Or how did that work?

5 A. I could. I could call them directly if I had a  
6 relationship with them, and they attended meetings at our  
7 Headquarters to ensure that information sharing was back and  
8 forth. Yeah, but I could contact them directly if I needed  
9 to.

10 Q. Sure. And they were -- those FBI liaisons to CIA  
11 were physically located in the CIA spaces?

12 A. Yes.

13 Q. And do you recall -- who do you recall occupying that  
14 role?

15 MJ [Col COHEN]: Counsel?

16 TC [MR. GROHARING]: I don't think that's a -- do you want  
17 a particular name?

18 LDC [MR. CONNELL]: Yes.

19 TC [MR. GROHARING]: One moment, Your Honor.

20 MJ [Col COHEN]: You may. I'll let counsel confer. Thank  
21 you.

22 [Counsel conferred.]

23 LDC [MR. CONNELL]: Your Honor, we've agreed that I'll ask

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1 that question in the closed session.

2 MJ [Col COHEN]: That will be fine. Thank you again. All  
3 right.

4 Q. So last question on this topic is: I just want to  
5 make sure that, when the analysts would gather responses or  
6 gather relevant information to your -- for example, your  
7 investigation, how would they -- how would you get that?  
8 Would you get that electronically or on paper?

9 A. As I recall, hard copy.

10 Q. And did you have a safe or something that you kept it  
11 in?

12 A. It would have been at the Secret level, so we would  
13 have had open storage for that.

14 Q. Storage was Open Secret?

15 A. Right. It wouldn't have been at a Top Secret level,  
16 we're only qualified at the Secret level unless you go to a  
17 special, different space. So I didn't -- I don't recall  
18 having access to Top Secret information. It would only be at  
19 the Secret level and then maintained in our space.

20 Q. Okay. I'd like to move to a different chapter, which  
21 I'd like to ask you about your investigation in the United  
22 Arab Emirates.

23 You've told us that UAE was part of your area of

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1 focus, investigative focus on the PENTTBOM team. When did you  
2 first travel to UAE? Would February of 2002 sound right?

3 A. That sounds right.

4 Q. Okay. The -- at one point, you went out and took  
5 photographs?

6 A. Yes.

7 Q. And accompanied by Special Agent Drucker and foreign  
8 partners?

9 A. Yes.

10 Q. On that trip, how long did you stay in the UAE? Like  
11 two weeks or like six months?

12 A. Oh, no. It would be short -- shorter term. A couple  
13 of weeks, probably.

14 Q. Okay. I'd like to now ask you about the events  
15 surrounding September 11th, 2002, the raids that are sometimes  
16 known as the Tariq Road raids. Do you know what I'm talking  
17 about?

18 A. Yes. Yes.

19 Q. Okay. Where were you physically when you first heard  
20 of the capture of Ramzi Binalshibh?

21 A. I was in the United Arab Emirates.

22 Q. Okay. So on a separate trip?

23 A. Yes.

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1 Q. That's actually what was confusing me. I didn't know  
2 if you had been there that whole time.

3 A. No.

4 Q. The -- was that trip to the UAE your second trip,  
5 third trip, something like that?

6 A. Only by going through vouchers could I really tell  
7 you that answer truly.

8 Q. Fair enough.

9 A. But maybe -- it wouldn't have been -- it would have  
10 been a handful, maybe, but not really.

11 Q. You've invoked the dreaded voucher, so I'm going to  
12 leave that topic alone.

13 So what was communicated to you when you were in the  
14 UAE and you heard of the capture of Ramzi Binalshibh?

15 A. So at some point, a decision was made for us to  
16 deploy to a location to assist with reviewing documents and  
17 search materials that were recovered.

18 Q. Okay. And as a general matter, was that location in  
19 Karachi, Pakistan?

20 A. Yes.

21 Q. The -- sorry. I ----

22 A. Sorry.

23 Q. ---- knew that that question was okay.

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1 A. Uh-huh.

2 Q. The -- and you and Special Agent Drucker traveled  
3 from UAE; is that right?

4 A. Yes.

5 Q. Okay. And you arrived on 12 September 2002?

6 A. That sounds about right.

7 Q. Okay. And you were told that -- that you could go to  
8 the consulate's office, correct?

9 A. Yes.

10 Q. Okay. And at that time -- give me ----

11 LDC [MR. CONNELL]: May I have just a moment?

12 MJ [Col COHEN]: You may.

13 [Counsel conferred.]

14 MJ [Col COHEN]: Are all of the counsel in agreement?

15 LDC [MR. CONNELL]: Yes, Your Honor.

16 MJ [Col COHEN]: Thank you, gentlemen. I appreciate you  
17 doing that again.

18 Q. Okay. So when we get to a part that you can't  
19 answer, I will use that convention that we talked about  
20 earlier; is that okay?

21 A. Okay.

22 Q. So when you went to the U.S. Consulate's office, you  
23 went to a room with several cardboard boxes of evidence. Does

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1 that sound right?

2 A. I think at that point, it was laid out on tables,  
3 actually spread around ----

4 Q. It was laid out on tables?

5 A. Laid out on tables, yes.

6 Q. Okay. And so you could actually see the individual  
7 items?

8 A. Yes.

9 Q. Okay. Not sealed or unsealed cardboard boxes?

10 A. Right. They -- yeah, the documents were laying out.  
11 They could have been in piles, but they were spread around so  
12 you could see them without sort of just -- by just looking at  
13 them.

14 Q. Okay. And how long were you allowed to look at that  
15 evidence? Short time?

16 A. Too short.

17 Q. Yeah. Does five to ten minutes sound right?

18 A. No.

19 Q. Okay. Longer than that?

20 A. It was longer than that, but there was -- during the  
21 course of our review, because I had seen enough things that  
22 were of interest to me. But it was at some point that we were  
23 asked to leave ----

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1 Q. All right.

2 A. ---- that review. And the review was for us to  
3 review for threat-based information to the U.S. So I was  
4 curious to look at as much as we could as quickly as we could,  
5 but did not have sufficient time to fully do that.

6 Q. Okay. The -- and it was a person from another U.S.  
7 agency who instructed you to leave?

8 A. Correct.

9 Q. And if I were to ask you the name of the agency, you  
10 would not be allowed to answer because of national security  
11 privilege; is that correct?

12 A. That's correct.

13 Q. The -- from there, where did you go, from the  
14 consulate's office?

15 A. Back to the FBI space.

16 Q. Okay. Also in Karachi?

17 A. Yes.

18 Q. Okay. The -- when was the first time that you  
19 actually laid eyes on any of the men who had been -- or women  
20 or children or whoever -- any of the people who had been taken  
21 into custody during the raid?

22 A. I recall -- I couldn't tell you the precise timing,  
23 but shortly, short term, I remember being -- sitting on the

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1 floors as one male detainee was brought in and was being  
2 interviewed by another government agency.

3           And then I -- separate from that, I was pulled off to  
4 interview the wife of someone who was killed during those  
5 raids, and so I would have interviewed her. And that's --  
6 those are the two that I recall specifically.

7           Q. Okay. So with respect -- let's talk about the first  
8 of those two.

9           First, to get this out of the way, if I were to ask  
10 you the affiliation of the person from another government  
11 agency, you would not be able to answer because of classified  
12 information privilege; is that correct?

13          A. Yes.

14          Q. The -- when -- with the person who you observed but  
15 were not able to participate in the interview, what sort of  
16 room was that in? Were you watching through a one-way mirror  
17 or ----

18          A. As I recall, he was sitting on the floor, we were all  
19 just sitting around, and they were asking questions. That's  
20 what I recall.

21          Q. Okay. The individual from the other agency was  
22 asking questions?

23          A. Yes.

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1 Q. And were you -- like I'm kind of envisioning sitting  
2 on the floor in a circle, but is that what it was like?

3 A. That's what I recall.

4 Q. Okay. Had you been instructed not to ask questions?

5 A. Whether instructed or implicit in who was in control  
6 of that situation, we did not ask questions.

7 Q. Right. And it -- but it was clear to you that you  
8 were -- your role there was not to ask questions?

9 A. Yeah, I didn't go in there thinking I was going to  
10 ask questions.

11 Q. What was the identity of the person who was being  
12 questioned?

13 A. I don't even -- I don't recall. It was a male.

14 Q. Okay. Male. Was the questioning in English ----

15 A. I don't think so, but I don't specifically recall.

16 Q. ---- or was it in Arabic? Okay. And then after  
17 that, you got split off to interview a -- the wife of one of  
18 the people who had been killed in the firefight?

19 A. Correct.

20 Q. At any time were you advised -- all right. Let me  
21 ask that question a different way.

22 You had been told that Ramzi Binalshibh had been  
23 captured, right, back in UAE?

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1 A. I think I understood that, yes.

2 Q. At any time, did you see Mr. Binalshibh?

3 A. I did not.

4 Q. Okay. At any time did you ask, "Hey, where's  
5 Binalshibh?"

6 A. No.

7 Q. Okay. The -- after the interview of the wife of the  
8 person who had been killed, what happened next?

9 A. So I think during this process, as I talked about  
10 reviewing -- we reviewed documents that were set out. There  
11 was a time that we were removed from the room, and we came  
12 back to the room, and at that point everything was boxed up  
13 and taped. And so we were told that this information was  
14 going to be sent to Islamabad for further review and that we  
15 had -- we weren't going to have access to it there on site.  
16 And so that's what I recall. And then ultimately finding our  
17 way to Islamabad to do that -- conduct that review there.

18 Q. Okay. I have a couple of questions before we get to  
19 Islamabad. The -- is it fair to say that you were not  
20 involved in the collection of the evidence, you only saw it  
21 once you got to the consulate's office?

22 A. Correct.

23 Q. And the same is true for Special Agent Drucker?

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1 A. Yes.

2 Q. And Special Agent Cudmore was there as well?

3 A. I don't know what he was doing, but -- I mean, he was  
4 not side by side with us, so I'm not sure what he was involved  
5 in.

6 Q. Okay. To the best of your knowledge, because he had  
7 been with you, Special Agent Drucker was not involved in the  
8 collection of the evidence?

9 A. Correct.

10 Q. And your understanding of the time -- at the time was  
11 that another U.S. Government agency and/or Pakistani  
12 authorities had been involved in the gathering of the  
13 evidence?

14 A. That was my understanding, yes.

15 Q. Now, what happened once you got to Islamabad?

16 A. Then we would -- it was a meeting with regard to how  
17 we were going to go through and review who was in charge of  
18 what. The FBI was specifically delineated, as I recall, to  
19 assess for specific threats to the United States, reviewing  
20 documents, identifying photographs of people who may present a  
21 threat to the U.S.

22 For example, one of the -- one of the high-value  
23 detainees' picture may have been found in that with a

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1 different name. That would be something important for us to  
2 know because of the efforts to get to the United States or the  
3 potential for that. So we would be specifically focused on  
4 those threats to the U.S.

5 Q. Okay. You said "high-value detainees." At that  
6 time, like in 2002, what was a high-value detainee considered?

7 A. I'm referencing the individuals involved here now.

8 Q. I see.

9 A. One of their pictures was seen -- like I remember  
10 seeing his picture and a different name and a false ID.

11 Q. Right.

12 A. That would be something that would be important for  
13 to us know so we could put a stop on that name and make sure  
14 they don't come to the United States.

15 Q. I see.

16 A. Yeah.

17 Q. And so -- because at that time, your primary  
18 investigative focus was still as part of PENTTBOM?

19 A. Part of PENTTBOM and figuring out who else may be  
20 involved, yes.

21 Q. Sure. Sort of the larger -- you knew the core  
22 conspiracy, you were working on the larger conspiracy?

23 A. Right.

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1 LDC [MR. CONNELL]: Let me see how I'm doing on time.  
2 Court's indulgence just one moment?

3 MJ [Col COHEN]: You may.

4 Q. Now, ma'am, how did you hear of the -- that  
5 Mr. al Hawsawi -- let me just ask a different question.

6 So you're working on financial issues, you have sort  
7 of a UAE focus along with Middle East focus. It's fair to say  
8 that Mr. al Hawsawi was a topic of investigative interest to  
9 you?

10 A. Yes.

11 Q. When did you first hear of his detention?

12 A. I can't tell you specifically, but, you know, within  
13 maybe hours, days of his capture.

14 Q. Okay. How did you hear about it?

15 A. Specifically I'm not sure. I just know that we came  
16 to know that they had actually been captured, he and Khalid  
17 Shaikh Mohammad had been captured together.

18 Q. Okay. Prior to Mr. al Hawsawi and Mr. Mohammad's  
19 capture, had you known that it was possible to submit  
20 intelligence requirements to the CIA for trying to seek  
21 information? I mean, that's the process you told us about  
22 earlier, right? Would you call those requirements?

23 A. Sure.

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1 Q. And the -- did you, yourself, engage in that process  
2 prior to the arrest of Mr. al Hawsawi, do you think?

3 A. Yes.

4 Q. Yes, you did. Okay.

5 A. Yes.

6 Q. Do you remember what the general topic areas were?

7 A. It would have been specific to threats that I was  
8 concerned about to the U.S. So it may be name -- it may be  
9 individuals that had come up in the investigation that I would  
10 have asked about. At one point, I went through the raid  
11 documents for the sites for Ramzi, Mustafa al Hawsawi, Khalid  
12 Shaikh Mohammad.

13 And any other site exploitation that had occurred, I  
14 went through and pulled every single photograph that I could  
15 find, put them on a disc, and asked that all the detainees be  
16 shown these photographs for the purpose of identifying  
17 individuals. If they were located in a site where a bad guy  
18 was arrested or a terrorist was grabbed, then I certainly  
19 would want to know who these individuals were, so that was a  
20 big part of what we were focused on.

21 And again, any individual that would have been  
22 identified during the course of our investigation that either  
23 would have been someone who may have participated in the 9/11

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1 attack but did not and now were somewhere and continued to be  
2 a threat to us. So really, sort of a threat-based posture  
3 with regard to those requirements out to the agency.

4 Q. And when you talk about the site exploitations, let  
5 me just mention one other. There was also -- on 28  
6 March 2002, Abu Zubaydah was captured. There was a site  
7 exploitation taking place there as well?

8 A. Yes.

9 Q. Sometimes called House 138?

10 A. Yes.

11 Q. The -- what actions did you take once you learned of  
12 the capture of Mr. al Hawsawi?

13 A. Specifically ----

14 Q. Maybe not -- maybe even just generally.

15 A. Likely would have been looking for that information  
16 that we thought he may be able to provide additional insight  
17 about and ensuring that that information got out so that we  
18 could proactively go after information relevant to threats to  
19 the U.S. So any of that sort of information would have been  
20 the posture we had taken, looking at those individuals again  
21 that he may know or may have been associated with him, or  
22 Khalid Shaikh Mohammad, exploiting information that was taken  
23 from the site where they were captured.

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1           Part of my responsibility was, again, looking through  
2 all of that stuff, documents or photographs or computer --  
3 computers and information on computers to again assess for  
4 potential threats to the U.S.

5           Q.    Okay.  And so essentially it was sort of making sure  
6 you had all the information that was available to you  
7 investigatively before you took further steps; is that fair to  
8 say?

9           A.    Yeah.  Acting on that information, right.

10          Q.    And so that would be kind of an example of the  
11 application of where you might go to an analyst and say, "What  
12 do we have on Hawsawi?"  And they would pull information from  
13 the sources that were available to them.  Is that an example  
14 of when that would happen?

15          A.    That could have happened, yes.

16          Q.    And if you didn't feel that you had satisfactory  
17 information, you might reach out to the CIA liaison to the FBI  
18 or the FBI liaison to the CIA to make sure that you had all of  
19 the information, threat and otherwise, that was available?

20          A.    Probably if I had something specific.  I would --  
21 don't know that I would have gone looking for generally, can  
22 you share with me that I have everything that I need.  But it  
23 would be a specific, discrete sort of thing that I would go to

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*UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT*

1 liaison for.

2 Q. Sure. With the analyst, it would be sort of more  
3 broad, right ----

4 A. Correct.

5 Q. ---- they're a person who's closer to your team?

6 A. Yes.

7 Q. With the analyst, it's -- I mean, I do the same with  
8 my analyst, right? Hey, do I have all the information that I  
9 need here; is there more stuff that's available?

10 A. Sure. And they would do that ongoing just as a  
11 matter of course.

12 Q. Sure. And so they would look at the resources that  
13 were available to them. And you said it was usually hard  
14 copy. They would print out what was available and they would  
15 bring it to you?

16 A. Yes.

17 LDC [MR. CONNELL]: Court's indulgence for just one  
18 moment?

19 MJ [Col COHEN]: You may.

20 LDC [MR. CONNELL]: Okay.

21 Q. While we're talking about the capture of  
22 Mr. al Hawsawi, if you have in front of you a binder that --  
23 it's ever-morphing numbers, but it should say 628DD through,

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1 perhaps, AAA?

2 MJ [Col COHEN]: She has -- it says ZZ, Counsel, is what  
3 she has. That's a Secret binder, correct?

4 LDC [MR. CONNELL]: Yes.

5 WIT: Yes.

6 LDC [MR. CONNELL]: Secret binder.

7 Q. Could I direct your attention, there should be a tab  
8 there that says 628PP on it. It will be sort of toward the  
9 back.

10 A. Yes.

11 Q. Okay. You were able to find that document?

12 A. Yes, sir.

13 Q. Okay. Would you like a moment to review it before I  
14 ask you about it?

15 A. Yes.

16 MJ [Col COHEN]: Counsel, I was pulling my copy up. Where  
17 is she at right now?

18 LDC [MR. CONNELL]: She's at 628PP.

19 MJ [Col COHEN]: Thank you.

20 A. Okay.

21 Q. Okay. Do you -- does this document look familiar to  
22 you?

23 A. Yes.

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1 Q. Okay. What is it?

2 A. It's a request I believe that I drafted requesting  
3 access to Mustafa al Hawsawi based on the information we  
4 gathered during the course of our law enforcement  
5 investigation, laying out the reasons why we thought that  
6 would be valuable, or why I thought that would be valuable.

7 Q. And just -- we won't do this every time, but just  
8 since the first one of these that we're talking about: The  
9 process would be that you would draft the substance of it?

10 A. Oh. Yes.

11 Q. And then you would take it to someone else within the  
12 FBI who was responsible for formatting in intelligence  
13 community format?

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

15 Q. And then it would be sent off to wherever it goes.

16 A. Yes.

17 Q. And this particular one happens to be from the FBI to  
18 the CIA?

19 A. Yes.

20 Q. Do you see the line -- and so -- you don't know this,  
21 so let me just tell you that the "to" line, the "from" line,  
22 the date and the general summary are unclassified, even though  
23 it's a Secret document.

*UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT*

26601

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1 A. Okay.

2 Q. Okay? Do you see the line that says "pass"?

3 A. Yes.

4 Q. It says "CTC-UBL"?

5 A. Yes.

6 Q. Which is the Usama Bin Laden unit of the  
7 Counterterrorism Center?

8 A. Yes.

9 Q. And then you will see a substitution, which is  
10 Interrogator SG1?

11 A. Yes.

12 Q. Without telling me who, as you sit here, do you know  
13 who Interrogator SG1 is?

14 A. I do not.

15 Q. Okay. In general, how would you have known who to  
16 put in that line?

17 A. I don't recall ever knowing who to put in that line.  
18 It would generally go to the CIA with a reference to the topic  
19 that I was looking to address, and ever hopeful that it's  
20 going to make it to the person who would be in charge of  
21 getting information with regard to ----

22 Q. Okay.

23 A. ---- the subject matter.

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1 Q. And how did you know -- or -- yeah, I'll just ask it  
2 that way, and we'll see. How did you know that -- like where  
3 did this idea come from? How did you know that you could  
4 request access to Mr. al Hawsawi?

5 A. I'm not sure I did. I ----

6 Q. Okay. Just seemed like, give it a try and see what  
7 happens?

8 A. Probably.

9 Q. Okay. Did anything happen? Did you ever get an  
10 answer or ----

11 A. I don't specifically recall getting an answer. It  
12 may -- I may have gotten an answer no, or I may have gotten no  
13 answer at all, just sort of ignored. I'm not certain which.

14 Q. Okay. All right. So you've talked a little bit  
15 about the process of submitting requirements and the sort of  
16 traffic process. I'd like to go through some of those  
17 requirements with you, and I'll give you an opportunity to  
18 look at each one in advance before I ask you any questions  
19 about it. Is that fair?

20 A. Yes.

21 Q. Yes. So I direct you to AE 628YY.

22 A. So I'll skim this quickly, because I've reviewed much  
23 of this.

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1 Q. Oh, you have reviewed this?

2 A. Some of it.

3 Q. Okay. Great. So you just let me know when you're  
4 ready.

5 A. Okay.

6 Q. Was that okay, I'm ready, or okay?

7 A. Okay, I'm ready, yes.

8 Q. Yeah, okay. So you're the drafter of 628YY; is that  
9 fair to say?

10 A. Yes.

11 Q. And this is a document dated 17 March 2003?

12 A. Yes.

13 Q. From the FBI to the CIA?

14 A. Yes.

15 Q. And it has a specific -- do you see the line  
16 reference?

17 A. Yes.

18 Q. Without saying exactly what the reference was, do you  
19 know what the system for -- or -- for this reference system  
20 was, how that worked generally?

21 A. I do not recall that.

22 Q. Okay. And the general subject of this is  
23 photographs, hoping -- of Zacarias Moussaoui, hoping that it

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1 be shown to relevant detainees; is that right?

2 A. Photographs, I think, that were found with photos of  
3 him.

4 Q. Right. Okay. So I can be more specific about that.

5 When Mr. al Hawsawi and Mr. Mohammad were captured in  
6 Rawalpindi, there was a site exploitation?

7 A. Correct.

8 Q. And the -- including electronics?

9 A. Yes.

10 Q. And in the course of that passport photographs were  
11 found?

12 A. Yes.

13 Q. Of -- allegedly of Mr. Moussaoui?

14 A. Yes.

15 Q. And you, in this, asked for those photographs to be  
16 reviewed by Khalid Shaikh Mohammad, Mustafa al Hawsawi, Abu  
17 Zubaydah, Ramzi Binalshibh, and Abdul Rahim al Nashiri, and  
18 any other al Qaeda detainee; is that fair to say?

19 A. Yes.

20 Q. Okay. The -- once those photographs were shown, then  
21 the CIA would send cables, not necessarily directly to you,  
22 but would send cables out to the intelligence community,  
23 correct?

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26605

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1 A. I believe that's true.

2 Q. Okay. And ----

3 A. If they -- if they had shown them. Their choice.

4 Q. If they had shown ----

5 A. Right.

6 Q. If they had acted.

7 A. Yes.

8 Q. Because I understand you can't make them do anything.

9 A. That's correct, yes.

10 Q. I can't make them do anything either.

11 The -- but if they gathered information either based  
12 on your requirements or inspired by your requirements or  
13 whatever, they didn't send the information directly back to  
14 you. They disseminated it for use by the intelligence  
15 community?

16 A. That's as I understand it, yes.

17 Q. And just so -- and you told us earlier that your  
18 analyst might have access to that sort of general traffic. If  
19 you're lucky, they find it, and they bring it to you?

20 A. Yes.

21 Q. Okay. The -- do you have a specific recollection of  
22 whether you ever received -- or what information you received  
23 in response to this?

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**26606**

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1 A. I do not.

2 Q. You don't have a specific recollection?

3 A. I don't.

4 Q. Okay. In your binder, do you have a -- an AE 628AAA?

5 A. Yes.

6 Q. Could you take a look at that for me, please.

7 A. Okay. I've generally reviewed it.

8 Q. Thank you. This is an FBI requirement dated

9 19 March 2003?

10 A. Yes.

11 Q. From -- from the FBI to the CIA?

12 A. Yes.

13 Q. And its general subject is a request to ask Ramzi  
14 Binalshibh about some documents that were found on a computer,  
15 captured at the same time as Mr. Mohammad and Mr. al Hawsawi;  
16 is that fair to say?

17 A. Yes.

18 Q. My specific question for you is: Could you turn to  
19 the last page, which is FBI-23722.

20 A. Yes.

21 Q. You'll see something there that says "administrative  
22 note tickler count"?

23 A. Yes.

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**26607**

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1 Q. What does that mean?

2 A. So that I should be one of the people to receive the  
3 results of -- copied on this request, and then I guess hopeful  
4 that I would receive the results.

5 Q. Okay. And when -- when an FBI -- we don't have the  
6 exact drafter. You see the drafter is redacted?

7 A. Yes.

8 Q. We don't have the exact drafter, so I'll just call  
9 them the drafter.

10 When the drafter of this document prepared it, they  
11 essentially wanted to flag that you were one of the people who  
12 was interested in this material; is that right?

13 A. That they may have believed that or ----

14 Q. Or they believed that, at least?

15 A. Right.

16 Q. Yeah. Do you have any recollection of this document  
17 specifically?

18 A. I don't specifically recollect it. I was doing the  
19 documents exploitation of the materials that were recovered  
20 during that time, so it could have been during the course of  
21 reviewing all of these things that I was doing it with others  
22 and would have been -- would have come across something like  
23 this and had an interest in it or expressed an interest.

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*UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT*

1 Don't specifically recall.

2 Q. Okay. And so as a general matter, you might have  
3 had, you know, some of your work input into the document, but  
4 you don't recall like working on the specific document; is  
5 that fair to say?

6 A. Yeah, I don't specifically recall working on the  
7 specific questions here, but I was doing document exploitation  
8 and following up on those leads.

9 Q. Right. And the -- there was a fair amount of  
10 material, detainee reporting generated by the CIA, about  
11 document -- even if it's not about this specific thing, in  
12 general about showing documents, document exploitation, what  
13 does this document mean. Do you recall that?

14 A. There could have been. Like I said, I gathered  
15 photographs myself and shared that and asked questions of the  
16 high-value detainees to say, "Do you know who this person is,  
17 and any information about them?" Yes.

18 Q. Right. And the -- when a high-value detainee would  
19 say, you know, would identify Mr. Moussaoui or Mr. al Baluchi,  
20 or somebody else, somebody who's involved, and that was pushed  
21 out in a cable, it would be your analyst's responsibility to  
22 keep an eye out for information of investigative interest to  
23 you and bring it to you if possible; is that right?

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1 A. As I recall, yes.

2 Q. And on occasion that happened?

3 A. Yes.

4 Q. Ma'am, I'd like to turn your attention to the first  
5 tab in that binder which is AE 628DD.

6 A. Yes.

7 Q. There are a number of documents there. If you look  
8 down in the lower right-hand corner, there's a Bates number.  
9 And if I could direct you to Bates number MEA-FBI-23516.

10 A. Okay. 23516.

11 Q. And just for orientation purposes, I'll direct you to  
12 23518, which lists you as the drafter.

13 A. Okay.

14 Q. And then if we could go back to the top page ----

15 A. Yes.

16 Q. ---- 23516. This is an FBI requirements cable dated  
17 3 April 2003?

18 A. Yes.

19 Q. From -- from FBI to CIA?

20 A. Yes.

21 Q. And in general -- so we have agreed to call the  
22 person who is -- who is the subject of this requirement  
23 Individual K?

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1 A. Okay.

2 Q. And this is a request for questions to be asked of  
3 Khalid Shaikh Mohammad regarding Individual K?

4 A. Yes.

5 Q. Okay. Can you -- do you recall the investigation  
6 into Individual K?

7 A. Yes.

8 Q. And Individual K was a person who investigative  
9 information suggested had introduced Mr. al Baluchi to Dubai  
10 Islamic Bank; is that right?

11 A. Yes, based on documentation.

12 Q. Right. And so based on that, if I correctly  
13 understand it, you drafted a requirements request, "Hey,  
14 can -- who is this person? Is there any more information  
15 about, you know, why he appears on Mr. al Baluchi's  
16 documents?"

17 A. It's likely that I did that. It doesn't -- oh, yeah.  
18 No, it is me. Sorry. Yes, it was me. I did that. I just  
19 wanted to make sure it was me that wrote it.

20 Q. Yes. That's right.

21 And when the -- I'll represent to you in a different  
22 stage of this hearing, we have reviewed the responsive cable  
23 from the CIA regarding Individual K. When information about

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1 Individual K came back from -- from CIA, it would go -- and be  
2 the responsibility of your analyst to gather it and print you  
3 out a hard copy and bring it to you?

4 A. Yeah. It would have to be routed back to me, yes.

5 Q. Right. Ma'am, I'd like to -- in that same tab, which  
6 is AE 628DD, if I could direct your attention to 23529.

7 A. So it goes to 23528, 23573.

8 Q. You know, I had this exact problem earlier. Let me  
9 just double-check something.

10 MJ [Col COHEN]: Please check, Counsel. I don't have that  
11 Bates number either. If you only have it in hard copy, you  
12 may use the hard copy.

13 LDC [MR. CONNELL]: Your Honor, could I approach counsel?

14 MJ [Col COHEN]: You may.

15 [Counsel conferred.]

16 LDC [MR. CONNELL]: Your Honor, if I could have an AE  
17 number, I will sync this up with the court reporters later.

18 MJ [Col COHEN]: That will be fine. Let me -- tell you  
19 what, why don't you go ahead and approach the witness, and I  
20 will let them work on the number while we're proceeding.

21 LDC [MR. CONNELL]: Okay.

22 MJ [Col COHEN]: Counsel, it will be AE 628CCC (AAA).

23 LDC [MR. CONNELL]: Thank you.

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1 A. Okay.

2 Q. And, ma'am, if you'll turn to the back page of AE  
3 628CCC, satisfy yourself that you are the drafter of that  
4 document?

5 A. Yes, I am.

6 Q. What's the date on that document?

7 A. April 22nd, 2003.

8 Q. From the FBI?

9 A. Yes.

10 Q. To the CIA?

11 A. Yes.

12 Q. And its general topic is that -- is the process that  
13 you testified about earlier about -- of gathering photographs  
14 out of site exploitation and then sort of putting them  
15 together in a collection; is that right?

16 A. Yes.

17 Q. And you sent that requirement along with the  
18 photographs for presentation to detainees to see if they could  
19 identify or give any information about the people who appeared  
20 in the photographs, correct?

21 A. I put it on a disc, yes.

22 Q. On a disc, yes. And when there was responsive  
23 information from the CIA, it would go into message traffic.

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1 It was the responsibility of your analysts to gather that and  
2 present it to you. Fair enough?

3 A. That would be their responsibility. I have no  
4 recollection of that happening.

5 Q. Okay. On -- for -- with respect to this?

6 A. Yes.

7 Q. Okay. Ma'am, I'd like to turn your attention to  
8 AE 628PP.

9 MJ [Col COHEN]: I'll retrieve 628CCC. Counsel, do you  
10 want it back or do you want me to give it to the court  
11 reporters?

12 LDC [MR. CONNELL]: I do. It doesn't have the right  
13 margins, so ----

14 MJ [Col COHEN]: Okay. I'll let the court reporter hand  
15 it to you.

16 Q. And then if I could direct your attention to  
17 AE 628DD, document FBI-23855.

18 A. DD? Say that again, I'm sorry. DD?

19 Q. Sure. DD.

20 A. Yep.

21 Q. And then 23855.

22 A. Okay. I believe I have it.

23 Q. This is an FBI cable dated 21 May 2003?

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1 A. Yes.

2 Q. From the FBI to the CIA?

3 A. Yes.

4 Q. And this is specific information relating to Ammar  
5 al Baluchi as its general subject matter, correct? You can  
6 take a minute to look through it.

7 A. Okay. So yes, information related to him.

8 Q. Yes. And so if you could just look at the last page.

9 A. Yes.

10 Q. My question is, just because I'm trying to figure out  
11 the system: Why would Brian Antol be the POC for this, the  
12 point of contact for this?

13 A. He was working matters involving Khalid Shaikh  
14 Mohammad. So in conjunction with that effort, maybe he would  
15 have put this all together in one comprehensive request.

16 Q. Makes sense. All right. Ma'am, we're done with that  
17 for now. And I would like to move on to the question of: Did  
18 you ever hear of a conference put on in May 2003 regarding  
19 reporting from Khalid Shaikh Mohammad?

20 A. So I've only heard that during prep.

21 Q. Okay.

22 A. I don't recall it separately.

23 Q. Sure. All right. I have one other set of

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1 requirements that I'd like to talk to you about, and they  
2 relate to Faruq al Najdi and Saud al Rasheed. Do those names  
3 sound familiar?

4 A. Yes.

5 Q. When you were involved in the questioning of  
6 Mr. al Baluchi, you showed him a photograph of Saud al  
7 Rasheed. Does that sound right?

8 A. Yes.

9 Q. And you noted in the LHM, or in your notes, you noted  
10 the names Saud al Rasheed for him, for that individual?

11 A. Yes. I believe so, yes.

12 Q. Not the name Faruq al Najdi?

13 A. Yeah. I'd have to look at it to make sure, right.

14 Q. I know it's a long -- that's all right. And when you  
15 questioned Mr. al Hawsawi, you also -- let me ask that a  
16 different way.

17 When you asked Mr. -- when you questioned  
18 Mr. al Hawsawi, one of the things you questioned him about was  
19 the so-called little blue notebook that had been found in the  
20 site exploitation of his capture. Do you recall that?

21 A. Yes.

22 Q. It was seized in the raid which was generally known  
23 as the Rawalpindi raid?

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1 A. Yes, I believe so.

2 Q. And you asked him about the name -- the little blue  
3 notebook had what looked kind of like to be a ledger, like  
4 money amounts or payments or something like that in it; is  
5 that fair to say?

6 A. Yes.

7 Q. And one of the names which was associated with that  
8 was Faruq?

9 A. As I recall, yes.

10 Q. And so you asked Mr. al Hawsawi about Faruq?

11 A. Yes.

12 Q. And he identified a person who had transited through  
13 Dubai and then had sort of been lost off the radar and never  
14 been heard of again?

15 A. I believe that's correct.

16 Q. Okay. Ma'am, if in the binder in front of you you'll  
17 turn to AE 628MM?

18 A. Okay.

19 Q. All right. That's a -- does it sound right that that  
20 is a document which was found -- it's -- well, let me say it a  
21 different way. It's purportedly a passport, right?

22 A. Yes.

23 Q. And it was -- does it sound right that it was found

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1 in the Rawalpindi raid on a CD along with passports of the  
2 hijackers?

3 A. I believe that's right.

4 Q. And is this the document of Saud al Rasheed or Faruq  
5 al Najdi that you showed to Mr. al Hawsawi, do you recall?

6 A. Could have been. I'd have to review that to make  
7 sure.

8 Q. Unfortunately, you didn't -- this is not one of the  
9 ones where the picture is attached to the LHM, so I actually  
10 can't tell you. I don't know. But this is the sort of  
11 investigative lead that led to interest in Saud al Rasheed  
12 because he was found -- his passport was found with hijacker  
13 passports?

14 A. As I recall, yes.

15 Q. The -- now, if you could, please, turn to -- in that  
16 same binder AE -- I'm sorry, a different binder, the AE 628CC  
17 binder.

18 A. Okay.

19 Q. And if you could turn -- once you have that binder,  
20 if you could turn to Attachment I -- or Tab I.

21 A. Okay.

22 Q. Okay. And if you -- within Tab I, if you could turn  
23 to STA-11.

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1 A. Okay.

2 Q. Now, when you -- when there was information coming  
3 from detainee reporting, I just want to explain what this is.  
4 This -- when you saw -- there was information coming from  
5 detainee reporting, it was in these all caps like this, right?

6 A. Yes.

7 Q. And this is not the actual document you would have  
8 seen. This is a summary of that document, which may have some  
9 modifications to it, but it's what's available to us for  
10 discovery?

11 A. Okay.

12 Q. When you saw these, they had like headers on them and  
13 dates and stuff like that, right?

14 A. Yes.

15 Q. So I'd like to draw your attention to the second  
16 paragraph in the -- in this document on STA-11.

17 A. Okay.

18 Q. And in -- actually in the first line, you'll see that  
19 this purports to be a summary of a CIA interrogation in early  
20 2003. Do you see that?

21 A. I do.

22 Q. Okay. Of Khalid Shaikh Mohammad?

23 A. Yes.

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1 Q. Okay. And in the second paragraph, you'll see  
2 comments by Khalid Shaikh Mohammad, who they call here  
3 Mukhtar, about Faruq al Najdi. Do you see that?

4 A. I do.

5 Q. Okay. And Faruq al Najdi, in case I haven't linked  
6 this up, is the name that was found on that passport, which is  
7 628MM; is that right? Sound right?

8 A. Could be.

9 Q. Okay. Let's just go with could be.

10 A. I knew that as an alias, yes.

11 Q. You knew that as an alias?

12 A. Yes.

13 Q. Very good. And that was actually the first alias  
14 that the FBI knew. The first name they knew was Faruq al  
15 Najdi, and they were trying to find out who was Faruq al  
16 Najdi -- you were trying to find out who was Faruq al Najdi  
17 and what's his real name, that kind of thing?

18 A. As I recall, yes.

19 Q. Okay. So do you have any specific recollection of  
20 seeing this reporting?

21 A. I believe I would have seen this reporting.

22 Q. Okay. Because it was on a topic that you were  
23 working on. It's about the site exploitation, right?

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1           A.   Yes.  And he was of specific, particular interest to  
2 me as a threat.

3           Q.   Right.  Right.  Because Faruq al Najdi is still out  
4 there somewhere?

5           A.   Yes.

6           Q.   And so the analysts would make sure to get you the  
7 original cable of this summary?

8           A.   Or I would look to be tracking it down, yes.

9           Q.   Or you would track it down ----

10          A.   Yes.

11          Q.   ---- through one of the ways that you could get  
12 information?

13          A.   Correct.

14          Q.   Okay.  And then if I could draw your attention to  
15 AE 628DD -- so, I'm sorry, you have to go back to the other  
16 binder -- and if I could direct your attention to FBI-23741.

17          A.   Whereabouts in the notebook is that?

18          Q.   I'm sorry.  If you'll -- if you are in the binder  
19 that says -- that has DD on the cover?

20          A.   Yes.

21          Q.   And then under the first tab, the Bates numbers are  
22 all FBI Bates numbers, and if you would look for 23741, just  
23 in that first tab, DD.

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1 A. Okay.

2 Q. Okay. And 23741 is a cable from FBI to CIA?

3 A. Yes.

4 Q. I'll give you a chance to look at it.

5 A. Yes, it is.

6 Q. Dated 4 April 2003?

7 A. Yes.

8 Q. And the -- do you -- the pass line includes

9 Interrogator SG1?

10 A. I see that.

11 Q. And do you think that -- there's no drafter listed,  
12 but do you think that you were the drafter of this?

13 A. My only hesitation is why the name would be blocked  
14 out if I had drafted it.

15 Q. So there's -- I'll represent to you that these cables  
16 come to us in two separate forms, one of which has a "drafted  
17 by" line and one of which does not.

18 And if I could direct your attention to page 23742,  
19 this -- this is the form that doesn't really have a line that  
20 says "drafted by." Do you see that?

21 A. Yes. Yes, it looks like something I would have  
22 drafted, or could have drafted.

23 Q. Right, because you were working on the Faruq al Najdi

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1 piece?

2 A. I was.

3 Q. Right. And if you look at -- this is a request for  
4 Mr. Mohammad and Mr. al Hawsawi to be queried about Faruq al  
5 Najdi; is that fair to say?

6 A. Yes.

7 Q. And if I could direct your attention to the second  
8 full paragraph, begins "Khalid Shaikh Mohammad."

9 A. Yes.

10 Q. And that paragraph contains information about prior  
11 reporting from Khalid Shaikh Mohammad; is that fair to say?

12 A. Yes.

13 Q. And it would be fair to -- and if you need to see  
14 that other document, that's fine, but it would be fair to say  
15 that that -- the information in that paragraph is a summary of  
16 the information in the CIA cable that I showed you just a  
17 moment ago?

18 A. Yes.

19 Q. Okay. I'd like to turn your attention now to,  
20 please, in that same tab, AE 628 -- oh, I'm sorry. I have one  
21 more question.

22 And you had -- how many questions did you list in  
23 this -- in this form?

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1 A. So if it was me who wrote it, it would be nine.

2 Q. Nine. Okay. I'd like to in that same tab -- or I  
3 could say the drafter, nine questions, whoever drafted it.

4 AE 628DD, and it's FBI-23862.

5 A. Okay.

6 Q. Okay. Do you have that document?

7 A. I do.

8 Q. If you flip to the back, you'll see this is another  
9 of the style of document which doesn't have a specific  
10 drafter.

11 A. Yes.

12 Q. Okay. But this is an FBI cable, requirement cable,  
13 from FBI to CIA?

14 A. Yes.

15 Q. Dated 7 April 2003? In that strange format, the  
16 first two digits are the date.

17 A. Okay. Yes.

18 Q. And the second four digits are the time.

19 A. Got it.

20 Q. The -- in this, it's to pass information to the CIA  
21 regarding Saud al Rasheed?

22 A. Yes.

23 Q. And proposed questions to be asked of Khalid Shaikh

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1 Mohammad?

2 A. Yes.

3 Q. And then in the document, you sort of -- or a  
4 person gives the history, including the passport document that  
5 I showed you earlier?

6 A. Yes.

7 Q. And other elements of the site exploitation and then  
8 describes the -- who Saud al Rasheed is; is that fair?

9 A. Yes.

10 Q. And I'll direct your attention to the third page,  
11 which is 23864.

12 A. Yes.

13 Q. And the second half of the page is requests for the  
14 CIA for essentially investigative assistance?

15 A. Yes.

16 Q. Regarding a photograph of Saud al Rasheed?

17 A. Yes.

18 Q. And a series of questions that the drafter would like  
19 answered?

20 A. Yes.

21 Q. Do you think that you were the drafter of this  
22 document?

23 A. I did not write this document.

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1 Q. Okay.

2 A. I don't spell Khalid Shaikh Mohammad's name that way,  
3 so that's how I know.

4 Q. Okay. That's -- that's a good tip.

5 So I'd like to turn your attention now to -- and you  
6 have to go back to the other binder, I'm afraid -- 628CC  
7 Attachment I, and then page STA-2422.

8 A. So under I?

9 Q. Yes, under I.

10 A. Okay. I have it.

11 Q. Okay. By the way, there are bottles of water to your  
12 right if you get thirsty.

13 A. Yeah, thank you.

14 Q. I'm constantly thirsty. So do you see 2422?

15 A. I do.

16 Q. And it's fair to say this document is a summary of a  
17 CIA cable regarding a custodial interview of Khalid Shaikh  
18 Mohammad in mid-2003; is that fair?

19 A. That is fair.

20 Q. Okay. And if I could refer you to, say, paragraphs 2  
21 and 3, this is information derived from Mr. Mohammad regarding  
22 Faruq al Najdi?

23 A. Correct.

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1 Q. When this document came from the CIA, is this the  
2 sort of information that might be routed back to you because  
3 you're working on the Faruq al Najdi question?

4 A. Yes.

5 Q. I'd like to turn your attention now back to DD,  
6 628DD, and it's page FBI-23819.

7 A. Okay. I have it.

8 Q. This is an FBI requirements cable dated 24 June 2003?

9 A. Yes.

10 Q. From the FBI to the CIA?

11 A. Yes.

12 Q. Includes an Interrogator SG1 in the pass line?

13 A. Yes.

14 Q. And in general, this is a request for assistance in  
15 showing the photograph of Saud al Rasheed to Mr. al Hawsawi to  
16 determine if Saud al Rasheed is identical with Faruq al Najdi?

17 A. Yes.

18 Q. And then if you look at the paragraph at the bottom  
19 of 23819?

20 A. Yes.

21 Q. That's information from prior detainee reporting from  
22 Mr. Mohammad?

23 A. Yes.

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1 Q. And then the -- there -- in this one actually there  
2 are some -- there are also some questions in addition to the  
3 photograph about the small blue notebook. And I will orient  
4 you to about one-third down the page on 23820, information  
5 about the small blue notebook.

6 A. Yes.

7 Q. And then there -- I can actually make this a little  
8 easier, because there's some unclassified paragraphs that I  
9 can read.

10 About two-thirds of the way down, the drafter writes,  
11 "Note that Faruq may be identifiable with Saud al Rasheed, who  
12 departed Dubai, UAE, for Saudi Arabia on 10 June 2001." Yes?

13 A. Yes.

14 Q. And then there's a reference, "Please" -- redacted --  
15 "dated 24 September 2002 for the full interview results of  
16 Saud al Rasheed by the" -- redacted -- "where it is noted that  
17 al Rasheed's alias is Faruq." Do you see that?

18 A. I do.

19 Q. And on the next page, 23821, in the middle of the  
20 first full paragraph, there's a request, "In an effort to  
21 confirm whether Saud al Rasheed is identical to Faruq al  
22 Najdi, CTC is requested to ensure that a photograph of Saud al  
23 Rasheed is shown to Mustafa Ahmed al Hawsawi. A photograph of

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1 Saud al Rasheed has been provided to" -- redacted -- "detailee  
2 from FBI for forwarding to appropriate individuals at CTC."

3 Does that sound right?

4 A. Yes.

5 Q. And then there are some specific questions under  
6 that?

7 A. Yes.

8 Q. And then there's a line here, "POC for this report is  
9 SSA Adam Drucker, and" -- redacted -- "and Special  
10 Agent Abigail Perkins"?

11 A. Yes.

12 Q. Do you know -- do you think you were the drafter of  
13 this document?

14 A. Again, I think, based on the spelling of Khalid  
15 Shaikh Mohammad's name, it would have been Adam Drucker.

16 Q. Okay. And -- but clearly it was on a topic of  
17 investigative significance to you?

18 A. Yes.

19 Q. Probably had some input into the subject even if not  
20 the actual drafting?

21 A. Yes.

22 Q. And that is why you and Special Agent Drucker were  
23 listed as POCs?

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1 A. Yes.

2 LDC [MR. CONNELL]: Your Honor, I note we have been going  
3 for quite a while. I'm happy to take a break or happy to keep  
4 going.

5 MJ [Col COHEN]: We'll take a break. Let's go ahead and  
6 take a -- there's a lot of people. Let's go ahead and take a  
7 15-minute recess. We'll reconvene just shy of 3:45.

8 [The R.M.C. 803 session recessed at 1527, 20 September 2019.]

9 [The R.M.C. 803 session was called to order at 1546,  
10 20 September 2019.]

11 MJ [Col COHEN]: The commission is called to order.  
12 Parties are present. Please recall the witness.

13 [The witness resumed the stand.]

14 MJ [Col COHEN]: Ma'am, if you'll please take your seat  
15 again. I recognize you as the same witness. I remind you  
16 that you are still under oath.

17 WIT: Yes, sir.

18 MJ [Col COHEN]: Counsel, your witness.

19 LDC [MR. CONNELL]: Thank you.

20 **DIRECT EXAMINATION CONTINUED**

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

22 Q. Ma'am, to your left, I have gone ahead and opened the  
23 binder to the next exhibit for you ----

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1 LDC [MR. CONNELL]: Actually, before I do that, I almost  
2 forgot. Your Honor, as usual, everything is my fault, and my  
3 paralegals actually did have that document that I was looking  
4 for in the record, so let me correct the record on that.

5 AE 628CCC, we're giving back, and what I earlier  
6 referred to as AE 628CCC is actually AE 628YY at STA-23 -- no,  
7 excuse me, at FBI-23529.

8 MJ [Col COHEN]: Thank you, Counsel.

9 LDC [MR. CONNELL]: Thank you.

10 Q. The -- ma'am, I'd like to direct your attention to  
11 AE 628CC Attachment I at STA-2174. Do you see that? All the  
12 way to your left.

13 A. I do.

14 Q. And that is a CIA -- summary of a CIA cable regarding  
15 mid-2003 interrogation of Mustafa al Hawsawi. Do you see  
16 that?

17 A. It is.

18 Q. The -- the question is -- was put to Mr. al Hawsawi  
19 whether he knew -- and -- sorry. It says that he was shown a  
20 photo of a person of interest in the first line?

21 A. Yes.

22 Q. And the -- Mr. al Hawsawi said he had never heard of  
23 the person referred to in another name -- by another name?

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1 A. Yes.

2 Q. But that al Rasheed and al Najdi actually both  
3 referred to the same region in Central Saudi Arabia?

4 A. Yes.

5 Q. He then continued to provide information about  
6 al Najdi or al Rasheed?

7 A. Faruq.

8 Q. Faruq, yes.

9 A. Name of Faruq, yes.

10 Q. So Faruq al Najdi, I'm sorry.

11 A. Yes.

12 Q. Yes. And then in the bottom paragraph on that page,  
13 he provides information about the small blue notebook?

14 A. He does.

15 Q. Okay. The -- now, we don't know when this actually  
16 came, because it's only mid-2003, but this is the -- it's fair  
17 to say this is the information that was sought in your -- in  
18 your earlier requirements cable, correct?

19 A. Yes.

20 Q. I'd like you to turn now to AE 628DD, and it's  
21 FBI-23795.

22 A. Okay.

23 Q. That's an FBI cable dated 1 August 2003?

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1 A. Yes.

2 Q. To the CIA?

3 A. Yes.

4 Q. And I'll -- if you flip to the back of the document,  
5 it shows the POCs as Adam Drucker and Abigail Perkins?

6 A. Yes.

7 Q. The -- would it be fair to say that this document is  
8 identical to the 24 June 2003 requirement we looked at a  
9 minute ago, except for the date?

10 A. It does look that way, yes.

11 Q. Okay. And although -- so we don't -- I've put them  
12 in a certain order, but we don't actually know whether the  
13 responsive cable from the government -- from the -- from the  
14 CIA came before or after this document, just -- just so I  
15 don't mislead you.

16 Is this a situation, I assume, where you had sent a  
17 cable, you didn't get any answer, and so you followed up with  
18 another version of the same cable?

19 A. That's possible.

20 Q. And so when you sent these cables, you would say -- I  
21 mean, they were obviously of importance to you?

22 A. Very much.

23 Q. Yeah. I mean, this is -- you're trying to stop

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1 threats -- you told us about your threat-based posture  
2 earlier. You are trying to stop threats. This is a person  
3 who's, you know, potentially still out there in the world,  
4 possibly even planning an attack?

5 A. Correct.

6 Q. Right. So when you didn't get some kind of answer --  
7 I know it wasn't a perfect system, but when you didn't get any  
8 answer at all, you would follow up with another cable?

9 A. That's not unlikely. That sounds like what we would  
10 have done, yes.

11 Q. Okay.

12 A. It was the only thing we had, was to ask again.

13 Q. Right. So could I direct your attention to AE 628CC  
14 Attachment I, STA-586.

15 A. Yes.

16 Q. And that's a CIA cable describing an early 2004  
17 custodial interview of Ramzi Binalshibh?

18 A. It is.

19 Q. And if you'll scan down through it, it reports  
20 information from Mr. Binalshibh regarding Saud al Rasheed,  
21 also known as Faruq al Najdi?

22 A. Yes.

23 Q. Turning your attention now to AE -- same tab,

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1 AE 628CC Attachment I, this time, STA-139.

2 A. Okay.

3 Q. This is a cable -- a CIA cable describing -- or a  
4 summary of a CIA cable describing a custodial interview of  
5 Khalid Shaikh Mohammad in early 2004?

6 A. Yes.

7 Q. And the interrogators asked Khalid Shaikh Mohammad  
8 about other potential hijackers?

9 A. Yes.

10 Q. And he discussed Faruq al Najdi as a potential  
11 hijacker?

12 A. Yes.

13 Q. I turn your attention now, same tab, AE 628CC  
14 Attachment I, but this time STA-304.

15 A. Okay.

16 Q. That document is a summary of a CIA cable describing  
17 a custodial interview of Mr. al Hawsawi in early 2004?

18 A. Yes.

19 Q. And he was interrogated at that time -- or questioned  
20 about the contents of the little blue notebook?

21 A. Yes.

22 Q. Which was the other topic of your earlier cable,  
23 right?

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**26635**

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1 A. Yes.

2 Q. And if I could turn your attention, same tab,  
3 AE 628CC Attachment I, to STA-162?

4 A. Okay.

5 Q. A summary of a CIA cable regarding custodial  
6 interview of Khalid Shaikh Mohammad in early 2004?

7 A. Yes.

8 Q. And where it reports the results of questioning of  
9 Mr. Mohammad about the contents of the little blue notebook?

10 A. Yes.

11 Q. The ----

12 A. Or it says a notebook associated with him. I'm  
13 assuming it's the same.

14 Q. Right. And so given that reporting, you didn't have  
15 to send this cable a third time?

16 A. About the notebook?

17 Q. Well, there was reporting about al Rasheed in the  
18 notebook, the subjects of your earlier cables, so you didn't  
19 have to go back a third time and send it again?

20 A. If it was a fulsome and answered the question, I  
21 would not, yeah.

22 Q. Right. Okay. I'd like to turn your attention now to  
23 AE 628DD, FBI-18758.

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1 A. What was the number again?

2 Q. 18758. I think I gave you a bum steer. Let me try  
3 again. AE 628CC Attachment H.

4 A. CC.

5 Q. And it is FBI-18758.

6 A. Sorry. The number again?

7 Q. Sure. 18758.

8 A. This is in the classified book? I'm sorry, I've lost  
9 track.

10 Q. That's all right. That actually threw -- it's the  
11 same thing that threw me ----

12 A. Oh, D, okay.

13 Q. ---- because this is actually unclassified 302. So  
14 it's AE 628CC.

15 A. Okay.

16 Q. Attachment H.

17 A. Okay. And then the number again?

18 Q. 18758.

19 A. Okay. I have it.

20 Q. All right. And this is a 302 of an interview of Saud  
21 al Rasheed?

22 A. Yes.

23 Q. Okay. Now, this -- this is dated 4 March 2004, which

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**26637**

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1 is after you had left the PENTTBOM team, correct?

2 A. Yes.

3 Q. And -- but this records the investigative efforts of  
4 Special Agent Maguire, Special Agent Barghouty, and Detective  
5 Sassok?

6 A. That's correct.

7 Q. And also, there were two members of the  
8 9/11 Commission, if you look in that top paragraph, who  
9 participated in this questioning. Do you know how that came  
10 to be?

11 A. No idea.

12 Q. Okay. And then the -- last, I'll turn your attention  
13 to AE 628CC, so same binder, Attachment I, STA-268.

14 A. Okay.

15 Q. This purports to be an interrogation of -- I'm sorry,  
16 this is a summary of a CIA cable regarding a mid-2004 series  
17 of interrogations of Mr. al Baluchi. Do you see that?

18 A. Yes.

19 Q. And at some point he was questioned about  
20 Mr. al Rasheed?

21 A. Do you have a specific reference on this page to  
22 direct me?

23 Q. It's quite long, so just one second. Can I direct to

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1 you page 270. Do you see the middle paragraph? It  
2 begins ----

3 A. I do, yes.

4 Q. And that ----

5 A. Yes.

6 Q. So this reports that Mr. al Baluchi was questioned  
7 about al Rasheed and said he didn't know him?

8 A. He was, yes.

9 Q. So would it be fair to say that what we've just gone  
10 through is an example of the system when it works; you make  
11 requests, get information back, make follow-up requests, get  
12 information back?

13 A. Could be, yes -- yeah, represent that.

14 Q. Okay. And I'd like to now move to a different  
15 chapter. And I'd like to ask you, when did you first hear  
16 that you might be engaged in questioning of Mr. al Hawsawi  
17 or -- and/or Mr. al Baluchi? I know that Mr. al Hawsawi was  
18 your primary focus.

19 A. So sometime at the latter part of 2006 ----

20 Q. And ----

21 A. ---- I would have learned.

22 Q. ---- where -- so at that time when you heard about  
23 that, were you still -- were you working on the East Africa

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1 Embassy bombing follow-ups?

2 A. No, I was in a different job.

3 Q. Okay. Different job. But within the FBI?

4 A. Yes.

5 Q. And at that time when you were tapped for this  
6 responsibility, were you given a TDY status or were you  
7 reassigned? How did that work?

8 A. So, yeah, temporary duty status, probably not having  
9 to move. I was already in D.C. working in the other job, but  
10 just attached to that at some point, to assist with that ----

11 Q. Right.

12 A. ---- those interviews.

13 Q. And the thing that you were attached to was the  
14 High-Value Detainee Prosecution Task Force?

15 A. Yes.

16 Q. There -- the High-Value Detainee Prosecution Task  
17 Force had a Top Secret closed network, computer network; does  
18 that sound right?

19 A. I rarely worked with a Top Secret network so that  
20 could be right. I don't recall specifically. I rarely worked  
21 in the Top Secret environment.

22 Q. Okay.

23 A. So they could have had that. I don't specifically

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1 recall that.

2 Q. The -- so, in fact, that actually makes some sense  
3 because I think in your prior testimony you said that there  
4 were -- because you hadn't worked on 9/11 for a while, there  
5 were CIA materials made available for your review but it was  
6 done in hard copy rather than you accessing the network; is  
7 that right?

8 A. There was a pile of documents, right, that I  
9 reviewed. And in reconstructing, just to clarify ----

10 Q. Yeah.

11 A. ---- because I think the prior testimony, now that I  
12 have thought through all of the areas that I would have looked  
13 at, which were many, I do recall buckets. So it wouldn't have  
14 been access to a searchable database for me to search  
15 something. There were hard-copy documents, and there were  
16 buckets per detainee that I recall now.

17 Q. All right. So -- just so I have it right, you  
18 accessed the computer system or it was all hard copy for you?

19 A. No. There was -- there was a computer system. If  
20 you're representing to me it was Top Secret, I think a lot of  
21 the things that I dealt with were Secret, so I see it as -- I  
22 would have to refresh my recollection from 13 years ago,  
23 but ----

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1 Q. Don't worry about the classification. There was a  
2 closed network ----

3 A. But there was -- there were documents on a computer  
4 that were in a bucket with the name of a detainee ----

5 Q. Okay.

6 A. ---- as I recall.

7 Q. And so by -- when you say bucket, you mean like a  
8 folder or some kind of a way they're all ----

9 A. Exactly. They called it a bucket. When someone said  
10 the word "bucket," it reminded me of buckets.

11 Q. Okay. And so there was a bucket for Mr. al Baluchi?

12 A. Yes.

13 Q. There was a bucket for Mr. al Hawsawi?

14 A. All the detainees, I think, yes.

15 Q. Okay. All of -- all 14 detainees who had been  
16 transferred?

17 A. As I recall, yes.

18 Q. And without telling us like the contents of any  
19 document, what sort of information was in the buckets?

20 A. So I think it would have been -- and I can't recall  
21 specifically, but either CIA reporting that had been  
22 disseminated out about a detainee or from a detainee.

23 Q. Okay. So some of the materials that we've gone over

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1 today, the ones that are CIA cables that we've talked about,  
2 that's the sort of material that would be in the buckets?

3 A. Very likely, yes.

4 Q. And did you have any reason to believe that any of  
5 the CIA reporting was withheld from you in the buckets?

6 A. No reason to believe that particularly.

7 Q. All right. Was there a lot of information in the  
8 buckets?

9 A. So I -- I was involved in four interviews.

10 Q. Sure.

11 A. So to distinguish between one to the next to the  
12 next, I'm not sure I could do that for you. I mean, it was --  
13 it's -- it seemed to cover what I would expect maybe to  
14 see ----

15 Q. Sure.

16 A. ---- but I can't -- I'm not sure I can really, truly  
17 quantify you -- for you, you know, with regard to each  
18 individual.

19 Q. Okay. Are we talking about, you know, a couple of  
20 documents, a couple of dozen documents, a couple of hundred  
21 documents?

22 A. It would be a list of documents that you'd start at  
23 the top -- I don't know if they were listed in order of

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1 time -- and then you would just click through the documents.

2 So sort of in a long laundry list.

3 Q. Okay.

4 A. Just one after the other.

5 Q. Okay. And ----

6 A. And not a handful, not a few. There was a folder of  
7 documents to quantify that, it wasn't a few -- you know, it  
8 wasn't five, ten, 20. Probably -- I'd hate to quantify  
9 without seeing it again.

10 Q. But substantially more than 20, it would be fair to  
11 say?

12 A. Oh, yes. Yes.

13 Q. And did any -- within -- so once you had access to  
14 the bucket, the -- you could click on whatever document you  
15 thought you wanted to review and look at it?

16 A. Yes. Within that bucket, yes.

17 Q. And ----

18 A. Within any of the buckets, right.

19 Q. Oh, within any of the buckets?

20 A. Yes.

21 Q. So you said that you were involved in four. Even the  
22 four that you weren't involved in, if you thought for some  
23 reason you had an investigative connection over there, you

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1 could go look at those?

2 A. Could -- could have -- yes. Could have done that.

3 Q. Sure. And ----

4 A. Not saying that I did, but could have.

5 Q. Sure. And the four that you were involved in were  
6 al Baluchi, al Hawsawi, Ghailani. And what was the fourth?

7 A. It was -- I'm just wanting to make sure it's not  
8 classified.

9 Q. Sure. I don't think so. I think they were just  
10 saying they knew the answer.

11 A. Oh, okay. Gouled.

12 Q. Gouled.

13 A. Gouled.

14 Q. Okay. Mr. Gouled, in fact, came in and testified in  
15 the military commission, so ----

16 A. Okay.

17 Q. ---- that's one of the few that I have seen outside  
18 of these five men.

19 So the -- how long -- so you were assigned to HVD or  
20 you were TDY to HVD PTF, and I assume if it's anything like  
21 our system, there was a time where you had to have a little  
22 application pending to have access to this closed network, and  
23 then eventually, you're granted access to this closed network

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1 that you're describing; is that right?

2 A. The specifics of that, going through that access I  
3 can't recall for you.

4 Q. That's fine.

5 A. I did have access at some point, though.

6 Q. That's right. So at some point prior to traveling  
7 here to Guantanamo, in your preparation period, you had  
8 access?

9 A. Oh, I'm sorry. I thought you were talking about 2007  
10 time frame.

11 Q. 2006-2007.

12 A. Oh, yes, prior. Yes, that time frame. Yes.

13 Q. So maybe -- you said you were living in Washington,  
14 National Capital Region at the time. The -- you had -- there  
15 was a place in Virginia where you could go to access the  
16 network?

17 A. Yes.

18 Q. And when you accessed the network, the -- that  
19 was before you traveled to Guantanamo for these questionings?

20 A. That's correct.

21 Q. Okay. How much time did you spend reviewing the  
22 buckets?

23 A. I'm not sure of exactly the time that I went down

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1 there. I think of the time that we went to the offsite  
2 location, we didn't have permission yet to interview, and it  
3 was hoped for, I guess, at that point, or being worked on. A  
4 couple of months ----

5 Q. Okay.

6 A. ---- maybe, for the four.

7 Q. So I just want to unpack that. There was some  
8 testimony about the offsite before. I just want to make sure  
9 we're all thinking about the same thing.

10 So at some point there was -- there was a meeting at  
11 an offsite; is that right?

12 A. Can you be more specific?

13 Q. Sure. You just testified about there was a time we  
14 went to an offsite, and we weren't sure we had permission yet.

15 A. Yes.

16 Q. Okay. Can you tell us about that -- that event, when  
17 you went to the offsite?

18 A. I just would have shown up at the offsite, and that's  
19 when I would have started the preparation for the interviews.

20 Q. Right. And at that time when you say you weren't  
21 sure if we had permission yet, it was still being worked as to  
22 whether you would be actually able to access the detainees?

23 A. Yes.

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1 Q. Okay. And as you understood it, that was being  
2 worked in some sort of interagency process?

3 A. Interagency and government, high-level government.

4 Q. Yes. Right. And at some point, the word came down,  
5 yes, the -- the FBI/CITF teams were going to be able to have  
6 access to the detainees?

7 A. Yes.

8 Q. And when you say a couple of months, you mean that  
9 there were a couple of months before your travel to Guantanamo  
10 for the actual interviews that -- that you had access to  
11 the -- to the buckets?

12 A. Yes.

13 Q. And during that time, was the location where you  
14 could access the closed network in Virginia, was that your  
15 ordinary duty station; is that where you went to work every  
16 day?

17 A. No.

18 Q. No. Okay.

19 Of those couple of months, how often -- how much time  
20 would you say that you spent actually at that site in  
21 Virginia?

22 A. I would report there daily for my -- that's where I  
23 would report to work every day.

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1 Q. I see. I must have asked a bad question. So that  
2 was -- that was your duty station. That was where you went to  
3 work?

4 A. It became -- yes. It became where I reported to  
5 work, yes.

6 Q. Right.

7 A. After designated for the team, right.

8 Q. Got it. Got it.

9 And so I take it that your principal responsibility  
10 at that time was to prepare for these interviews.

11 A. Yes.

12 Q. And given everything that you've described, I can  
13 only assume that you were diligent in reviewing the  
14 information in the buckets and preparing for your interviews?

15 A. So I would tell you that Agent Fitzgerald was the  
16 primary on Mr. Ali. I was the primary or taking a primary  
17 responsibility for three of the others. Gouled, I didn't know  
18 at all, so I really had to read a lot of information to really  
19 understand what he was all about and the documents that may be  
20 relevant to him and documents that I would want to show in the  
21 interview.

22 So I would say I would have, if given the time -- it  
23 would have been Agent Fitzgerald's responsibility, but if

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1 given the time, I would have reviewed the information  
2 available to me regarding him.

3 Q. Sure. And was -- was Agent Fitzgerald basically  
4 engaged in the same process during that time?

5 A. With regard to Mr. Ali, yes.

6 Q. Yes. So the same thing that you were doing with  
7 respect to primarily Mr. Gouled, but others as well, on --  
8 that's what Special Agent Fitzgerald was doing with respect to  
9 Mr. al Baluchi or Mr. Ali?

10 A. Yes.

11 Q. Okay. He had a -- he also had a workstation there at  
12 the -- at the Virginia location?

13 A. So the timing of his arrival, you know, I'd have to  
14 leave it to him to tell you, but yes, that when he arrived,  
15 that would be his responsibility on site there.

16 Q. So I can represent to you that he testified that he  
17 was given access to that system on 17 October 2006. Does that  
18 sound about -- pretty reasonable?

19 A. Yes. Yes.

20 Q. Okay. So when -- was that around the same time that  
21 you were working there?

22 A. That would be my best estimate, yes.

23 Q. Yeah. Was there a -- if -- if you wanted to use a

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1 particular document from that closed network in your interview  
2 with -- whether that's with Mr. al Hawsawi or Mr. al Baluchi  
3 or whoever, was there a process by which you could request  
4 sort of downgrading or declassification of it to use it?

5 A. Yes.

6 Q. And did you ever engage in that process?

7 A. With other detainees, I would say yes. With regard  
8 to Mr. Ali, I can't specifically recall. I don't recall doing  
9 that with regard to him. Agent Fitzgerald would have been  
10 responsible for going through that process to get the  
11 approvals and the permissions.

12 Q. In general, how did that process work?

13 A. So as I recall, you would identify what you wanted.  
14 I don't recall identifying any statements, but there were  
15 certainly documents that were associated or may have had  
16 national security equities from another government agency that  
17 would need that sort of review.

18 So you would identify the document and go to the  
19 agency for them to -- with your request for consideration to  
20 use it. There may be some discussion with regard to why you  
21 need it, and there may be some discussion about  
22 national security equities or other government agency  
23 equities. That's their job to assess. And so you would

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1 negotiate that and then determine on the other side whether  
2 you would be in a position to use it or not.

3 Q. Okay. So I understand you're not certain if you did  
4 that with respect to Mr. al Baluchi. Did you do it with  
5 respect to Mr. al Hawsawi, go through that process?

6 A. I suspect I did, but I can't specifically recall  
7 unless I went to review it.

8 Q. That's okay. My question really is: How would that  
9 negotiation take place? Is that like over e-mail? Is it that  
10 you had a meeting?

11 A. As I remember, it was -- now, as I reflect and review  
12 things, a pester request, which would have gone to the owning  
13 agency.

14 Q. I'm sorry, what was the word?

15 A. A pester request.

16 Q. Pester?

17 A. Uh-huh.

18 Q. Like you pester someone?

19 A. Yes, like you pester someone to ask them a question  
20 and you say, can you -- would you review this? Can I use it,  
21 get permission to use it? Are there national security  
22 equities we need to be concerned about?

23 And then they would respond to me. And whatever the

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1 answer might be, if it was yes, then he was good to go; and if  
2 it was no, there might be ongoing discussion as to why I felt  
3 it important.

4 Q. And did that ongoing discussion take place via  
5 e-mail?

6 A. In person.

7 Q. In person. Okay. So if you had a document that you  
8 wanted to use and somebody else wanted to know why you wanted  
9 to use it, there were -- you would convene all of the  
10 interested parties in a meeting, discuss it, and then the  
11 relevant agency would make a decision; is that what you're  
12 saying?

13 A. So I wouldn't say that it's correct to say why I  
14 wouldn't want to use it.

15 Q. Okay.

16 A. It would be review it for national security equities.  
17 If there are such equities, then it would come back as either  
18 no or require further discussion, but not what was my purpose  
19 in using it. It was purely for does this touch on -- you  
20 know, potentially expose national security interests.

21 So my purpose in using it, unless we got to a  
22 negotiation of saying this is the significance of why, but the  
23 initial review would be purely national security concerns, and

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1 protecting ----

2 Q. Sure.

3 A. ---- another agency's equities.

4 Q. That makes sense. It's the would "require further  
5 discussion" category that I'm interested in. How would  
6 that -- further discussion take place?

7 A. So as I recall, if I was told no, then it would be an  
8 in-person discussion with the attorney for the agency to  
9 address concerns about why I thought it significant, and maybe  
10 them addressing to me why it may step on national security  
11 interests and thereby preclude it, and having me understand  
12 that.

13 Q. Got it. And so there were -- there were attorneys  
14 for CIA and NSA who were at least nearby in this space in  
15 Virginia, correct?

16 A. Yes, they were available.

17 Q. Yeah, available to you. And they would be sort of  
18 the liaison with you on that, if you had to give -- if you  
19 wanted to discuss it with them or they wanted to discuss it  
20 with you, you all would get together and hash it out?

21 A. Yes.

22 Q. Okay. You also testified about the hard copy  
23 process, because you said there were stacks and there were

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1 buckets.

2 A. Correct.

3 Q. We've covered the buckets pretty well. Can you tell  
4 us about the stacks?

5 A. So the stacks, as best I can recall it -- and it  
6 might have been something that had been printed off a computer  
7 which is why it wasn't contained in any other database,  
8 whether it would have been something recently obtained. So it  
9 would have been -- like I said, it may be a site exploitation  
10 sort of, as I reconstruct, you know, what was it I was looking  
11 at, with regard to whom. And so yeah, it was probably that  
12 high, a stack of documents that was sitting ----

13 MJ [Col COHEN]: Approximately eight inches, eight to ten  
14 inches?

15 LDC [MR. CONNELL]: Sure.

16 A. ---- that was there for me to review.

17 And again, reflecting whether it was related to --  
18 not Ali. I don't recall it being related to Ali, but -- and  
19 not Gouled, but two other detainees potentially were the  
20 individuals that I was reviewing that for.

21 Q. Sure. So like a stack for Hawsawi; is that what you  
22 mean?

23 A. Or Ghailani. It could have been related to either, I

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1 think ----

2 Q. Or Ghailani. Okay.

3 A. ----- as I recall who I think it was -- who I think  
4 the information was relevant to.

5 Q. Sure. And it was the same sort of information as the  
6 buckets, right? It was CIA reporting, detainee reporting,  
7 sensitive site exploitation, that kind of thing?

8 A. I think it could have contained that, but I think --  
9 yes. Exactly. Yes. It could have been statements about,  
10 from, or document exploitation.

11 Q. Right.

12 A. Or printed off a computer.

13 Q. Sure.

14 A. Sort of in my mind what was done, like it was a  
15 computer that had been recovered in the capture of someone  
16 that would have been relevant to read and review for  
17 potentially either of the other two detainees.

18 Q. Got it. And do you know why they -- why someone  
19 printed out that material for you?

20 A. I don't.

21 Q. Okay. And when you said it was there for you,  
22 what -- what -- I'm not asking you where. I mean, like you  
23 came in and it was sitting on your desk one day, or how did

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1 that work?

2 A. Somebody pointed it out and said that you may want to  
3 review that relevant to your preparation.

4 Q. Okay. Was it duplicative of the information that was  
5 in the buckets or was it additional information, like in a  
6 different compartment or something?

7 A. Like I said, I think it may have been print-offs of  
8 the computer that wouldn't have been contained in the bucket.

9 Q. Right. So there's like some other computer that, for  
10 whatever reason, doesn't have the same information as the  
11 bucket, and they're like, here's some additional information  
12 available for you?

13 A. So I think the computer that I'm sort of recollecting  
14 may have been a computer that was picked up during a capture  
15 of an individual ----

16 Q. I see.

17 A. ---- and printed from that computer. So that the --  
18 that's evidence, the computer, but the documents then would  
19 have been something that could be reviewed separate and apart  
20 from the computer itself from that capture, not a -- not a  
21 another agency's computer.

22 Q. Right. And so they -- they didn't have to load  
23 the -- that computer basically into the bucket, the whole

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1 image of the computer, is that -- did I get that right?

2 A. It didn't contain that sort of information, the  
3 buckets. Yeah, as I recall, more cables.

4 Q. All right. So the buckets were basically cables?

5 A. The best of my recollection. I was looking at the  
6 PENTTBOM file, the East Africa file in both courts.  
7 PENTTBOM -- you know, the PENTTBOM file that the FBI had. So  
8 there were lots of places I was looking for things for those  
9 law enforcement purposes and so there were -- yeah. So I can  
10 say the best of my recollection, it would have been cables.

11 Q. Okay. And do you recall, was it all CIA cables, or  
12 did it have the FBI requirements as well?

13 A. I can't get that specific with you.

14 Q. Okay.

15 A. I'm not sure.

16 LDC [MR. CONNELL]: Okay. Can I have just a moment?

17 MJ [Col COHEN]: You may.

18 LDC [MR. CONNELL]: Thank you so much. My time hack is  
19 4:21.

20 MJ [Col COHEN]: All right. So cross-examination.

21 Mr. Groharing, I'll let them wrap up a few things  
22 here, and that way you have more space at the podium.

23 Ma'am, do you have water still?

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1 WIT: Yes, sir.

2 MJ [Col COHEN]: Okay. Mr. Ryan, your witness.

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

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

5 MTC [MR. TRIVETT]: Sir, I think you referred to

6 Mr. Groharing as Mr. Ryan. So for the record ----

7 MJ [Col COHEN]: No, I said Groharing.

8 MTC [MR. TRIVETT]: Oh, we both heard Ryan.

9 MJ [Col COHEN]: Oh, sorry.

10 MTC [MR. TRIVETT]: Sorry.

11 MJ [Col COHEN]: That's all right. At least I intended

12 to. If I didn't, I did recognize you as Mr. Groharing.

13 TC [MR. GROHARING]: That's all right, Your Honor.

14 MJ [Col COHEN]: That's okay. It would not be the first

15 time, unfortunately, that I have called someone by the wrong

16 name. So I apologize if I did.

17 TC [MR. GROHARING]: ---- day for Mr. Swann, so ----

18 MJ [Col COHEN]: Sir, your witness.

19 **CROSS-EXAMINATION**

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

21 Q. Special Agent Perkins, I'm going to ask you a little  
22 bit about your practice with e-mails regarding cases, okay?

23 A. Okay.

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1 Q. Would it have been your practice to include  
2 substantive case-related information in e-mails?

3 A. And you're talking circa 2001?

4 Q. Circa 2001.

5 A. Okay. So best of my recollection, 18 years ago, so  
6 pardon for the -- you know, having to fill in some of the  
7 blanks.

8 Q. No specific examples are required. Just generally,  
9 what your practice would have been.

10 A. Right. Generally -- I mean, it's changed over time,  
11 so even what practice was in place at the time, but I would  
12 say back in circa 2001, you know, unless operating under an  
13 exigent circumstance or something that we would want to give a  
14 heads-up to an agent regarding a lead that might be coming  
15 their way, for the FBI, they engrain in you, if it's not on  
16 paper in the file, cut a lead, it doesn't exist.

17 So there could have been situations that were exigent  
18 that were dealing with either a legat or an ALAT in a foreign  
19 country where you might need to share information quickly with  
20 an e-mail followed by a lead.

21 So I would say the general practice would be that if  
22 you did use e-mail for that purpose, that limited purpose,  
23 then you would make sure that that information got into a lead

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1 and got sent to them so that, if not, you're unable to track  
2 when the request was made, what request was made, and then  
3 what the expectation for the return would be. So I think  
4 generally that would be the practice.

5 Q. Fair to say that throughout your career, it was  
6 important to have significant case-related information in the  
7 case file?

8 A. Absolutely.

9 Q. Have you ever conducted a telephonic interview?

10 A. It's a possibility.

11 Q. If you needed to interview an individual who you knew  
12 to be a covert officer of the CIA, would you approach him in  
13 public, show your credentials, and ask to speak with him about  
14 his covert activities?

15 A. I would not for fear of risking exposing his covert  
16 status.

17 Q. If you were conducting an investigation that involved  
18 information at the TS//SCI level that involved current and  
19 former covert CIA officers, what would you do to attempt to  
20 interview relevant witnesses?

21 A. So if I had such a request, I would certainly go to  
22 my chain of command ----

23 LDC [MR. CONNELL]: Objection, scope of direct.

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1 MJ [Col COHEN]: Counsel?

2 TC [MR. GROHARING]: Well, Judge, the witness has relevant  
3 testimony to these matters. She's here.

4 MJ [Col COHEN]: As a matter of M.R.E. 611, I will allow  
5 you some leeway here so we can get through the witness'  
6 testimony.

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

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

9 Q. Please continue.

10 A. So with regard to that, if I had gotten such a  
11 request, I would have gone through my chain of command to see  
12 what the proper protocol was to address that concern. It  
13 certainly would raise my level of concern with regard to how  
14 that was approached. Go to my chain of command. They would  
15 likely go to the chain of command of the agency of the person  
16 and then back down to ensure that the equities of that other  
17 government agency was protected during the course of any  
18 communication.

19 Q. So someone else would ultimately contact that person,  
20 advising them of your request for interview?

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

22 A. Very likely.

23 LDC [MR. CONNELL]: ---- objection. The objection is to

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1 leading. If this is the government's witness for this area,  
2 they should ask open-ended questions.

3 MJ [Col COHEN]: Counsel, do you have any objection to  
4 doing so?

5 TC [MR. GROHARING]: I don't, Your Honor.

6 MJ [Col COHEN]: Okay. Then please. I will still allow  
7 to you continue. You may treat it as a witness that you're  
8 calling. All right.

9 TC [MR. GROHARING]: And that's specifically ----

10 MJ [Col COHEN]: But only with -- but only with respect to  
11 anything that wasn't covered during direct examination.

12 TC [MR. GROHARING]: Sure.

13 MJ [Col COHEN]: Then you may lead as a cross-examination.  
14 Thank you for your willingness to do so.

15 Q. So ultimately in that situation, would it be you or  
16 someone else that would contact the individual and advise them  
17 of your request for an interview?

18 A. It would likely be, again, negotiated up my chain and  
19 across, and very likely someone from their chain of command  
20 that would advise them of my interest to interview them.

21 Q. Are you aware of any efforts by foreign terrorist  
22 organizations to target CIA officers?

23 A. Yes.

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1 Q. What are those?

2 A. Specifically -- and I want to say it was early '90s.  
3 I actually went over to speak to someone who had seen the  
4 attack. It was an attack on a van, I think, that was coming  
5 out of Karachi, Pakistan, and they had fired into the van and,  
6 I think, killed everyone inside. I'm familiar with the Khost,  
7 with the source that came in. And the agency folks were lined  
8 up to meet, and walked in, was able to get past security based  
9 on relationships, and then blew himself up, killing a number  
10 of people. A number of CIA folks.

11 Q. And are you familiar with an individual named  
12 Hakimullah Mehsud?

13 A. Yes.

14 Q. And do you know what role, if any, he had in  
15 orchestrating that attack?

16 A. No, I'm not going to be able to answer that.

17 Q. I can move on to the next question.

18 MJ [Col COHEN]: You may.

19 Q. So would it be fair to characterize the purpose of  
20 your interview with Mr. Ali as to obtain a useable law  
21 enforcement statement completely detached from any statement  
22 that he had made in CIA custody or any evidence that could  
23 have been derived from any statements that he had made?

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1 A. That's accurate.

2 Q. Did you take efforts to avoid using any of Mr. Ali's  
3 prior statements in the interview?

4 A. Yes.

5 Q. Did you take similar efforts with respect to any  
6 material that could have been obtained based on statements he  
7 made after his capture?

8 A. Yes.

9 Q. Is it fair to describe the interview as document  
10 based?

11 A. Yes.

12 Q. What does that mean?

13 A. So documents that we had gathered during the course  
14 of the PENTTBOM investigation with regard to him and even  
15 reviewing the 1A, we included a lot of documents that were  
16 obtained in our financial investigation as well as some of the  
17 document exploitation sites as well as documents obtained from  
18 an apartment associated with Mr. al Hawsawi, documents  
19 associated from the site exploitation of Ramzi Binalshibh, and  
20 all documents that were obtained prior to his capture.

21 And so relying on those documents is what a  
22 document -- looking at the documents and having a  
23 document-intensive focus is meant.

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1 Q. Why did you use that strategy?

2 A. It's hard to argue when you have a hard document in  
3 front of you. Like if I ask an open-ended question, I may get  
4 an answer that I can't vet or verify as I'm going along.

5 So for strategic reasons, if you showed them a  
6 document that I have information about, say their name or a  
7 signature that's similar to something else, or connects via a  
8 P.O. box or a phone number or an alias that's repeatedly used,  
9 then -- or names that are repeatedly used where you're sending  
10 money to a person that's the same person and maybe a  
11 signature. I'm going to connect those things up and  
12 circumstantially in my mind believe that this person is the  
13 person who did it. So in being able to use that, I'm able to  
14 vet the truthfulness of the conversation we're having.

15 Q. Now, you mentioned that CIA officers -- CIA personnel  
16 had some involvement in -- you interacted with CIA personnel  
17 to some degree in preparing for these interviews. What was  
18 the role of the CIA personnel with whom you interacted?

19 A. So those personnel would have been the attorneys  
20 that, again, would have been reviewing materials that would be  
21 used in our interviews for their equities. So to protect  
22 national security equities or other concerns they may have,  
23 something we may be using may impact an operation we're not

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1 aware of, and that's their role to protect that information on  
2 behalf of their agency. So that's how we would have  
3 interacted with them, for that purpose.

4 Q. Did you consider them part of the -- the prosecution  
5 team or the interview team?

6 A. No.

7 Q. Did they help you formulate questions or strategy or  
8 anything like that?

9 A. No.

10 Q. What, if anything, did they do other than ensure that  
11 CIA information was properly protected?

12 A. That's all they did.

13 Q. Did that -- was that the same with regard to the NSA  
14 attorney that you interacted with during this process?

15 A. Yes.

16 Q. On direct exam, you talked about the PENTTBOM  
17 investigation files.

18 A. Yes.

19 Q. Please describe that for the court, what those files  
20 were.

21 A. So it was a file from 9/11. When 9/11 happened, the  
22 file was ultimately opened, and probably every single piece of  
23 document that was done in 56 field offices and every single

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1   legat was placed into the PENTTBOM file, hundreds of thousands  
2   of documents that would have been placed there. So any lead  
3   that would have been covered regardless of its association to  
4   9/11, ultimately, if the possibility existed, everything went  
5   into that file.

6           So it was a very large, extensive file covering the  
7   entire FBI response. So any searches, any interviews, any  
8   leads, everything would have gone into that file.

9           MJ [Col COHEN]: And that was just if it was tangential in  
10 any way?

11          WIT: Regardless of -- at some point, the team took charge  
12 of that to ensure that nothing went into the file that we  
13 didn't review and deem associated with 9/11 because the  
14 knee-jerk response was everything went into the PENTTBOM file.

15          Q. So things like responses to subpoenas, would they  
16 have been part of the investigative file?

17          A. Yes. Yes.

18          Q. If you asked for a foreign government's assistance in  
19 locating documents, is that the kind of thing that would go in  
20 a -- the Pentagon investigative file?

21          A. Yes.

22          Q. So these materials, is it fair to say that you had  
23 all of these materials before ever stepping foot on this

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1 facility where you prepared for the interview in late 2006?

2 A. Yes. I went back and reviewed all of the 1A  
3 documents that were shown and used in this interview, and  
4 every document, everything that was shown to him, we had prior  
5 to his capture.

6 Q. So those materials were not materials that -- that  
7 were in the PENTTBOM file that you needed any assistance from  
8 the CIA to locate or anything like that?

9 A. Right. I think in reviewing what we used from the  
10 1A, it was all -- they were all items either obtained from the  
11 PENTTBOM file or sensitive site exploitation holdings. So  
12 sensitive site exploitation where the FBI would have been the  
13 initial custodian of the documents that would have been  
14 retrieved, and so we took custody of them and started a chain.  
15 So all FBI holdings is what we used in the interview.

16 Q. So is it fair to say that in situations like this  
17 overseas -- and I don't want you to disclose any classified  
18 information, so -- but generally speaking, when materials were  
19 obtained in -- related to this case in various locations, is  
20 that something that you would coordinate with the CIA as far  
21 as -- regardless of how they were acquired, whether they might  
22 have a particular equity within the materials?

23 A. Yes. We would want them to review that material for

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1 their national security equities or agency equities.

2 Q. And was it those materials that were the subject of  
3 the requests that you talked about on direct exam?

4 A. Yes.

5 Q. Now, with regard to the actual preparation of the  
6 letterhead memorandum after the interview -- and I'll talk  
7 more about the interview in a few minutes -- but other than  
8 reviewing that memorandum and your notes for classification,  
9 what, if any, involvement did the CIA have -- CIA have with  
10 regard to the letterhead memorandum?

11 A. So with regard to that, they would have reviewed the  
12 letterhead memorandum for classification review, so the level  
13 of classification for the information contained in the LHM.  
14 The information would have been typed on a CIA computer with a  
15 CIA thumb drive, I think, that was fingerprint controlled by  
16 us. It would have been -- and I'll stop there.

17 Q. Okay. Did they have any ability to edit the  
18 document, as far as changing what was said in the LHM?

19 A. No.

20 Q. How about your notes? When they were reviewed, were  
21 there any changes made to your notes?

22 A. No.

23 Q. Let's talk about the atmospherics of your interview

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1 with Mr. Ali. How would you describe the tone and tenor that  
2 Special Agent Fitzgerald used when he was interacting with  
3 Mr. Ali?

4 A. So I would describe the interview as rapport-based  
5 interview, so friendly tone, professional tone,  
6 conversational, questions and answers, no confrontation.

7 Q. Do you recall anyone raising their voice at any point  
8 during the interview?

9 A. No.

10 Q. Did you ask and did Special Agent Fitzgerald ask  
11 questions in an open-ended manner?

12 A. Yes. Agent Fitzgerald would have asked most of the  
13 questions. If I had asked, it would have been few. But yes,  
14 open-ended questions. And oftentimes, if he had -- if he was  
15 talking about something that we had a document that might  
16 reflect the nature of what he was talking about, then he would  
17 be shown that document, again to show him that we had done our  
18 homework and that we had gathered lots of information about  
19 him, we knew lots of things about him. And, you know, when he  
20 would talk about it, it gave us an opportunity to show him  
21 what we knew and the fact that, yeah, we already knew the  
22 answer. We knew that information.

23 Q. Did you ever have any difficulty communicating with

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1 him?

2 A. No.

3 Q. Did it ever seem as if he was having difficulty  
4 understanding you?

5 A. No.

6 Q. Did he ever seem to disassociate during the  
7 interview?

8 A. No.

9 Q. Did he complain about hallucinating or anything like  
10 that?

11 A. No. He didn't complain about any physical ailments.  
12 I think when we asked him whether he was taking medication for  
13 any sort of physical ailment, a stomach ulcer or something  
14 like that, he may have been taking medication for that his  
15 stomach as bothering him on occasion. And we would inquire  
16 about whether he was okay, you know, how he was feeling.

17 Q. Did he appear anxious?

18 A. No.

19 Q. Did he appear nervous?

20 A. No.

21 Q. Did he appear relaxed?

22 A. He seemed very relaxed, yes.

23 Q. Did he smile throughout the interview?

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1           A.    I mean, I think it was -- it was a cordial  
2 back-and-forth.  Certainly, you know, when we had lunch, we  
3 would share lunch with him and take the opportunity to sort of  
4 take a break from questions and not talk about what we had  
5 been talking about.  Really, sort of just share a meal  
6 together.  And I would -- I would describe the conversation  
7 like you would have almost with anyone, a lunch conversation,  
8 a friend you were going to meet.

9            And I recall talking about -- there was some TV show,  
10 and I don't know if it was Seinfeld or something like that,  
11 like a prominent TV show that he had watched, and, you know,  
12 conversations maybe about western things like Starbucks and  
13 stuff like that.  But talking -- just talking in general like  
14 you would with anyone, sharing a meal and, again, trying to  
15 build rapport and trust with him during the course of that.

16           So absolutely didn't -- you know, very cordial.

17           Q.    Was that consistent throughout the course of the  
18 interview?

19           A.    Yes.

20           Q.    Did you ask him about -- well, you didn't ask him  
21 about specifically how he was treated in CIA custody, did you?

22           A.    I did not.

23           Q.    And at any point did he mention how he was treated?

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1 A. He didn't bring that up.

2 Q. Why didn't you ask him about his treatment?

3 A. So with regard to the setup of the interview, that  
4 was one of the things that would have required permission from  
5 the CIA to use that sort of information. We didn't seek that  
6 sort of permission.

7 And I think further, there was a separation between  
8 the CIA and the FBI that we were attempting to draw, and that  
9 may have drawn some sort of connection between the two of us  
10 to raise that issue with him. And furthermore, sort of  
11 talking about things that may bring up bad associations or bad  
12 memories I don't think would have served, you know, the  
13 purpose of our rapport-based interview. We wanted to have a  
14 conversation with him, and that was probably not -- would not  
15 be the best way to go about building that relationship and  
16 bringing and dredging up old memories.

17 Q. Okay. Do you believe that the interview -- that  
18 Mr. Ali voluntarily participated in the interview?

19 A. Yes.

20 Q. Why would you say that?

21 A. So, you know, when we first went in there, we wanted  
22 to establish that he was able to speak English. And so we  
23 asked him a series of questions to ensure his English-speaking

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1 abilities. And he had learned English as a kid when he was  
2 growing up in Kuwait and Iran. He had studied English in  
3 school, he said. At the age of 17 he was really concerted  
4 about learning English and had studied it for the purpose --  
5 he knew he would need it for school and would need it for  
6 business and to be successful in life. He said it was a  
7 worldwide language and something that he found easy to learn.  
8 And he said he was fluent in that.

9           So we first established his English-speaking  
10 capabilities to ensure that we were capable of communicating  
11 in a way that didn't leave concern. We told him that if he  
12 had any problems understanding us, there was a translator  
13 standing by that would be made available to him. He said,  
14 "I'm 100 percent capable of speaking English, and I do not  
15 need a translator." So at that point, we felt confident that  
16 we were able to continue the conversation in English.

17           Next, we really wanted to make sure he understood who  
18 we were. So the question was asked, "Do you know who the FBI  
19 is?" And he said -- he distinguished the FBI from the CIA.  
20 He said the CIA, where he was before, they work externally;  
21 and the FBI, they work internally.

22           So Agent Fitzgerald informed him that, in fact, we're  
23 a law enforcement agency. We do work domestically, but we

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1 also conduct investigations outside. We would have told  
2 him -- he -- we would have identified ourselves and we did  
3 identify ourselves by our credentials and our true name. So  
4 the two FBI agents, myself and Agent Fitzgerald, identified  
5 ourselves, showed our FBI credentials, the CITF agent or  
6 criminal investigative task force agent Steve McClain showed  
7 his credentials, indicating that he's with CITF and part of  
8 Department of Defense.

9 He was told that the FBI and the CIA are two  
10 different agencies. And he said that's what it seemed like to  
11 him. He affirmed these things as we were sharing with him who  
12 we were and sort of the circumstances.

13 Then we wanted to ensure that he understood his  
14 changed circumstance, right; that he was had -- he was in a  
15 different -- so he was in a different place from where he had  
16 been. Agent Fitzgerald asked him, "Do you know where you  
17 are?" And he said, "I'm at GTMO." And he said -- he -- Ali  
18 responded, "GTMO. GTMO is 100 percent under the control of  
19 the Army."

20 And so Agent Fitzgerald corrected him and said, "It's  
21 actually the Army and the Navy that controls the base."

22 He was told that he is no longer in the custody of  
23 the CIA. And he said, yeah, he -- that's what he understood

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1 because he had not seen the CIA around anymore.

2 He was told that he would not be returned to the CIA  
3 and, in fact, that the military had responsibility for his  
4 care, his food, his control.

5 We informed him that, had he spoken to other  
6 individuals or other people and -- or the CIA in answer to  
7 their questions, that we were not concerned about what he had  
8 said to them in the past; that we were concerned about what he  
9 knew from himself, not -- it didn't matter what he had said to  
10 anybody else.

11 At that point, he said to us, you know, "The agency  
12 referred to me by the name Ammar, and you guys are referring  
13 to me by the name Ali. It looks like you're looking at me  
14 officially."

15 And so we said, "Yes, we're looking at you  
16 officially."

17 He would have been told that he may have seen  
18 documents in the past. He may have seen them before, maybe  
19 even some of the documents we were showing him -- we didn't  
20 know -- but that if he did, we were interested in his  
21 independent reflection with regard to those documents, not  
22 anything he may have said about those documents to anyone  
23 else.

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1           And at that point, we would have asked him if he was  
2 willing to answer our questions. And he said, "Yes, let's get  
3 down to business," were his words.

4           During the course of the interview, we would ensure  
5 at breaks, in the morning when we started, at the end of each  
6 day, that we inquired of him whether he would continue to  
7 answer questions, would he be willing to answer -- continue to  
8 answer questions. So in the morning, "Would you answer  
9 questions?" He would say, "Yes." At breaks, "Are you still  
10 willing to continue on and look at more documents and answer  
11 questions?" "Yes." At the end of the day, "Are you willing  
12 to come back and see us the next day?"

13           So I think -- and he was given breaks along the way.  
14 He was -- he was told that anytime actually, he could take  
15 breaks so for food or prayer or whatever. Sort of -- he's in  
16 control of, you know, the timing of things, and he could take  
17 a break whenever he wanted.

18           On the third day, in talking to him, he again raised  
19 the issue of whether this was his legal case. He said is this  
20 his legal case, and we said, "Do you remember when we talked  
21 the first day, you asked the question this seems like it's  
22 official, and we told you yes?"

23           He said, "Am I going to -- is the Department of

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1 Justice going to come and talk to me?"

2 And we basically said, "We are the -- you know, the  
3 Department of Justice, and we told you we're going to tell our  
4 bosses about our conversation, and about you."

5 And he said something to the effect of, "Yeah, it  
6 seems like you're asking me about the documents, and the  
7 investigation that you conducted is different from the CIA."

8 And we said yes.

9 And at the end of that day, we would have again  
10 said -- and I think at that point, we thought we may have been  
11 done -- "Would you still be willing to talk to us if we needed  
12 to come back and talk to you again?"

13 And he said yes.

14 At some point he shared a note out with us. It was a  
15 note -- I think something we had talked about that he wanted  
16 to make sure we had information from him regarding Rowlah or  
17 something, but a note to Jim and Abbey, maybe FBI or something  
18 like that.

19 We went back to see him on January the 30th, and we  
20 went in to see him. He said -- you know, sort of -- he  
21 seemed happy to see us. And he said, you know, "For the last  
22 couple of days, I was thinking about there were other things  
23 that I wanted to talk to you about, and I wasn't sure if you

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1 were still on the island or if you had left. But I was going  
2 to ask for paper to write a note to the guards so that they  
3 could see if I could talk to you again."

4 So based on sort of the totality of all of those  
5 things, I was confident that he had voluntarily chosen to  
6 speak to us.

7 Q. Throughout the entire course of all of the  
8 interviews, at any point, did Mr. Ali do anything that  
9 suggested to you that he was incapable of participating in a  
10 voluntary interview?

11 A. No. Nothing.

12 Q. Did you feel like his statements were -- that he made  
13 to you were reliable?

14 A. Based on having documents to show him and the  
15 information that connected him, based on the investigation we  
16 had conducted, yes.

17 Q. Were his responses consistent with the PENTTBOM  
18 investigation?

19 A. Yes.

20 Q. Now, assuming that in 2003, when Mr. Ali was  
21 captured, and at that point, you had all of the information  
22 that you -- at your disposal at the time of his capture, and  
23 you had a memo, the same memo from the FBI regarding how the

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1 interview -- how the interview should be conducted. Would you  
2 have conducted the interview any differently than you  
3 conducted the interview?

4 A. No.

5 Q. Why not?

6 A. All of the information we gathered was pertinent to  
7 either the PENTTBOM investigation, the work that we had done  
8 to get to that point. It would have been documents that even  
9 in a federal court, I could have gotten permission, I believe,  
10 to use that information, even from a sensitive site.

11 So all documents that would have been obtained prior  
12 to his capture, it would have been consistent with the sort of  
13 case -- I put together to-go books on my subjects when I'm  
14 working subjects and try to include all of the evidence that  
15 connects to them, phone numbers, P.O. boxes, anything that's  
16 going to -- that's going to show their association to either  
17 the attack that was carried out or other folks, or identify  
18 their people, you know, and connect those people.

19 So it would have been the same case I would have --  
20 would have done in federal court with the information that I  
21 had.

22 TC [MR. GROHARING]: Okay. Thank you, Special  
23 Agent Perkins.

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1 MJ [Co1 COHEN]: Redirect or cross-examination?

2 LDC [MR. CONNELL]: Court's indulgence for a moment?

3 MJ [Co1 COHEN]: You may.

4 LDC [MR. CONNELL]: Nothing further from us, Your Honor.

5 MJ [Co1 COHEN]: All right.

6 LDC [MR. CONNELL]: To be 100 percent clear, I do

7 have ----

8 MJ [Co1 COHEN]: Classified.

9 LDC [MR. CONNELL]: ---- some questions for classified,  
10 but nothing further for unclass.

11 MJ [Co1 COHEN]: Mr. Harrington wants to talk to you for a  
12 second.

13 [Counsel conferred.]

14 LDC [MR. CONNELL]: [Counsel away from podium; no audio.]

15 MJ [Co1 COHEN]: All right. Thank you, Mr. Connell. In  
16 case the microphone didn't pick that up, he said nothing  
17 further. All right.

18 Momentarily then we will take a recess. It's going  
19 to take approximately 30 minute, roughly, for us to bring down  
20 the stenographers and set up the stuff for the closed session.

21 Does either side anticipate -- based on the -- it  
22 seems like based on the way that ended, we will not need  
23 another open session. Is that correct?

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1 LDC [MR. CONNELL]: Not from us, sir.

2 TC [MR. GROHARING]: Not from us either.

3 MJ [Col COHEN]: All right. The day will conclude with  
4 closed session testimony. While we are in open session, once  
5 again, I want to give credit where credit is due.

6 I want to thank Mr. Groharing, Mr. Trivett,  
7 Mr. Connell for the way in which you handled the classified  
8 nature of evidence and presented that and working through the  
9 guidelines ordered by the court. It made things go very  
10 smoothly. And I wanted to make sure that I noted all of you  
11 by name for the excellent work that you did this afternoon.  
12 Thank you.

13 Ma'am, we'll temporarily excuse you. We'll bring you  
14 back as soon as we can have the stenographers in here for the  
15 closed session and classified testimony.

16 WIT: Yes, sir.

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

19 MJ [Col COHEN]: All right. We're in recess.

20 [The R.M.C. 803 session recessed at 1651, 20 September 2019.]

21 [END OF PAGE]

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