

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 [The R.M.C. 803 session was called to order at 0902,  
2 25 September 2019.]

3 MJ [Col COHEN]: The military commission is called to  
4 order. The parties are present. All of the accused except  
5 Mr. Hawsawi are here.

6 Trial Counsel, it appears to me that all of the  
7 counsel are the same; is that correct?

8 CP [BG MARTINS]: Good morning, Your Honor. Yes, that's  
9 correct. Major Dykstra had been out on commission business  
10 yesterday afternoon. He's returned.

11 MJ [Col COHEN]: All right. Thank you, sir,  
12 General Martins. I appreciate it. Good morning.

13 Mr. Sowards, good morning. It appears that all of  
14 your counsel are here this morning as well as your client,  
15 Mr. Mohammad.

16 LDC [MR. SOWARDS]: That is correct, Your Honor.

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

18 Mr. Nevin.

19 CDC [MR. NEVIN]: Sorry to interrupt, Your Honor.

20 MJ [Col COHEN]: No problem.

21 CDC [MR. NEVIN]: I wanted just to advise the military  
22 commission that a commission- -- convening authority-, rather,  
23 appointed consultant is with us today who has all the

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 appropriate clearances. She is not -- she is potentially a  
2 witness on the motion to suppress, but not with respect to any  
3 of the testimony that's being presented today, and she's here  
4 pursuant to Military Commission Rule of Evidence 615(c) and  
5 (d), a convening authority-approved consultant. I just wanted  
6 to put that on the record for the ----

7 MJ [Col COHEN]: Thank you, sir. I appreciate the  
8 heads-up.

9 Ms. Bormann, good morning. It looks -- well,  
10 Captain Peer is probably not here, but I see his jacket, so  
11 I'm expecting that he will be back at some time.

12 LDC [MS. BORMANN]: Captain Peer is away doing other  
13 commission-related business. We are going to match up  
14 Captain Peer and his jacket before he walks in here.

15 MJ [Col COHEN]: All right.

16 LDC [MS. BORMANN]: I am here, as is Mr. Bin'Attash and  
17 Mr. Montross.

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

19 Good morning, Mr. Harrington.

20 LDC [MR. HARRINGTON]: Good morning, Judge. We are the  
21 same today, and Mr. Binalshibh is here.

22 MJ [Col COHEN]: Excellent. Thank you, sir. I appreciate  
23 it.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Mr. Connell, good morning.

2 LDC [MR. CONNELL]: Good morning, sir. Mr. al Baluchi and  
3 all counsel are present.

4 MJ [Col COHEN]: Excellent.

5 Mr. Ruiz, good morning.

6 LDC [MR. RUIZ]: Good morning, Judge. Colonel Williams is  
7 back with us today. Otherwise the same.

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

9 All right. Mr. Swann, will you be doing the  
10 testimony?

11 I recognize the Major as the same major who testified  
12 yesterday. She is still under oath.

13 WIT: Thank you, sir.

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

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

17 DIRECT EXAMINATION

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

19 Q. Major, did you have occasion to advise Mr. al Hawsawi  
20 of his right to attend this morning's proceeding?

21 A. I did.

22 Q. Did you do it in English or in Arabic?

23 A. English.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. Do you have Appellate Exhibit 660HH in front of you?

2 A. Yes, sir.

3 Q. And is that his signature that appears on the second  
4 page of the document?

5 A. Yes, sir.

6 Q. Do you have any question about the voluntariness of  
7 his waiver?

8 A. I do not.

9 TC [MR. SWANN]: Thank you, Your Honor.

10 MJ [Col COHEN]: Thank you.

11 Mr. Ruiz, would you please remind me -- I remember we  
12 talked about this a couple of months ago -- with respect to --  
13 should it be al Hawsawi when I refer to him or just Hawsawi?

14 LDC [MR. RUIZ]: I would say Mr. al Hawsawi, Judge.

15 MJ [Col COHEN]: All right. Thank you. I just wanted to  
16 make sure I was pronouncing his name correctly.

17 Mr. Ruiz, have you had the opportunity to review  
18 what's been marked as Appellate Exhibit 660HH?

19 LDC [MR. RUIZ]: I have.

20 MJ [Col COHEN]: Do you have any questions of the witness?

21 LDC [MR. RUIZ]: I don't.

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

23 LDC [MR. RUIZ]: Thank you.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: I find that Mr. al Hawsawi has knowingly  
2 and voluntarily waived his right to be here at today's  
3 proceedings.

4 I will temporarily excuse you until a future session  
5 if you testify again. Thank you.

6 WIT: Thank you, sir.

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

8 MJ [Col COHEN]: Handing Appellate Exhibit 660HH to the  
9 court reporter.

10 Standing objection is noted with respect to identity.

11 All right. Trial Counsel, are you ready to call your  
12 witness?

13 LDC [MR. CONNELL]: Sir, I have one ----

14 MJ [Col COHEN]: One second, Mr. Connell. Mr. Connell, I  
15 should just start -- I should always ask, "Hey, do you have  
16 something you want to say?"

17 Good morning.

18 LDC [MR. CONNELL]: Good morning, sir. One housekeeping  
19 matter, which is that yesterday, during Judge DeLury's  
20 testimony, there was mention of two CSRT exhibits which were  
21 referred to as R-6 and R-7.

22 MJ [Col COHEN]: Okay.

23 LDC [MR. CONNELL]: The -- they have over the years been

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 the subject of several discovery requests by us, and this --  
2 just to basically close the loop on this, this morning I am  
3 moving to compel the production of those two exhibits. I am  
4 authorized by the government to state that they are invoking  
5 national security privilege over those two exhibits and will  
6 not produce them.

7 MJ [Col COHEN]: Okay.

8 TC [MR. RYAN]: That's correct, sir.

9 MJ [Col COHEN]: All right. Mr. Connell, is there a  
10 specific AE series I can look at with respect to the rationale  
11 for those two exhibits? If you need some time to think about  
12 it, you may have it. I'm -- just want to make sure, if  
13 there's something in writing I can go back and read, I wanted  
14 to do so.

15 LDC [MR. CONNELL]: I don't think there is, sir, but I'd  
16 be happy to file a short history of the issue ----

17 MJ [Col COHEN]: If you would, that would assist me.

18 LDC [MR. CONNELL]: ---- the position that it has.

19 MJ [Col COHEN]: That would be wonderful. Like I said,  
20 just enough that I understand the context of why you want  
21 them, et cetera.

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

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

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 LDC [MR. CONNELL]: Thank you.

2 MJ [Col COHEN]: All right. Anything else?

3 Negative response.

4 Trial Counsel, you may call the witness.

5 CP [BG MARTINS]: Sergeant, please inform the witness to  
6 come into the courtroom.

7 Sir, please proceed to the witness stand, remain  
8 standing, raise your right hand for the oath.

9 D.J. FIFE, civilian, was called as a witness for the  
10 prosecution, was sworn, and testified as follows:

11 **DIRECT EXAMINATION**

12 Questions by the Chief Prosecutor [BG MARTINS]:

13 Q. Could you please state your full name and spell it  
14 for the record?

15 A. My name is D.J. Fife. My last name is spelled  
16 F-I-F-E.

17 Q. Could you please state your state of residence.

18 A. I live in the state of Virginia.

19 Q. And what is your current occupation?

20 A. I'm a physical scientist, forensic examiner.

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

22 MJ [Col COHEN]: Mr. Ryan, would you please just go over  
23 some general rules with respect to interpreters, those kinds

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 of things, so the witness is aware.

2 TC [MR. RYAN]: Yes, sir.

3 Questions by the Trial Counsel [MR. RYAN]:

4 Q. Good morning, Mr. Fife.

5 A. Good morning.

6 Q. Taking His Honor's instruction, I just want you to  
7 know that -- a few things. First of all, very large  
8 courtroom, sound doesn't always carry well; although the  
9 microphones are extremely good, they're not so good if you're  
10 not speaking directly into them.

11 A. Okay.

12 Q. So I'll ask you to try and keep that in mind, also to  
13 keep your voice up as much as possible.

14 Secondly, the words you will be saying today, the  
15 testimony you will be giving, will be taken down for purposes  
16 of creating a record by our stellar court reporting system.  
17 But also at the same time, although you may not see them, your  
18 testimony will be translated for purposes of the accused. And  
19 for their purposes, I would ask that you speak clearly and  
20 slowly as well.

21 To the extent that at some point you speak -- you are  
22 moving too quickly, you may see a signal on the -- a small  
23 screen that might -- I think is in front of you.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Actually, he doesn't have one, Counsel.  
2 So you and I may get one, so we'll just have to inform him.

3 Q. If we get a signal -- either His Honor or me get a  
4 signal that you're going too quickly, we'll ask you to slow  
5 down.

6 A. Okay.

7 Q. Understood, sir?

8 A. Yes.

9 MJ [Col COHEN]: Thank you, Mr. Ryan.

10 CDC [MR. SOWARDS]: Excuse me, Your Honor. I beg your  
11 pardon, Mr. Ryan.

12 MJ [Col COHEN]: Yes, Mr. Sowards.

13 LDC [MR. SOWARDS]: Is there any way to adjust the  
14 position of the monitor? We are actually from this end unable  
15 to see Mr. Fife.

16 WIT: Is it possible to make this chair ----

17 LDC [MR. SOWARDS]: If it's not possible, then I guess  
18 we'll have to ----

19 WIT: Is that better?

20 MJ [Col COHEN]: Yeah, Mr. Fife, if you will pull -- Mr.  
21 Fife, if you will just pull your mic just a little bit more to  
22 your left. There we go. And then I think that's about as  
23 much as we can do unfortunately.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 LDC [MR. SOWARDS]: Thank you, sir. And is that  
2 comfortable for the witness? I don't want to ----

3 WIT: Yes.

4 LDC [MR. SOWARDS]: Okay. Thank you, sir.

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

6 TC [MR. RYAN]: Your Honor, may I proceed?

7 MJ [Col COHEN]: You may. Thank you, Mr. Ryan.

8 **DIRECT EXAMINATION CONTINUED**

9 **Questions by the Trial Counsel [MR. RYAN]:**

10 Q. Sir, you stated that your name is D.J. Fife; am I  
11 correct?

12 A. Yes.

13 Q. And by whom are you employed?

14 A. I work at the Federal Bureau of Investigation at the  
15 laboratory.

16 Q. Could you pull the microphone just a little bit  
17 closer.

18 A. Closer?

19 Q. A little closer to you. Is that possible?

20 A. Yes.

21 Q. Okay. And for how long have you been with the FBI?

22 A. Over 15 years.

23 Q. Has it always been in that capacity?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Yes, always as a latent fingerprint examiner.

2 Q. Had you done that field of work prior to the FBI?

3 A. No.

4 Q. Sir, could you give us your educational background,  
5 please?

6 A. I have a Bachelor's of Science in biology with a  
7 minor in chemistry from Utah State University in Logan, Utah,  
8 and I have master's degree in molecular microbiology from the  
9 University of Massachusetts in Boston.

10 Q. And what training and experience do you have in the  
11 area of fingerprint examination and analysis?

12 A. So I completed a two-year training program at the  
13 laboratory in Quantico where I learned all aspects of the  
14 latent print examiner's job, which is I receive items of  
15 evidence and I process those items of evidence. I can then  
16 compare any latent prints that were detected. I can conduct  
17 automated searches. I then compare a final report, and I can  
18 testify to those findings in court.

19 Q. And does the Federal Bureau of Investigation rely  
20 upon your work in the conduct of its official law enforcement  
21 duties?

22 A. Yes.

23 Q. Within the FBI Laboratory, how much of your work is

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 spent on fingerprint examination and analysis?

2 A. My job is 100 percent fingerprint examination and  
3 analysis.

4 Q. And, sir, have you ever had the occasion to testify  
5 in any court of law as an expert in the field of fingerprint  
6 examination and analysis?

7 A. Yes.

8 Q. How many times, sir?

9 A. Maybe seven or eight times.

10 Q. And in those situations, were you qualified as an  
11 expert in the field?

12 A. Yes.

13 Q. And were you allowed to testify as an expert and give  
14 your expert opinions?

15 A. Yes.

16 Q. Could you tell us which particular courts that you  
17 testified in and were accepted as an expert witness?

18 A. I've testified in state, federal, and also military  
19 commissions.

20 Q. And which military commission case did you testify  
21 in?

22 A. The al Bahlul case.

23 Q. And in terms of federal cases, could you draw our

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 attention to any specific and significant cases in which you  
2 provided testimony?

3 A. I testified in the Chelsea bombing in New York City,  
4 the al Rahimi case. I testified in the Boston Marathon  
5 bombing.

6 Q. The Chelsea bombing case would have been the Southern  
7 District of New York?

8 A. Yes.

9 Q. And the Boston Marathon bombing case would have been  
10 in the District of Massachusetts?

11 A. Yes.

12 Q. And was the defendant's name in that case Tsarnaev?

13 A. Yes.

14 TC [MR. RYAN]: Your Honor, I ask for permission to  
15 question this witness as an expert in the field.

16 MJ [Col COHEN]: Any objection to his qualifications as an  
17 expert in the field of latent fingerprint analysis?

18 ADC [Capt ANDREU]: No objection.

19 MJ [Col COHEN]: All right, any others?

20 LDC [MR. RUIZ]: Judge, not at this time.

21 MJ [Col COHEN]: All right. I will so recognize him.

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

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

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. Mr. Fife, a couple of preliminary questions. First,  
2 what is the term a "known fingerprint"?

3 A. So a known fingerprint generally refers to a  
4 fingerprint card. It's the intentional recording of the  
5 friction ridge arrangements on the fingers on the palmar side  
6 of the hand and also on the soles of the feet. There's a  
7 special type of skin called friction ridge skin. It's -- the  
8 recording of these impressions is usually referred to as a  
9 known print, and that is typically achieved using black  
10 printer's ink and rolling the finger on a standard white card.

11 Q. Give us some -- give us an idea of the situations in  
12 which a known fingerprint or prints are collected from an  
13 individual. When does that happen?

14 A. The prints are collected for all sorts of reasons.  
15 They might be collected for security clearances for jobs.  
16 Sometimes they're collected for financial transactions.  
17 They're collected if you're arrested. They can be collected  
18 for testimony -- for trial purposes.

19 Q. Is it possible or does it happen that a person's  
20 known fingerprints may be taken more than once in a lifetime?

21 A. Yes.

22 Q. What is a -- what does the term "latent fingerprint"  
23 mean?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1       A.    So a latent fingerprint is a general term that  
2 encompasses any type of unintentional reproduction of the  
3 patterns of the friction ridges on the skin.  So this could  
4 be -- like anytime you touch a surface, there's the  
5 possibility of you leaving behind sweat from your fingers, and  
6 that will represent the pattern of the ridges.

7           A latent print usually indicates that you need some  
8 sort of forensic light source or chemicals in order to view  
9 that impression.

10       Q.   And is this -- the things we just have been talking  
11 about, is this what you do as your job?

12       A.   Yes.  The main thing that I do is examine and process  
13 items of evidence to try and detect latent fingerprints.

14       Q.   And when a latent fingerprint is, in fact, found, is  
15 it compared against known fingerprints?

16       A.   So when a latent fingerprint is detected on an item,  
17 the first thing that happens is that it's photographed,  
18 because all of our comparisons are done from a photograph  
19 directly next to a known card.

20           So once the fingerprint is photographed, then an  
21 analysis will take place to determine whether or not there's  
22 enough information present in the print that you could  
23 reliably conduct a comparison and come to a conclusion.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           Once you've decided that the print is of sufficient  
2 quality and quantity of information to move on to the  
3 comparison phase, then yes, those prints can be compared to  
4 any number of people.

5           Q.    Okay.  And if a -- is the term "match" correct, if  
6 a -- if a determination is made that a latent print matches a  
7 known print?

8           A.    "Match" works.  We normally say "identification";  
9 other people say "individualization."  It's just the meaning  
10 that you feel that that print came from one source.

11          Q.    We'll go with your words rather than mine, okay?

12          A.    I generally say identification.

13          Q.    Identification.

14                In the case before us right now, the five individuals  
15 in this case, were known fingerprints of these five accused in  
16 this case collected from them at various times since their  
17 arrests?

18          A.    Yes.

19          Q.    And are they -- and have those known -- I'm sorry.

20                First, would that be what you've described as a known  
21 fingerprint?

22          A.    Yes.

23          Q.    Meaning they exist on those cards that you would use?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1       A.   Yeah.  An intentional recording is what we generally  
2 call it.

3       Q.   Thank you.  And are those known fingerprints as to  
4 these five accused available at the Federal Bureau's Lab --  
5 the Federal Bureau of Investigation's Lab for examination and  
6 analysis?

7       A.   Yes.

8       Q.   Did you, yourself, Mr. Fife, ever collect known  
9 fingerprints from these five individuals?

10      A.   Yes.

11      Q.   Where did that happen?

12      A.   It happened here in Guantanamo Bay.

13      Q.   And what year did that happen?

14      A.   2008, I believe.

15      Q.   And was it as to one or more or all?

16      A.   All, and additional people as well.

17      Q.   But as far as this case is concerned, all five?

18      A.   Yes, all five.

19      Q.   And you, yourself, collected the prints?

20      A.   Yes, I did.

21      Q.   Did you look at them afterwards?

22      A.   Yes.

23      Q.   And did you -- were you satisfied that they had

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 captured the fingerprints properly?

2 A. So in this case, major case prints were collected  
3 which includes more than just the fingerprint cards. It was  
4 also palm prints, lower joints. So it was a series of  
5 recordings, which is a more extensive capture than just a  
6 fingerprint card, and that was collected. Major case prints  
7 were collected from all five individuals.

8 Q. You need to slow down just a little bit, sir.

9 A. Sorry.

10 Q. All right. Mr. Fife, I'm going to direct your  
11 attention to the government's consolidated notice of exhibits  
12 located at 628FFF/629G/630K/631J/6320. And I'm going to ask  
13 you, sir: You have a binder that was prepared for you,  
14 correct?

15 A. Yes, I do.

16 Q. And you have had that with you?

17 A. Yes.

18 Q. And you've gone through it?

19 A. Yes.

20 Q. And examined specifically all of the attachments, but  
21 for right now I'm interested in, have you reviewed the  
22 Attachments at B through T?

23 A. So Tab B through T?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. Correct.

2 A. Yes.

3 Q. Those represent different items; am I correct?

4 A. They are photographs of different items of evidence,  
5 yes.

6 Q. Were all of those items in Attachments B through T,  
7 Bravo through Tango, received by the FBI's lab for fingerprint  
8 examination and analysis?

9 A. Yes, they were.

10 Q. And do each of them bear a K or a Q number?

11 A. Yes.

12 Q. And we had some testimony about this from Agent --  
13 Special Agent James Fitzgerald, but if you would tell us for  
14 lab purposes and your purposes, what's the significance of a K  
15 or a Q number?

16 A. So when evidence is submitted to the laboratory, it  
17 receives a unique identifying number, and that's -- we call it  
18 a lab number.

19 Q. Slow down, sir.

20 A. Sorry. A laboratory number ----

21 Q. Sometimes you have to like kind of really  
22 concentrate. It takes a while.

23 A. Yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           So every item of evidence receives a laboratory  
2 number, which is a nine-digit number, which represents the  
3 day, month, and year, and then the submission number. And  
4 then each specific item of evidence receives either a K number  
5 or a Q number.

6           The Q in this situation stands for questioned,  
7 because it's usually for the Latent Print Unit; the question  
8 is who may have touched this item. And if it received a K  
9 item, that means it was received in the Explosives Unit. And  
10 the Explosives Unit has different standards for what's  
11 questioned and what's known. They attach question Qs to  
12 explosive items, and they refer to everything else as a K.

13           So it's just a unique identifier that signifies that  
14 item in combination with that lab number that no other item of  
15 evidence would have.

16       Q.   As to all of the items -- excuse me -- items in  
17 Attachments B through T, were latent prints identified -- or  
18 I'm sorry, were latent prints detected?

19       A.   Latent prints were detected on all of these items,  
20 yes.

21       Q.   And as to all of the items in Attachments B through  
22 T, were latent prints identified as being those of one of the  
23 accused?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           A.    Yes.

2           TC [MR. RYAN]: Your Honor, at this moment, if I could  
3 alert the commission: As to Attachments B through T, which  
4 have been provided, I'm going to direct the witness to each  
5 specific attachment one by one and ask him for the results of  
6 the FBI examination.

7                   Some of the attachments, sir, were displayed during  
8 the course of Special Agent Fitzgerald's testimony; and when I  
9 say displayed, I mean for public viewing. I'll ask to  
10 publish -- to republish only those specific attachments that  
11 were already displayed publicly during Special  
12 Agent Fitzgerald.

13          MJ [Col COHEN]: Okay.

14          TC [MR. RYAN]: And, Your Honor, one further matter. We  
15 provided in the consolidated notice of exhibits various  
16 laboratory reports. There is one additional one which have  
17 been provided to the parties this morning, and it -- I will  
18 note for the commission that it is a classified matter. It is  
19 portion marked. I will be asking the witness about various  
20 reports -- of various findings within the report, but he has  
21 been instructed not to discuss anything that is marked as  
22 classified.

23          MJ [Col COHEN]: Understand. For my reference, is there

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 an attachment number for me to look at that?

2 TC [MR. RYAN]: Yes, sir.

3 Q. Mr. Fife, do you have your copy there?

4 A. I do, yes.

5 TC [MR. RYAN]: May I approach, Your Honor?

6 MJ [Col COHEN]: You may.

7 TC [MR. RYAN]: Your Honor, I have it as -- and it gets a  
8 whole number, it's not a new attachment to the existing  
9 filing. I have it as AE 628000/629H/630L/631K/632P, and I'll  
10 probably be referring to it by its Bates stamp number, which  
11 ends in the number 18250.

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

13 TC [MR. RYAN]: May I give this back to the witness, sir?

14 MJ [Col COHEN]: You may.

15 WIT: Thank you.

16 Q. Mr. Fife, I'm going to ask you to turn to  
17 Attachment B in your binder.

18 A. Yes.

19 TC [MR. RYAN]: And this, Your Honor, is one of those that  
20 had been published. I will ask for the feed to Table 3 and  
21 for the -- and for our ability to broadcast this or publish it  
22 for the gallery.

23 MJ [Col COHEN]: I recognize the document. You may do so.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 TC [MR. RYAN]: May I do so, sir?

2 MJ [Col COHEN]: Please.

3 Q. Mr. Fife, sometimes we have to wait a minute or two  
4 for the feed to take place.

5 A. Okay.

6 Q. Okay. Mr. Fife, directing your attention to this  
7 item, do you recognize it?

8 A. Yes.

9 Q. And on this photograph of an item, does the -- does  
10 there appear an FBI K number?

11 A. Yes.

12 TC [MR. RYAN]: And I'll ask Master Sergeant Horn to blow  
13 up the K number, please.

14 Q. What is the K number for this item, sir?

15 A. K3757.

16 Q. And was this, in fact ----

17 TC [MR. RYAN]: Court's indulgence, sir.

18 MJ [Col COHEN]: Absolutely.

19 Q. And, Mr. Fife, before we go into it, let me ask you  
20 this question: Did you, yourself, play some direct role in  
21 the examination and analysis of all the items we're talking  
22 about today?

23 A. Yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. Tell us what that was.

2 A. So this is an interesting situation, in that some of  
3 the evidence was received at the laboratory before I worked  
4 there. I started working there in 2004.

5 So in this case, since some of this evidence was  
6 received and processed before I started working there, what I  
7 did is I went back through and I did an evaluation of all of  
8 the latent prints.

9 Q. Slow down, sir.

10 A. I basically redid the examination to determine that  
11 the -- to make my own determine on identification. So in all  
12 of the prints we'll be talking about today, I was either a  
13 verifier or I was the original examiner. But I have conducted  
14 latent fingerprint comparisons on all of the fingerprints  
15 we'll be discussing today.

16 Q. So you personally have looked at every single item  
17 and done the comparison?

18 A. Every item and every latent that we're going to be  
19 talking about.

20 Q. So as to this item in Attachment B, what can you tell  
21 us about the findings?

22 A. So when you look at the Q tag in this photo, it shows  
23 a laboratory number, which indicates this evidence came in in

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 2002. And it was -- as we said, it was given the item number  
2 K3757, so a laboratory report would have been issued.

3 In this case, because this case has gone on for a  
4 long period of time, subsequential lab reports were also  
5 issued. And I know that the comparison results for this  
6 report -- for these latents that were detected on this item  
7 were reported out under a laboratory number that was issued in  
8 2007. And that laboratory ----

9 Q. And the laboratory report that we're talking about  
10 that bears the results, is that the one I just handed back to  
11 you ----

12 A. Yes.

13 Q. ---- with Bates number 18250?

14 A. Yes. This is a report that I issued myself in 2008.

15 Q. What are the results of the examination and analysis?

16 A. In reference to this one item?

17 Q. Yes, sir.

18 A. Okay. So if you -- let's see. K3757, so five latent  
19 fingerprints were identified to Ali Abdul Aziz Ali.

20 Q. Thank you. Sir, turn, please, in your binder to  
21 Attachment C, as in Charlie?

22 A. Yes.

23 TC [MR. RYAN]: This one, Your Honor, is not for

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 publishing.

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

3 Q. Sir, it's -- in our copies, because of the printing  
4 and all, we -- it's very faint, but does there appear a K or a  
5 Q number on this?

6 A. Yes. There's a handwritten Q number on the bottom  
7 right-hand corner of the image on the left, and it reads  
8 Q6552. And my handwritten initials are there also.

9 Q. So you, yourself -- I'm sorry, did you put down the  
10 number or did you initial the number?

11 A. Both.

12 Q. Very good. And from Q6552, were you able to  
13 determine what results were found as to this item?

14 A. Yes. The results are in Attachment Y, which is  
15 Laboratory Number 130718011. And if you look at page labeled  
16 page 13 of 18, you can see on the table it says that Q6552 had  
17 four latent fingerprints and two latent palm prints, and all  
18 six of those prints were identified to Aziz Ali.

19 Q. Thank you, sir. Would you now turn to Attachment D,  
20 as in Delta.

21 A. Yes.

22 TC [MR. RYAN]: And, Your Honor, I would ask for the feed  
23 again. This is one that was shown to Agent Fitzgerald.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Okay.

2 TC [MR. RYAN]: And for the ability to display it.

3 MJ [Col COHEN]: You may.

4 Q. You see this item, sir?

5 A. Yes.

6 Q. And do you recognize it?

7 A. Yes.

8 TC [MR. RYAN]: And I'll ask Master Sergeant Horn to

9 please blow up the K number.

10 Q. Sir, the K number reads 3312; am I correct?

11 A. Yes.

12 Q. From that number, what are you able to determine?

13 A. This report references the report you spoke about

14 earlier that's not included in the binder.

15 Q. And is that the one that ends in Bates number 18250?

16 A. Yes.

17 Q. Go ahead, sir. And, I'm sorry, I should have done

18 this before.

19 We talked about this previously, but on that document

20 in front of you, you're aware that there are certain items

21 marked as classified; am I correct?

22 A. Yes.

23 Q. It is not our intention to discuss any of them today,

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 correct?

2 A. Correct.

3 Q. So just to be clear, though, with you, please do not  
4 refer to anything in there that is marked as classified. If  
5 you feel the need to tell -- to do so as part of your answer,  
6 please alert me.

7 A. Okay.

8 Q. So go ahead, sir, from that K3312.

9 A. So going back to K3312, on page 2 of 3, the report  
10 that we just referenced, three fingerprints were identified to  
11 Aziz Ali.

12 Q. Thank you, sir. Please turn to Attachment E, as in  
13 Echo. Are you there, sir?

14 A. Yes.

15 Q. All right. And this is not for publishing.

16 First, do you recognize the item?

17 A. Yes.

18 Q. And do you see a K number on it?

19 A. Yes.

20 Q. What is the K number?

21 A. K3319.

22 Q. And from K3319, what are you able to tell us as far  
23 as the fingerprint examination and analysis?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1       A.    This -- the results of this are also in the report we  
2 just mentioned, with the Bates ----

3       Q.    Again, with Bates number 18250?

4       A.    Correct.

5            The report -- the results of this item are actually  
6 on the next page, the second page, Bates number 18251. And it  
7 indicates that one fingerprint detected on K3319 was  
8 identified to Aziz Ali.

9       Q.    Very good, sir. Please turn to Attachment Foxtrot,  
10 F.

11       A.    Yes.

12       TC [MR. RYAN]: And, Your Honor, I ask for the feed again.

13       MJ [Col COHEN]: You may.

14       Q.    Sir, do you see this item?

15       A.    Yes.

16       Q.    And do you recognize it?

17       A.    Yes, I do.

18       TC [MR. RYAN]: And I'll ask Master Sergeant Horn to  
19 please blow up the K number.

20       Q.    Sir, it appears as K3311?

21       A.    Yes.

22       Q.    From that K number, what can you tell us about the  
23 examination and analysis?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1       A.   3311, the results are also issued in the report with  
2 the Bates number 18251. And K3311, three fingerprints were  
3 identified to Aziz Ali.

4       Q.   Sir, I think I missed it. Did you say K3311, but I  
5 thought I heard a three after that.

6       A.   It's K3311.

7       Q.   Okay, and then your analysis revealed ----

8       A.   Three fingerprints were identified to Aziz Ali.

9       Q.   Thank you, sir. Please turn to Attachment G.

10      TC [MR. RYAN]: And I'll ask Master Sergeant Horn to  
11 please display this one.

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

13      Q.   And, sir, do you recognize this item?

14      A.   Yes.

15      TC [MR. RYAN]: And could you, Master Sergeant Horn,  
16 please blow up the K number.

17      Q.   K3170 appears; am I correct?

18      A.   Yes.

19      Q.   And what can you tell us from that as to what the  
20 analysis revealed?

21      A.   The results are also on Bates page 18251. K3170, two  
22 latent fingerprints and one latent palm print were identified  
23 to Aziz Ali.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 Q. Please turn to Attachment Hotel, H.

2 TC [MR. RYAN]: Master Sergeant Horn, if you would please  
3 display this item.

4 MJ [Col COHEN]: Please.

5 Q. And, Mr. Fife, do you recognize this item?

6 A. Yes.

7 Q. And for the record, it bears the handwriting -- it  
8 bears printing -- printed information of Marwan al Shehhi and  
9 also Isam Mansour?

10 A. Yes.

11 TC [MR. RYAN]: And if you would, Master Sergeant, please  
12 blow up the K number.

13 Q. K3173, am I correct, sir?

14 A. Yes.

15 Q. And from that K number, what were you able to tell  
16 us?

17 A. The results of the analysis are also listed on Bates  
18 number 18251. K3173, one fingerprint was identified to Aziz  
19 Ali.

20 Q. Please turn to Attachment I, India. This is not for  
21 publication. Do you see that item, sir?

22 A. Yes.

23 Q. And do you recognize it?

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. Do you see a K number on this item?

3 A. Yes.

4 Q. What is that, sir?

5 A. K2665.

6 Q. And from that K number, what are you able to tell us  
7 as to the analysis?

8 A. The report for this analysis is under Attachment Z.

9 Q. Z as in Zebra?

10 A. Z as in Zebra.

11 So on the third page of that attachment, Bates number  
12 18 -- sorry, it's 16030. Would you remind me which attachment  
13 we were just looking at?

14 Q. Yes, sir. Under India, I.

15 A. I. So that's K2665?

16 Q. Yes, sir.

17 A. And referring to the report I just referenced under  
18 Attachment Z, as in Zebra. Let's see. This is on -- there  
19 were -- there was one fingerprint on 2665. All right. This  
20 is broken out in a way that's taking me a minute.

21 Q. That's all right, sir.

22 A. There's one fingerprint identified to Ramzi  
23 Binalshibh on K2665.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. Please move to Attachment J, as in Juliet. Do you  
2 see that item?

3 A. Yes.

4 Q. All right. And in this item, there appears a  
5 photograph; am I correct?

6 A. Sorry. I was on the wrong one.

7 Q. Take your time. It's on Juliet, J.

8 A. Yes. Yes, there is a photograph.

9 Q. Now, when you actually went through the process of  
10 taking known fingerprints from the five individuals, that  
11 photograph that appears in this document, does it match the  
12 person who you took the prints from?

13 A. Yes.

14 Q. You were able to identify him?

15 A. Yes.

16 Q. Is there a K number on this item?

17 A. Yes. It's K2666.

18 Q. And from that item, what are you able to tell us  
19 about the analysis?

20 A. K2666, the results are also on Bates page number  
21 16030.

22 Q. That's Attachment Z?

23 A. Yes. And there were actually ten fingerprints that

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 were identified to Ramzi Binalshibh.

2 Q. And, sir, if you would turn to Attachment Kilo, K.

3 A. Yes.

4 Q. And do you recognize that item?

5 A. Yes.

6 Q. A photograph as well?

7 A. Yes. It's also a photograph of the same person.

8 Q. And does a K number appear on this item?

9 A. Yes, K2667.

10 Q. And what does that tell us in terms of an analysis?

11 A. The results are also under Attachment Z, which is  
12 Bates page 16030, and two fingerprints on K2667 were  
13 identified to Ramzi Binalshibh.

14 Q. Please turn to Attachment L, as in Lima.

15 A. Yes.

16 Q. And I'll direct your attention -- well, first, do you  
17 recognize the item?

18 A. Yes.

19 Q. And is there a K number that appears on this?

20 A. K2889.

21 Q. And from that K number, what does the analysis  
22 reveal?

23 A. Let's see. So the results of this are under

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Attachment W.

2 Q. W as in Whiskey?

3 A. Yes. And they appear on the second page, which is  
4 Bates number 16503. Three latent fingerprints detected on  
5 K2889 were identified to Ramzi Binalshibh.

6 Q. Please turn to Attachment M, as in Mike.

7 A. Yes.

8 Q. And do you recognize this item?

9 A. Yes.

10 Q. Was there a K number on it?

11 A. Yes. It's K3328.

12 Q. And from that K number, what can you tell us about  
13 the analysis?

14 A. The analysis of this is reflected back on the  
15 document that is not in the binder that has Bates page number  
16 18252, and the results for K3228 is that two fingerprints  
17 identified on this item were identified to al Hawsawi.

18 Q. Please turn to Attachment November, N. Let me know  
19 when you're there.

20 A. Okay.

21 Q. Do you recognize this item?

22 A. Yes.

23 Q. Does a K number appear?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. K3165.

2 Q. And what can you tell us from that K number?

3 A. The results from that item are under Attachment X, as  
4 in X-ray, they are on Bates page number 18349. And two latent  
5 fingerprints detected on K3165 were identified to al Hawsawi.

6 LDC [MR. RUIZ]: Objection, Your Honor.

7 MJ [Col COHEN]: Same objection as yesterday?

8 LDC [MR. RUIZ]: Yes, sir.

9 MJ [Col COHEN]: All right. Noted. Thank you.

10 Q. Please turn to Attachment O, as in Oscar.

11 A. Yes.

12 Q. Do you recognize that item?

13 A. Yes.

14 Q. Does it bear a K number?

15 A. K3295.

16 Q. And what can you tell us from that?

17 A. This refers back to Bates page number 18252. K3295,  
18 one fingerprint detected on K3295 was identified to  
19 al Hawsawi.

20 Q. Please turn to Attachment P, as in Papa.

21 A. Yes.

22 Q. And looking at the page that is displayed in this  
23 attachment, first of all, do you recognize any markings on it

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 as being your own?

2 A. Yes, my initials appear on it.

3 Q. And does a Q number also appear?

4 A. Yes. There's a range of handwritten Qs.

5 Q. When you say "range," what do we mean?

6 A. It says Q1782 through Q1789. This is actually a  
7 picture of the primary packaging that I prepared to -- to  
8 store this item.

9 Q. And the item -- strike that.

10 The items identified with Q numbers, the range that  
11 you said, where would they have been in relation to this  
12 packaging?

13 A. They were inside the packaging.

14 Q. Now I'll ask you to turn to Attachment Q, as in  
15 Quebec.

16 A. Yes.

17 Q. How does this particular attachment relate to the one  
18 you just displayed for us that -- what you described as  
19 packaging?

20 A. This is a photograph of the last page of the evidence  
21 that was in that packaging, which is Q1789.

22 Q. And from that Q number, what are you able to tell us?

23 A. So the results of this are under Attachment V, as in

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Victor. The specific page, the Bates page number ends 5040,  
2 and three fingerprints detected on Q1789 were identified to  
3 Bin'Attash.

4 Q. Please turn to Attachment R, Romeo. Do you see that  
5 item?

6 A. Yes.

7 Q. And do you see a Q number on it?

8 A. Yes.

9 Q. What was the Q number?

10 A. Q1790.

11 Q. And do your initials appear on this as well?

12 A. Yes, they do.

13 Q. Did you put them there?

14 A. Yes.

15 Q. And from that Q number, 1790, what can you tell us?

16 A. This also references a report that is under  
17 Attachment V.

18 Q. V, as in Victor?

19 A. V, as in Victor. And the Q is Q1790, correct?

20 Q. Correct, 1790.

21 A. Four fingerprints detected on Q1790 were identified  
22 to Bin'Attash.

23 Q. Sir, just to be really clear, since you asked me,

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 would you please just turn back and satisfy yourself that  
2 you're talking about the right Q number there.

3 A. Can you tell me the attachment letter?

4 Q. Sure. Attachment R, as in Romeo?

5 A. Yes. The photo in Attachment R shows the item in its  
6 packaging labeled Q1790, and the results of Q1790 are on Bates  
7 page 5040.

8 Q. And again, the results were what?

9 A. Four fingerprints on Q1790 were identified to  
10 Bin'Attash.

11 Q. Please turn to Attachment S, as in Sierra.

12 A. Okay.

13 Q. And first of all, do you see your initials again?

14 A. Yes, my handwritten initials appear in red ink.

15 Q. And is there a Q number?

16 A. The Q number listed is Q1698.

17 Q. And from that Q number, what are the results?

18 A. Let's see. The results would be listed under  
19 Attachment U.

20 Q. U, as in Uniform?

21 A. U, as in Unicorn. And that's item -- we're referring  
22 to item -- I'm sorry, to Q1698, correct?

23 Q. That which appears in Attachment S, you've just

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 testified is Q1698?

2 A. Yes. Q1698, the results are on Bates page number  
3 ending 5363. Two fingerprints were identified on Q1698 to  
4 Bin'Attash.

5 Q. And if you would, sir, please turn to Attachment T,  
6 as in Tango.

7 A. Okay.

8 Q. And again, do you recognize your own initials?

9 A. Yes, I do.

10 Q. And is there a Q number?

11 A. Yes, it's Q1710.

12 Q. And from that Q number, what are the results?

13 A. These are also under Attachment U.

14 Q. U, as in Uniform?

15 A. U, as in Unicorn. Q1710, the results are listed on  
16 Bates page ending 5362. One latent fingerprint detected on  
17 Q1710 has been identified to Bin'Attash.

18 TC [MR. RYAN]: Your Honor, could I have the court's  
19 indulgence for one moment?

20 MJ [Col COHEN]: You may.

21 Q. All right. Mr. Fife, you've now taken us through the  
22 attachments in this particular government filing; am I  
23 correct?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. Those are all of the actual items from which you've  
3 just testified as to an examination and analysis?

4 A. Yes.

5 Q. Just for purposes of making it clear, am I -- are  
6 there other fingerprints as to these five individuals out  
7 there that we have not talked about today?

8 A. Yes.

9 TC [MR. RYAN]: One more moment, sir?

10 MJ [Col COHEN]: You may.

11 TC [MR. RYAN]: Thank you, Mr. Fife.

12 Your Honor, that's all I have.

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

14 [Alarm in courtroom went off.]

15 MJ [Col COHEN]: Perfect timing. We'll go ahead and take  
16 a recess. During the recess, please make sure that you don't  
17 have any cellular items or anything transmitting. If it's a  
18 false alarm, that will be fine.

19 We'll take 15 minutes, at which point we'll begin  
20 cross-examination at -- let's go ahead and take until 1010.  
21 All right. Thank you.

22 TC [MR. RYAN]: Your Honor, do you wish to instruct the  
23 witness?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Oh. Sir, please do not discuss your  
2 testimony with anyone during the recess.

3 WIT: Yes.

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

5 [The R.M.C. 803 session recessed at 0953, 25 September 2019.]

6 [The R.M.C. 803 session was called to order at 1011,  
7 25 September 2019.]

8 MJ [Col COHEN]: Military commissions are called to order.  
9 Parties are present.

10 Please recall the witness.

11 Sir, if you'll please come take your seat again.

12 [The witness resumed the witness stand.]

13 MJ [Col COHEN]: Counsel.

14 **CROSS-EXAMINATION**

15 **Questions by the Assistant Defense Counsel [Capt ANDREU]:**

16 Q. Good morning, sir.

17 A. Good morning.

18 Q. My name is Mark Andreu. I'm one of the attorneys  
19 representing Mr. al Baluchi.

20 Sir, I've provided you several binders up there. I  
21 know it looks like a lot. We're not going to be going through  
22 all of that, but those are binders that mostly contain  
23 laboratory reports.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Okay.

2 Q. And there's a few things I want to refer to, and I  
3 provide the entire report in case there's something you want  
4 to direct my attention to.

5 A. Okay.

6 Q. The binders are marked on top with an AE number, and  
7 then the attachments that are found in the specific binder.  
8 AE stands for Appellate Exhibit.

9 ADC [Capt ANDREU]: And for the court and counsel, the two  
10 appellate exhibit numbers I will be referring to are 628BBB  
11 and 628JJJ.

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

13 Q. Sir, you and I have not met before; is that correct?

14 A. No, we have not.

15 Q. And I'd like to talk to you today -- I'd like to go  
16 over a few topics, but I want to start by talking a little bit  
17 about your background.

18 A. Okay.

19 Q. I understand that you have worked for the FBI since  
20 2004?

21 A. Yes.

22 Q. And you said that entire time you've worked in the  
23 Latent Print Unit?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           A.    Yes.

2           Q.    Over that period of time, you've received training on  
3 various subjects related to fingerprint examination.

4           A.    Yes.

5           Q.    Have you received training on establishing a chain of  
6 custody for evidence?

7           A.    Yes.

8           Q.    Would you agree with me that that's sort of  
9 fundamental to documenting evidence?

10          A.    Yes.

11          Q.    In general, what have you been trained in regard to  
12 documenting chain of custody?

13          A.    You definitely always want to document chain of  
14 custody from the time it comes into the Latent Print Unit.  
15 So there are obviously other units that are going to be on the  
16 chain as well; but specifically to me, anytime something is  
17 assigned to me, it's very important that I maintain a correct  
18 chain of custody.

19          Q.    And you said when it comes into the fingerprint --  
20 the Latent Print Unit -- when it comes in -- when the piece of  
21 evidence comes into the Latent Print Unit, it already has a  
22 chain of custody sheet attached to it; is that correct?

23          A.    Yes.  So the difficulty in speaking about this case

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 is that it's spanned many, many years and a lot of things have  
2 changed. So currently, it's electronic currently. In the  
3 past there was a paper chain, but there will always be some  
4 form of chain for evidence. But sometimes when the evidence  
5 comes into the Latent Print Unit, we begin a chain, so it does  
6 not already have a chain, or it doesn't have a chain that  
7 we're a part of.

8 Q. Okay. And when it comes in, whether it be electronic  
9 or paper, when there's a chain of custody, it tells you who  
10 has handled the evidence before it gets to the lab?

11 A. So that's the -- sometimes no. Sometimes a new chain  
12 is started. So there is a chain that shows it was turned over  
13 to the lab, but that isn't always provided to the lab. It's  
14 sometimes, depending on who the contributor is, sometimes it  
15 will stay in with the contributor, and then we pick up the  
16 chain where their chain leaves off.

17 Q. Okay.

18 A. So I don't always know or see the previous chains.

19 Q. Understood. But there is a chain out there. It's  
20 just what you're saying, as I understand your testimony, is  
21 that sometimes the lab receives that chain and sometimes the  
22 lab does not?

23 A. I assume there is a chain, but I don't always know

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 that there's a chain, so it's hard for me to answer that  
2 question.

3 Q. You mentioned that once the evidence reaches the lab,  
4 you also maintain a chain of custody.

5 A. The laboratory always maintains a chain of custody  
6 for evidence, yes.

7 Q. Do you do that on what the FBI sometimes refers to as  
8 green sheets?

9 A. I don't know the term "green sheets."

10 Q. When you establish the chain of custody sheet in the  
11 lab, is it carefully documented?

12 A. Yes.

13 Q. And each time an individual, for example, checks a  
14 piece of evidence out of storage to do an examination, would  
15 that be documented on the chain of custody?

16 A. It depends on what kind of storage you're referring  
17 to.

18 Q. Well, explain to me how the chain of custody sheet  
19 works within the Latent Print Unit.

20 A. Again, we're talking about a lot of -- there's a lot  
21 of years that have passed, so a lot of things have changed  
22 but, in general, its personal custody is tracked. So I take  
23 possession of something. I have my own personal storage

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 locker. I don't check it in and out of my own personal  
2 storage locker because no one else has access to it. So in  
3 that case, it isn't documented that I am retrieving something  
4 from myself.

5 If I stored it in a location that we refer to as  
6 bulky storage and multiple people have access to that, that  
7 would be documented, that you put it into a place that other  
8 people could then retrieve it from that place.

9 Q. Okay. So it would show different people who accessed  
10 the evidence?

11 A. Yes.

12 Q. Sir, I want to go through some of the laboratory  
13 reports ----

14 A. Okay.

15 Q. ---- in this case, and I'll ask you to bear with me a  
16 little bit as we talk about the process.

17 As you mentioned in the beginning, we haven't had a  
18 chance to meet?

19 A. We have not.

20 Q. All right. Let's talk about that for a second.

21 Did you meet with the prosecution before your  
22 testimony?

23 A. Yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. And who did you meet with?

2 A. I met with Ed Ryan.

3 Q. How many times?

4 A. Recently, two times.

5 Q. When was that?

6 A. Yesterday.

7 Q. And you said recently two times?

8 A. I think I met with him a month ago, within the last  
9 two months. I met with him one time.

10 Q. In total, how many hours do you think you spent  
11 preparing for your testimony?

12 A. Maybe six. I don't really know a good number.

13 Q. That's fine. Approximately six, is that fair?

14 A. You mean with other people or personally?

15 Q. With the prosecution.

16 A. Maybe six to ten.

17 Q. Now, you mentioned that you haven't met with me. You  
18 are aware that I asked to speak with you?

19 A. Yes.

20 Q. I notified you that I'm a captain in the Air Force  
21 and I'd like to talk to you about your testimony, but you  
22 refused that request?

23 A. I did, yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. Okay. So today will be the first time that we're  
2 going through your lab reports?

3 A. Yes.

4 Q. Before we get to the actual lab reports, can we talk  
5 generally for a second about the general procedures for  
6 friction ridge examinations?

7 A. Sure.

8 Q. I think you mentioned this on direct, but could you  
9 again explain for us what are friction ridges?

10 A. So the words "friction ridges" refers to a specific  
11 type of skin on the human body. It's on the palmar side of  
12 the hand. It covers the full palm of the hand and the lower  
13 joints on the fingers and the actual palm itself. It also  
14 appears on the soles of the feet and the toes.

15 It's believed that -- it's called friction ridge  
16 because it gives you sort of gripping power. It allows you to  
17 hold on to things. And it has a lot of genetic and  
18 environmental variability, and it's because of this  
19 variability that we're able to use it to distinguish the donor  
20 of these prints from one another.

21 Q. Before you actually do -- before an actual  
22 examination or a comparison takes place between a latent print  
23 and a known print, as I understand it, first the item has to

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 be processed to see if there's a latent print there,  
2 obviously; is that correct?

3 A. Well, in general, yes. But sometimes latents are  
4 just submitted sometimes which have already been processed or  
5 photographed or lifted, so there wouldn't be any processing in  
6 that situation.

7 But if you're talking about evidence being submitted,  
8 then, yes, processing would usually -- is usually started with  
9 light sources and then the application of chemicals to  
10 visualize the impressions.

11 Q. And that's what happened for the evidence that you  
12 talked about today?

13 A. Most of it, yes.

14 Q. And is it -- am I correct that whether or not you're  
15 using light sources or chemicals depends on the nature of the  
16 evidence, or are they used in combination always?

17 A. So this is actually a much bigger question. There  
18 are two main types of evidence that we generally process, and  
19 that's porous evidence and nonporous evidence. The type of  
20 evidence determines how it's processed and what chemicals are  
21 used.

22 A good example, the best example of porous evidence  
23 is paper. So every -- I think most everything we talked about

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 today was paper, so it would have gone down the porousing --  
2 the porous processing sequence. The only variation to that is  
3 what we called semi-porous, and that would be things that have  
4 sort of a glossy finish, like a magazine page or a photograph.  
5 And I did talk about some photographs today, and those are  
6 processed slightly differently.

7 Q. When the item is processed, that's notated in the lab  
8 report?

9 A. That's notated in the case notes ----

10 Q. Okay, sir.

11 A. ---- which are not in the lab report.

12 Q. And the case notes, though, explain exactly what type  
13 of processing the item went through?

14 A. Yes.

15 Q. And so when someone like me or somebody goes and  
16 looks at the report later, they can see by looking at those  
17 notes how the item was processed?

18 A. Yes.

19 Q. Now, if a friction ridge print is detected on an  
20 item, the -- am I correct that the examination procedure you  
21 employed at the FBI is called ACE-V?

22 A. Yes. Yes.

23 Q. And that's A-C-E-V. So it's ACE-V?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Correct.

2 Q. A stands for analysis?

3 A. Correct.

4 Q. What does that mean?

5 A. So analysis is when you -- so speaking of a latent  
6 print, because just for clarity, if we're talking about a  
7 latent print that was detected on an item, the first thing we  
8 would do is have it photographed.

9 So the analysis doesn't actually occur on the  
10 evidence; it occurs on a photograph with a scale, because  
11 comparisons are done one to one, so compared at actual size.  
12 The analysis is basically looking at the friction ridge  
13 impression, taking in all of the information that's there, the  
14 quality of the print, the clarity of the print, the amount of  
15 information present in the print.

16 So it's just an overall analysis of the image, and  
17 you then make a determination whether or not there's enough  
18 information present in that latent that you would feel  
19 confident moving into the comparison step. So there are a lot  
20 of latent prints that are developed that are -- when they're  
21 analyzed, they're determined not to be suitable for  
22 comparison, and those wouldn't move forward in the ACE  
23 process. They would be set aside and they wouldn't be

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 compared to anybody because they're deemed unsuitable.

2 We used to use the term "no value"; that appears in  
3 the reports. We don't use that terminology now. But  
4 basically, it's just stating you don't think there's enough  
5 information in that print that you could conclusively come to  
6 a comparison result.

7 Q. Okay. Let's talk about the ones where you -- where  
8 there is enough value to move to the comparison stage.

9 A. Okay. So in the reports, all those prints are -- in  
10 most of the reports you have in front of me, those are  
11 referred to as prints of value, and that's what that means,  
12 that they have cleared the analysis phase.

13 Q. And that moves us to C, in the ACE-V, which is  
14 comparison.

15 A. Comparison, correct.

16 Q. Could you explain to us how the comparison process  
17 works?

18 A. Comparison can take a lot of different pathways. The  
19 main pathway is taking a photograph of that image, as I said.  
20 It's a black and white photograph. It's true to size, so it's  
21 one to one.

22 The photographs are generally four-by-five-inch  
23 photographs. We score them so that we can place them directly

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 side by side on top of the known collection, which is usually  
2 an inked card. And then we do a comparison -- a person does a  
3 comparison by eye, and they go through and they compare the  
4 three levels of detail, which I can get into, if you want.  
5 And they then do a comparison, and they look for similarities  
6 and differences. That's the comparison phase.

7 Q. So as part of that print phase, are you looking for  
8 points of identity?

9 A. So we don't use points, to be clear. A lot of people  
10 use the term "points of identity" when they're referring to  
11 level two characteristics, which we do use.

12 So ridges tend to flow in -- there's ridges and  
13 furrows. So the ridges are actually the lines that make up  
14 the raised portion of the ridges. They tend to flow. They  
15 have a sort of a general pattern you expect to see.

16 But they can end -- and that's what we call an ending  
17 ridge, so that's part of a level two characteristic. They can  
18 divide or bifurcate and that's when one ridge becomes two.  
19 They can combine, where two ridges become one. A short ridge  
20 has an end on either side and sometimes those are called dots.

21 So it's these characteristics, these ridge events as  
22 some people call them, that you compare with another latent  
23 print or sometimes with another known print.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           And so that's where the point -- the word "point" and  
2 "characteristics" -- and it's referring to the specific  
3 details within the larger picture and their relationship to  
4 one another.

5           Q.   You're doing this side-by-side comparison; is that  
6 what you said?

7           A.   Yes.

8           Q.   Are you looking for, I guess, similarities in the  
9 two?

10          A.   You're looking for similarities and differences,  
11 because we don't only identify prints. We are often asked to  
12 exclude people, so sometimes you're looking at a person to say  
13 that person did not make this print just as often as you're  
14 looking to say a person did.

15                So you're looking for things in common and things  
16 that are not in common in order to determine whether or not  
17 you feel that that print came from that individual.

18          Q.   Could you tell us about the E, the evaluation?

19          A.   So the evaluation is basically just your decision  
20 after you've compared, your final decision. Your decision --  
21 which normally our decisions are one of three, which is:  
22 Identification, which means you feel, as the examiner, you  
23 would not expect to see this formation of friction ridges

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 present on another individual. So you feel that it came only  
2 from one person. You make an identification to that person.

3 You can also say that these ridges are too  
4 dissimilar; this print did not come from this person. And  
5 then you would make an exclusion.

6 And the other one you can use is inconclusive.  
7 Inconclusive is a way of saying that you can't make a  
8 determination. Sometimes it's due to the quality of the inked  
9 print or the known print. There's other factors that can come  
10 in, but basically you as the examiner just don't feel  
11 comfortable saying yes, it is that person, or no, it isn't  
12 that person. Sometimes you don't have the right area on the  
13 known card, so you just don't have enough information to come  
14 to a conclusive decision.

15 Q. I want to talk for a second about the  
16 identification -- if an identification is made.

17 A. Okay.

18 Q. Does the FBI require an examiner to find a certain  
19 number of similarities in order to make an identification?

20 A. No. The FBI has never had a point standard or a  
21 minimum number that you need in order to make an  
22 identification.

23 Q. So what -- do different examiners use different

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 standard or what?

2 A. Different examiners around the world probably do use  
3 different standards. At the FBI Laboratory, we all -- we  
4 don't have a point standard. We just have like a -- it's  
5 difficult to explain because it's a visual image you're  
6 looking at; so you have to take into account the clarity of  
7 the print, the quality of the print, the volume of information  
8 in the print, and then you just come to a collective decision.  
9 But there is no like countable number, which is a difficult  
10 thing to describe.

11 Q. So even within the FBI then, as I understand your  
12 testimony, examiners might reach a conclusion based upon a  
13 different number of similarities?

14 A. Well, they're not reaching a conclusion on any number  
15 of similarities, so it's -- they may reach a conclusion using  
16 different information, yes; but it's not a countable number,  
17 so it -- I couldn't say yes to that question.

18 Q. Okay. Let me ask it a different way. Well, the next  
19 step in the process is ----

20 A. Verification.

21 Q. ---- verification.

22 A. Okay.

23 Q. And that is where someone else comes and also goes

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 through the entire ACE process on that latent print and the  
2 known print?

3 A. Right. So they do an independent analysis,  
4 comparison, and evaluation; they have their own photograph;  
5 they do their own markup, which is marking the points of  
6 similarity or dissimilarity; and they come to their own  
7 decision. And then if those two decisions are the same, then  
8 we can report that decision out.

9 For example, if both people say this print is an  
10 ident, then you would report that print out. If they don't  
11 say it's the same, then we go into a whole other process; but  
12 that print would not be reported out without two independent  
13 ACE cycles coming to the same conclusion.

14 Q. The -- I take it the verification step is intended to  
15 minimize the chance of a misidentification?

16 A. An erroneous identification or an erroneous  
17 misidentification. So -- so the intention is quality  
18 assurance, yes.

19 Q. The person doing the verification's a human who can  
20 make mistakes?

21 A. Yes.

22 Q. And the person doing the original examination can  
23 make mistakes as well?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1       A.    Yes.

2       Q.    Is there anywhere documented within the lab report  
3 the number of similarities that were found in reaching the  
4 conclusion?

5       A.    We don't have a number, so no, it's not documented  
6 anywhere.

7       Q.    So let me word that one a little bit differently,  
8 also. I'm not asking about a required number. I'm just  
9 saying if -- if someone reaches a conclusion, and I'm trying  
10 to figure out how many points of similarity they found to  
11 reach that conclusion ----

12      A.    All right.

13      Q.    ---- how am I able to see that?

14      A.    So it's a difficult question to answer because  
15 they're not using points to reach that conclusion. So I think  
16 what you're asking is, where is the documentation of the  
17 comparison. And that's actually on the photograph.

18            So when we do these one-to-one comparisons, we have a  
19 photo in front of us and we have like a -- it's a pen, but it  
20 has a sharp metal point on the end. And what we can do is we  
21 can mark that photograph. And what we can do is we can mark  
22 the characteristics that we're using, we can trace the  
23 ridges ----

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Just slow down just a little bit.

2 WIT: Sorry.

3 MJ [Col COHEN]: That's okay.

4 A. So the image itself is changed. It can be marked  
5 with this metal poker, because it has like sort of a gel  
6 surface. So you can mark the points of similarity, you can  
7 mark dissimilarities, you can indicate areas where there's  
8 excessive pressure or slippage. So you're -- because it's a  
9 visual thing, so we add visual cues to the photo instead of  
10 counting is kind of what you're saying.

11 The other thing is, we are moving more to digital.  
12 So that would be another thing. You could digitally trace the  
13 steps that you took in -- during your comparison. So there  
14 are different ways to do that. You can color code it, you can  
15 trace the ridges, you can put marks -- points of similarity  
16 between the latent and the known.

17 So you mark up the latent and the known, the inked  
18 print and the known -- sorry, the inked print and the latent  
19 print. So your analysis -- your documentation of your  
20 analysis, which I think is the question you're asking, and  
21 your comparison are on a photograph which is maintained in the  
22 original case file.

23 Q. Okay. And so there would be photos of that

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 comparison for each of the prints you've talked about today?

2 A. Yes. There would be -- well, yes. There is an  
3 analysis photo -- I'm sorry. There's a comparison -- there's  
4 the original examiner's photo, and then there's the verifier's  
5 photo. In some cases, there may be a blind verification  
6 photo; and in some cases, there's even another verification  
7 photo, which is my photo, because that was done at a later  
8 date.

9 Q. And that photo also has these markings?

10 A. Yes.

11 Q. Okay, sir. If we could now walk through a couple of  
12 these reports. If I show you -- some of them might be marked  
13 classified.

14 A. Okay.

15 Q. If that's the case, I'll let you know now that I'm  
16 only going to ask you about the unclassified portions in the  
17 open session.

18 A. Okay.

19 Q. Also, I may ask you questions that you are not  
20 permitted to answer based upon the government's invocation of  
21 the national security privilege. If that's the case, I will  
22 be crystal clear about that so that you can wait to answer if  
23 the national security privilege is invoked.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Okay.

2 Q. Sir, you -- related to Mr. al Baluchi, you spoke on  
3 direct about K3311?

4 A. Yes, I remember that.

5 Q. K3312?

6 A. Yes.

7 Q. K3319?

8 A. Yes.

9 Q. Okay. K3170?

10 A. Yes.

11 Q. K3173?

12 A. I think so, yes.

13 Q. And K3757?

14 A. Yes.

15 Q. Sound right? Okay.

16 All right. Let's start, then, with items of  
17 evidence -- we'll break it up by where they came from, so  
18 let's start with items of evidence that were reported to come  
19 from Mr. Hawsawi's apartment.

20 And one last time, could you explain to me what the K  
21 for the K number is?

22 A. A K number indicates that the evidence was first  
23 received at the FBI Laboratory in the Explosives Unit. So

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Explosives Unit Ks things, which stands for known, because  
2 they're not questioning whether or not those items have  
3 explosive residues on them.

4 A Q or a K can be issued in the Latent Print Unit;  
5 but in this case, if it has a K, it means it went to the  
6 Explosives Unit first.

7 Q. Okay. Thank you. Sir, if I could direct your  
8 attention to -- this would be the first time we go to one of  
9 the binders there, so AE 628BBB Attachment Golf, G.

10 A. Okay.

11 Q. And if we could look at the Bates number LBR-16986.  
12 That should be the first page.

13 A. The first page in the binder?

14 Q. I'm sorry, the first page at Tab G.

15 A. Oh, at Tab G.

16 Q. Yes.

17 A. Can you tell me the Bates number again?

18 Q. Sure. It's 16986.

19 A. Yes.

20 Q. Okay. So these are items that were received on  
21 April 26th, 2002.

22 A. Yes. That's listed on the first page.

23 Q. And if I could have you flip to page 16994.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Okay.

2 Q. I'm sorry. 16995, I'm sorry.

3 A. Okay.

4 Q. And at the bottom of the page is K3311.

5 A. Yes.

6 Q. So that is a ComTech certificate of achievement that  
7 you testified to on direct?

8 A. Yes.

9 Q. All right. If we go to the next page, 16996.

10 A. Yes.

11 Q. This shows the receipt of K3312 from that April 26th,  
12 2002 date. K3312 is the CV for Ali Abdul Aziz Ali?

13 A. Yeah. I'm confused. You said something about a  
14 receipt?

15 Q. I'm sorry. At the beginning of this document on page  
16 LBR-16986.

17 A. Oh, yes.

18 Q. Right. This lists all the items that I'm going  
19 through now that were received.

20 A. Sorry. We don't use that word. We use that word for  
21 something else; I was confused. So this is -- we call this  
22 the worksheet, and the worksheet just indicates it links the  
23 specific item and the description with a unique K or Q.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           So yes, I'm sorry, this is what we refer to as the  
2 worksheet. It just lists all the evidence that was received  
3 under this lab number which appears at the top of the page.

4           Q. But am I correct that it says that all this evidence  
5 was received April 26th, 2002?

6           A. It was received at the building in Quantico -- wait.  
7 Were they in Quantico? They weren't in Quantico then, I think  
8 they were at Headquarters.

9           It was received by the FBI Lab, but it wasn't  
10 received by the Latent Print Unit on that day.

11          Q. I understood. Thank you.

12          So flipping back to 16996.

13          A. Yes.

14          Q. And K3312 is listed?

15          A. Yes.

16          Q. And that's the CV I just mentioned?

17          A. Yes.

18          Q. Also, on that same page is ----

19 [Alarm in courtroom went off.]

20          MJ [Col COHEN]: We've done a few searches.

21 General Martins, I'm inclined to unplug this one. Does the  
22 government have any objection to me doing so?

23          CP [BG MARTINS]: Your Honor, in light of the subject

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 matter and the previous triggerings of that, I agree with you.

2 MJ [Col COHEN]: Okay. Thank you, sir. We'll get that  
3 checked during the recess -- afternoon recess.

4 Counsel, sorry about that. Please continue.

5 ADC [Capt ANDREU]: Yes, sir.

6 Q. Mr. Fife, also on that page is an item you talked  
7 about on direct, K3319?

8 A. Yes.

9 Q. And that is a letter addressed to Mr. Ali A. Aziz,  
10 System Engineer, ProLink?

11 A. Yes.

12 Q. Now if we could go over to AE 628JJJ Attachment C.  
13 So it's going to be a different binder.

14 A. Attachment which?

15 Q. So it's -- the binder on the front will say 628JJJ.

16 A. Yes.

17 Q. Okay. And then if we could look at Attachment C.

18 A. Yes.

19 Q. Could you please flip to RAD-2480.

20 A. Yes.

21 Q. Do you recognize this?

22 A. Yes.

23 Q. And what is -- what are we looking at here?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. These are case notes.

2 Q. So let's look at the one on the top that's dated  
3 May 1st, 2007.

4 A. Yes.

5 Q. And this is listed as the examinations results; is  
6 that right?

7 A. Yes. This is a different scenario, though. So what  
8 we were talking about before was the receipt and the  
9 processing of the evidence. And what we're talking about now  
10 is what we call a request-only, when the request is made from  
11 latent prints that were detected on previously submitted items  
12 of evidence. So these are the comparison case notes for  
13 another -- for evidence that was processed under another lab  
14 number.

15 Q. Okay. So -- okay. One moment. Okay.  
16 Is K3311 listed there?

17 A. Yes.

18 Q. Now, this section is initialled DJF?

19 A. Yes.

20 Q. Is that you?

21 A. Yes.

22 Q. And what is the significance of that initialling?

23 A. That initialling indicates that the information below

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 was all done by me.

2 Q. And for K3311, you said something about this being a  
3 different examination or a different laboratory number? I'm  
4 trying to understand what you're saying.

5 A. Yeah, it's very confusing. I apologize.

6 The way the laboratory numbers work, laboratory  
7 numbers are assigned when evidence is received in the  
8 laboratory. The laboratory number is the month, date, and  
9 year. That's how the laboratory number -- I said that  
10 backwards -- year, month, day, and then the last numbers just  
11 indicate the submission it was for that day. And that doesn't  
12 repeat. That's unique to that evidence.

13 If any requests are made from that evidence at a  
14 later date, it's called a request-only or a -- it has no  
15 evidence, which is why it's called a request-only. And then  
16 it requests a person to conduct usually latent fingerprint  
17 comparisons to people -- new people or people with new cards  
18 or something like that.

19 So you have to refer back to the laboratory number  
20 where the evidence was received. You take those photos that  
21 we spoke about earlier from the file, and then you can conduct  
22 new comparisons or some exams that were requested to new  
23 people.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           So this -- this lab report is an extension of the lab  
2 report we spoke about earlier, but they don't stand alone, is  
3 the point that I was trying to make.

4           Q.    So they're part of the same -- they're part of an  
5 analysis of the same item?

6           A.    In this case, yes.

7           Q.    And is this your analysis of the item?

8           A.    No, this is my analysis of the latents.  Because the  
9 items are -- this is what I was saying.  These -- this doesn't  
10 go far -- this doesn't go back to the evidence because the  
11 evidence is not with us anymore.  It just goes back to the  
12 case file.  It generally just goes back to photographs of  
13 latent prints that were captured.

14          Q.    So that's -- I'm sorry.

15          A.    So in a way, yes, but just to be clear, it doesn't go  
16 back to a processing or a re-examination of the evidence or  
17 the claiming, which is the prints that were retained to be  
18 determined of value.

19                So it basically just starts with the case file that  
20 was maintained, in this case, from the '02 that you  
21 referenced.  I went to that file.  I retrieved the  
22 photographs, and then I moved forward in 2007.

23          Q.    Okay.  So this is a separate examination from -- from

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 one that's already occurred?

2 A. In this case, it's a new examination because I didn't  
3 do any examinations in 2002 because I didn't work there. So  
4 these are new examinations done by me in 2007.

5 Q. And what would be the purpose for that?

6 A. So in this case there's probably -- somewhere in this  
7 binder there's probably a request that specifically states  
8 what they want me to do. And if you know where that is, I  
9 could tell you. It looks like it's a request to compare  
10 previously detected latent fingerprints to new individuals.

11 Q. Can you explain the result -- so it starts with a 3  
12 and then like a zero with a line through it. Can you explain  
13 what this line of results means?

14 A. Yes. So this is latent print shorthand. You're  
15 talking about the line -- it starts with an arrow, and then  
16 there's a 3 and then what we call the ident symbol and then s  
17 and the #3. Is that what you are asking?

18 Q. Yes.

19 A. So this is getting down kind of into the specifics of  
20 what happened. So these are the listing of the results. The  
21 3 means three fingerprints. I'm sorry, it means three  
22 identifications.

23 The circle with the line through is the ident symbol.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 It's used in all the case notes. It's shorthand to indicate  
2 that an identification was effected that refers back to the  
3 photo.

4 On the photo, those symbols would also appear above  
5 each print that was identified, so there were three of them.

6 The #3 indicates finger number 3. So that's the  
7 right middle finger. The second number, #6, indicates the  
8 left thumb, and #9 index -- indicates the left ring.

9 So if you -- if you read that out, it basically says,  
10 three prints detected on K3311, have been identified to three  
11 fingers of Aziz Ali, and those three fingers are finger #3,  
12 right middle; finger #6, left thumb; finger #9, left ring.

13 Q. If we can flip over, then, to RAD -- this is the same  
14 attachment, RAD-2544.

15 A. Yes.

16 Q. Are you there?

17 A. Yes.

18 Q. Okay. What is this?

19 A. These are four photographs of latent -- yes. I'm  
20 just confirming that these are the same item number. So these  
21 are four separate photographs. As I said before, the  
22 photographs are usually four-by-five. So these are four  
23 photographs that were captured digitally together that are the

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 latent prints from K3311. And ----

2 Q. And so that's -- that corresponds to the results that  
3 we were just talking about?

4 A. To a portion of the results, because not all of them  
5 are on this page, but yes.

6 Q. And these are initialled by you?

7 A. So all of the photos are initialled by me because  
8 this was my case file. The two photos on the -- well, the two  
9 photos on the bottom, if you're looking at it upright, are my  
10 analysis photos, and the two photos on the top are the photos  
11 of the verifier.

12 Q. I know these are not the greatest images, but would  
13 these be the ones that have the notations of the similarities  
14 that you found?

15 A. Yes.

16 Q. Okay. So if this was a better photo, we could see  
17 the actual similarities that you notated?

18 A. Yes.

19 Q. And that higher-quality photo is something that's  
20 maintained?

21 A. Yes.

22 Q. Now, I understand that a -- for that item, for that  
23 photo that we just looked at, would a chain of custody log

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 document where -- when that was handled?

2 A. The photographs?

3 Q. Yes.

4 A. No.

5 Q. Okay. So just a chain of custody for the actual item  
6 of evidence?

7 A. Yes. So these photos, we refer to them as secondary  
8 evidence. So if secondary evidence is produced, it's  
9 documented. If secondary evidence was sent back to the field,  
10 which they used to do, that was documented. So there is --  
11 there is a chain, but not for these, because these are the  
12 ones that were part of the case file. So basically they're in  
13 what we call it a 1A, which is a strong envelope with a  
14 closure, and it's documented how many photos are inside. But  
15 it's not the same thing as a chain of custody.

16 Q. All right. The chain of -- there would be a separate  
17 chain of custody, then, for the actual item of evidence.

18 A. There is -- yes. And in this case, the item of  
19 evidence was never used because the evidence -- the item of  
20 evidence was returned at this point.

21 Q. Okay.

22 A. That's kind of what I was trying to make the point  
23 before. This has nothing to do with the evidence itself at

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 this point because that was documented somewhere else.

2 Q. All right. So then let's go back to AE 628BBB  
3 Attachment G.

4 A. That's the one from before?

5 Q. Yes, sir.

6 A. Yes.

7 Q. And at 1 -- we were earlier at 16994.

8 A. 16994, yes.

9 Q. Okay. So there's a paragraph there that says -- and  
10 it's -- I'm not going to ask you about any of the classified  
11 information in that paragraph.

12 There's a paragraph there that says when the actual  
13 item of evidence was received. Do you see that?

14 A. No.

15 Q. Okay. So ----

16 A. Well, it's -- I can't read it because it's redacted.

17 Q. Right. It's a little confusing, but if we go to the  
18 first page of this document, again, it said when the items  
19 were received, that was at 16986. That was the April 26th,  
20 2002 date where you said this is when it was initially  
21 received in the laboratory but not the Latent Print Unit; is  
22 that right?

23 A. Probably. That's probably correct, but ---- that's

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 the general procedure, yes. So I would assume that that is  
2 when it was received in the Explosives Unit because these  
3 items have Ks.

4 Q. And then going again to 16994.

5 A. Yes.

6 Q. And this is where I'm going to be crystal clear. I  
7 understand it's redacted, but if I were to ask you about the  
8 origin of this item, K331 -- K3311, the national security  
9 privilege would prevent you from answering that question.

10 A. Yes.

11 MTC [MR. TRIVETT]: Sir, can we have one second?

12 TC [MR. RYAN]: Your Honor, can we have a moment, please?

13 MJ [Col COHEN]: Yes, please. You may confer with counsel  
14 if you need to.

15 [Counsel conferred.]

16 Q. Okay, sir. If we could go now to back -- and we're  
17 going to be using pretty much these same two binders -- 628JJJ  
18 Attachment C. If we could go to RAD-2 -- or -- yes, RAD-2478.  
19 If you just let me know when you're there.

20 A. Yes.

21 Q. And between pages RAD-2478 and RAD-2479 are  
22 April 19th, 2007 examination results by you. I understand  
23 this is going to be the same circumstance as the evidence we

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 just talked about; is that right?

2 A. The same circumstance meaning that it was requested  
3 at a later date -- the comparisons were requested at a later  
4 date?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. Now, this has the results for -- on page 2479,  
8 the results for K3312?

9 A. Yes.

10 Q. That is the CV that we discussed earlier?

11 A. Yes.

12 Q. And I won't -- we won't do this every time, but just  
13 once more here, can you explain the line under it with the  
14 zero with the line through it and then the numbers for this  
15 one?

16 A. Can you give me the item number again?

17 Q. Yes, sir. K -- there's a lot of K numbers.

18 A. Yes.

19 Q. K3312.

20 A. Okay. K3312, the line reads, "3 fingerprints  
21 developed on K3312, C.V. (Curriculum Vitae) for Ali Abdul Aziz  
22 Ali, Lab #020426016." And then it has the arrow, which  
23 indicates results. Then it has the 3, which means three

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 identifications. The zero with the line through it is the  
2 identification symbol. And this one says #1, which means the  
3 right thumb; it says #3, which means right middle; and it says  
4 #4, which means the right ring finger. And then it says that  
5 the result -- the result shows this was identified to Ali Abd  
6 Al Aziz Ali and it lists the FBI number, which is a unique  
7 number associated with known cards or individuals. So it's  
8 just a unique number that no one else has.

9 Q. Okay. That was a question I had when I was looking  
10 through this. So that number is associated with the  
11 individual, not associated with the actual print card that was  
12 used for comparison?

13 A. That number is associated with an individual, and  
14 by -- and, therefore, it's associated with all known  
15 recordings we have from that person. So that number is on  
16 every recording we have of that person, on each one.

17 So it doesn't refer to any specific one. It, in  
18 fact, refers to anything that's in the possession of  
19 Clarksburg, West Virginia, where the fingerprints are held for  
20 the FBI, or in our files at the laboratory.

21 Q. Okay. Sir, if we could flip to 25 -- RAD-2546.

22 A. Is that in the same binder?

23 Q. Yes, sir. Just a couple of pages later.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           A.    2546.

2           Q.    Is this the -- are these the photos for the -- that  
3 correspond to the results we were just talking about? It's  
4 hard to read. It looks to me like it says K3312.

5           A.    That's what it looks like to me as well, K3312.

6           Q.    Now, on this one we can see a little bit of what  
7 looked to me like loops around what, to me, look like the  
8 latent. Is that for orientation?

9           A.    So what that means, that -- we call it a horseshoe,  
10 and it does look kind of like a half circle. That half-circle  
11 indicates that that print was claimed, meaning that that print  
12 was of value, so that's the latent print examiner's shorthand  
13 notation to this print is of value. And in this one you can  
14 see there was three, so it was determined that there are three  
15 prints of value.

16                   And it's difficult to read, but you can see the ident  
17 symbol and the finger numbers are written about the  
18 horseshoes. And yes, the impression below the horseshoes are  
19 the latent fingerprints photographed from the original  
20 evidence.

21           Q.    And there's a -- a better quality photo than this  
22 exists within the FBI?

23           A.    The original photograph, yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. And again, that original photograph would have the  
2 actual similarities notated?

3 A. Yes.

4 Q. Sir, if I -- and you mentioned as with 3311, with  
5 3312, there would also be a chain-of-custody sheet for the  
6 actual item within the FBI?

7 A. Can you repeat the question?

8 Q. For K3312, the item that we're discussing, a  
9 chain-of-custody sheet would exist that documents the custody  
10 for the actual item -- I know not the print.

11 A. Yeah.

12 Q. The actual item.

13 A. The chain of custody from that would exist in the  
14 original lab number, which is 020426016, yes.

15 Q. However, if I were to ask you the origin of K3312,  
16 the national security privilege would prevent you from  
17 answering that question?

18 A. Yes.

19 Q. Sir, if we go to RAD-2478 again. And between 2478  
20 and 2479, do you see the result for K3319? It's on 2479.

21 A. Can you repeat the K number?

22 Q. Yes, sir. K3319.

23 A. There are comparison results, yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. The reason I was referring to RAD-2478 and 2479 is  
2 because it looked like it had the same date of examination, so  
3 I just wanted to orient you to that.

4 So was that examination done by you on April 19th,  
5 2007?

6 A. Yes.

7 Q. Okay. And if we go, then, to RAD-2549.

8 A. Yes.

9 Q. This is the corresponding photograph for K3319, or  
10 photographs?

11 A. These are photographs of K3319, yes.

12 Q. Again, the original better quality photograph would  
13 have the points of similarities marked?

14 A. Digital -- yes. But digital images -- digital  
15 quality photos of these have been provided; they just aren't  
16 reflected in this printout.

17 Q. Okay. And those would -- but those would have the  
18 points of comparison marked?

19 A. Yes.

20 Q. For this item, for the actual item, K3319, the FBI  
21 Laboratory would maintain a chain of custody?

22 A. For the item of evidence?

23 Q. Yes, sir.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1       A.   Yes.  That item of evidence is going to be under the  
2 original 02 lab number.

3       Q.   And that chain of custody would say who handled it  
4 and when?

5       A.   Yes.

6       Q.   If I were to ask you, however, about the origin of  
7 this item, the national security privilege would prevent you  
8 from answering that question?

9       A.   Yes.

10      Q.   Sir, if we could go back to -- those are the Hawsawi  
11 items.  If we could go over now to 628BBB Attachment G.  
12 That's the other binder we had a minute ago.

13      A.   Yes.

14      Q.   And if I could direct your attention to LBR-16986.

15      A.   Yes.

16      Q.   This lists, again, items that were received on  
17 April 26th, 2002?

18      A.   Yes.

19      Q.   And it lists item K3170?

20      A.   Yes.

21      Q.   That's one of the items you spoke about on direct?

22      A.   I think so, yes.

23      Q.   The next page, LBR-16987, it shows the receipt of

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 K3173?

2 A. Yes.

3 Q. And that's the other U.A.E. Exchange Centre item that  
4 you spoke about on direct?

5 A. I believe so, yes.

6 Q. I know it's hard to remember the K numbers.

7 A. Right.

8 Q. If we go now to the other binder at AE 628JJJ  
9 Attachment C.

10 A. Yes.

11 Q. And if we could go to RAD-2478.

12 A. Yes.

13 Q. Okay. This lists the comparison that you did, same  
14 situation as we talked about before, but the comparison you  
15 did for item K3170 at the bottom of page 2478.

16 A. Thank you. Yes.

17 Q. Again, for that item, there would be a corresponding  
18 photograph, high-quality photograph where we could see the  
19 actual similarities that you noted?

20 A. Yes.

21 Q. For the item itself, K3170, the FBI would maintain a  
22 chain-of-custody log?

23 A. Yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. The chain-of-custody log would tell us who handled  
2 the item?

3 A. Yes.

4 Q. And it would tell us when?

5 A. Yes.

6 Q. However, if I were to ask you for the origin of item  
7 K3170, the national security privilege would prevent from you  
8 answering that question?

9 A. Yes.

10 Q. So on page RAD-2479, which is the following page ----

11 A. Yes.

12 Q. ---- is the results of your examination for K3173?  
13 It's at the bottom of the page.

14 A. Yes.

15 Q. That was on May 1st, 2007?

16 A. Yes.

17 Q. There, again, would be a corresponding photograph to  
18 show the -- high-quality photograph to show the points of  
19 similarity you found?

20 A. Yes.

21 Q. For that item, K3173, for the original item, the FBI  
22 would maintain a chain-of-custody sheet?

23 A. Yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. However, if I were to ask you about the origin of  
2 that item, the national security privilege would prevent you  
3 from answering that question?

4 A. Yes.

5 Q. The last item I want to talk about is found at  
6 RAD-2479, and the item is K3757. Do you see that?

7 A. Yes.

8 Q. That's an item that you talked about on direct?

9 A. Yes.

10 Q. You did an examination of it on April 19th, 2007?

11 A. Not the actual item, no, just the photographs.

12 Q. Okay. The photographs were taken on April 19th,  
13 2007?

14 A. The photographs weren't taken that day. The  
15 photographs were -- new photographs were examined that day.

16 Q. Okay, I'm sorry. When you said the photographs, you  
17 meant that you examined the photograph, not the actual item?

18 A. Correct.

19 Q. Okay. I'm tracking.

20 And the results of your examination would be  
21 documented on a high-quality image?

22 A. Yes. Well, on the original photo, yes.

23 Q. The FBI would maintain a chain-of-custody log for

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 K3757?

2 A. Yes.

3 Q. Telling us who handled it?

4 A. Yes.

5 Q. And when they handled it?

6 A. Yes.

7 Q. I mean, would you agree with me that's important for  
8 us to know -- you would agree with me that these items could  
9 be used in evidence later?

10 A. Yes.

11 Q. And would you agree it's important to know who  
12 handled the item?

13 A. Yes.

14 Q. However, if I were to ask you about the origin of  
15 that item, the national security privilege would prevent you  
16 from answering that?

17 TC [MR. RYAN]: Objection, sir.

18 MJ [Col COHEN]: Basis.

19 TC [MR. RYAN]: Areas beyond this witness' ability to  
20 answer.

21 MJ [Col COHEN]: Are you allowed to disclose what the  
22 origin of this is?

23 WIT: The item he's asking me about right now is not the

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 same origin as the other items he was asking about, so I don't  
2 actually know the answer to the question. This is referring  
3 to a different collection that we haven't referenced yet.

4 MJ [Col COHEN]: Okay. Counsel, based on that response,  
5 do you have -- do you want to ask different questions in a  
6 different way?

7 ADC [Capt ANDREU]: Sure.

8 Q. Do you know where that item came from?

9 A. That -- just to be clear, you're asking about 3757,  
10 correct?

11 Q. Correct.

12 A. This is a different lab report than the one we've  
13 been referring to before. The other one was 020426016 and  
14 this is 020805005.

15 Q. Yes.

16 A. I don't -- I don't know the answer. I can look at  
17 it, but I don't -- it's not the same one we've been talking  
18 back and forth about, so I don't know.

19 Q. Okay. Okay. We'll come back to that.

20 Sir, if I could -- if we could change gears now and  
21 talk a little bit about the print cards or major case prints  
22 that the FBI had on file for Mr. al Baluchi.

23 A. Sure.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. You talked about on direct how at one point you and  
2 some others came down to Guantanamo to take the prints of  
3 Mr. al Baluchi and other detainees?

4 A. Yes.

5 Q. That was between 9 and 14 May 2008, does that sound  
6 right?

7 A. Yes. Can I put this binder away?

8 Q. Yes, sir. Actually, why don't we go to AE 628BBB  
9 Attachment F.

10 A. Yes.

11 Q. And I'm at LBR-6131.

12 A. Yes.

13 Q. Same question. And maybe this will refresh your  
14 recollection ----

15 A. Yes.

16 Q. ---- since it's a date from in the past, you know,  
17 years back. Between May 9th and May 14th, 2008, is when you  
18 came to Guantanamo?

19 A. Yes. That's what it says on the page you're  
20 referring to.

21 Q. And do you agree with that?

22 A. Yes.

23 Q. And that was for the purpose of recording major case

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 prints of the detainees?

2 A. Yes.

3 Q. On May 10th, 2008, you recorded the major case prints  
4 of Mr. al Baluchi.

5 A. May I move to the page to ----

6 Q. Yes, sir. That's going to be on LBR-6133.

7 A. On May 10th, 2008, yes. It indicates that major case  
8 prints were collected that day.

9 Q. And that would be by you?

10 A. By me and three other people, yes.

11 Q. When you say by you and three other people, how does  
12 that work?

13 A. In this case, because of the nonstandard mess of this  
14 case, the intention -- the intention of recording prints is  
15 twofold: That you get all of the area that you need of a  
16 sufficient quality, and also that the person collecting the  
17 prints is going to be available to testify.

18 And because in this situation, we knew it was not a  
19 normal time frame, multiple people witnessed the collection of  
20 the prints to ensure that one of those people would be  
21 available to testify to their origin in this court.

22 Q. It says major case prints. Are major case prints  
23 different than other recorded prints?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 A. Yes.

2 Q. How so?

3 A. Generally when you refer to known prints, it's a  
4 10-print card, which is ten rolled fingers and ten slaps  
5 across the bottom. Major case prints are a complete  
6 collection of the friction ridge skin on the palmar surface of  
7 the hand. So it includes palm prints, it includes lower  
8 joints, it includes multiple captures of each finger in order  
9 to try and collect the entire area of friction ridge skin.

10 Q. The examinations that we've talked about today that  
11 you did occurred in 2007; was that right?

12 A. Yes.

13 Q. That I've talked about?

14 A. Yes.

15 Q. And this is from 2008. So obviously that means the  
16 FBI had other prints of Mr. al Baluchi available for  
17 comparison before this -- before these major case prints were  
18 taken.

19 A. Yes.

20 Q. Is there a way to figure out how many print cards or  
21 major case prints for Mr. al Baluchi the FBI had in its  
22 custody?

23 A. Yes.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Q. How so?

2 A. I have turned them over and they're numbered.

3 Q. Okay. You've turned them over to?

4 A. They were part of discovery.

5 Q. And they -- they date exactly when the FBI had  
6 custody of those print cards?

7 A. No.

8 Q. So they are -- what information would they have?  
9 Would they have the date the print was taken, or the ----

10 A. They have the date of collection, but it doesn't  
11 indicate when they came to us. So in this case, there was a  
12 lot of cards that came to us on a variety of ways, which some  
13 I believe are classified.

14 Q. Okay. I'll tell you what, we will -- we'll just pick  
15 that up in the classified session.

16 A. Okay. To answer your question, all the prints that  
17 are associated with an FBI number are maintained in this case  
18 by me, and we call it the KSL, which is the Known Standards  
19 Library. Every recording that was collected is there, and  
20 each one is numbered in the top right-hand corner. And that  
21 indicates -- so you, when you get a full set of prints, you  
22 know that you have the full set. And we want examiners to  
23 have the full set, so they don't have any inconclusives or

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 prints they're not able to come to a decision on. So it's in  
2 the examiner's best interests to have every card.

3 And the reason we number them is so that the examiner  
4 looking at them can confirm, I have numbers 1 through 24, I  
5 have all cards within the FBI's holdings, and I used every --  
6 all available resources to make this decision.

7 Q. So the examiner then would document which card they  
8 used?

9 A. They don't document which card they used. They  
10 document the person that they used, and they indicate that  
11 they had all available cards. Because one comparison might  
12 come from multiple cards.

13 So it's often the situation that an area of an inked  
14 print is -- let's say it's better around the pattern area in  
15 one print, but the tip, which they also need, is better in  
16 another. So we actually encourage examiners to use all of the  
17 information instead of only one recording, because no two  
18 recordings are the same.

19 So often when you make a comparison, you might use  
20 the rolled and the slapped, or you might use the rolled on two  
21 separate cards. So it does not indicate in any way where that  
22 comparison was performed within the stack of known cards.

23 Q. Sure. But it would then document what the known

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 cards that they had -- the specific known cards that they had  
2 available to them?

3 A. Yes. It would indicate that the person had, you  
4 know, the prints -- this is an unusual situation because we  
5 don't normally have 25 sets of cards. We normally have one or  
6 two cards, so you just have those two cards.

7 But it is policy that you use all available resources  
8 to come to conclusions rather than inconclusives, which leaves  
9 it sort of open ended. In that situation, you would normally  
10 ask for a new card. But in this situation, that wasn't really  
11 an option, which is why we wanted them to have everything they  
12 had instead of -- normally in the report you would write that  
13 you need additional cards, but this was not a situation where  
14 we could do that.

15 ADC [Capt ANDREU]: Could I have one moment?

16 MJ [Col COHEN]: You may.

17 [Counsel conferred.]

18 ADC [Capt ANDREU]: Thank you, sir. That's all I have.

19 MJ [Col COHEN]: All right. Are there any additional open  
20 session questions of this witness?

21 Negative response from the parties.

22 Mr. Ryan, with respect to closed session testimony,  
23 do you have any of this witness?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 TC [MR. RYAN]: Well, first, Your Honor, no redirect in  
2 open.

3 MJ [Col COHEN]: Oh, sorry. Yeah. Right. I was -- that  
4 was one of my questions, so ----

5 TC [MR. RYAN]: I have no redirect in open session  
6 testimony -- in open session I have no redirect. As far as  
7 closed is concerned, I have no direct.

8 MJ [Col COHEN]: Okay. Thank you, sir.

9 Captain Andreu, it was -- it is pronounced Andreu,  
10 correct?

11 ADC [Capt ANDREU]: Yes, sir.

12 MJ [Col COHEN]: Okay. Like I said, things have moved  
13 along fairly well. How -- ballpark is fine. The number of  
14 questions you might have, for example, how many of those do  
15 you have for closed session?

16 ADC [Capt ANDREU]: Sir, I don't think my closed session  
17 questions would take any longer than 20 minutes.

18 MJ [Col COHEN]: Okay. I tell you what then, I'm going to  
19 try to have the setup done in about 30 minutes so we can begin  
20 at about 1145 with the closed session testimony. Then I  
21 have -- I want to ask the parties -- well, let me see what  
22 Mr. Connell has to say first.

23 LDC [MR. CONNELL]: Sir, I was just going to throw out the

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 idea of we have a fair amount of time left before the lunch  
2 break. We could probably cover most, if not all, of the other  
3 pending motions, the 628B/538/561, which is all in one, and  
4 then the 655 from the government and then the 637.

5 MJ [Col COHEN]: Okay. I will -- okay. Is the government  
6 amenable to that? I'll just release the witness for now and  
7 bring him back this afternoon after lunch and we just take up  
8 some oral argument?

9 CP [BG MARTINS]: Your Honor, we are amenable to that.  
10 And I'll add another item is I would request and recommend  
11 that we do that, and then when we break, everyone take their  
12 gear out, because we're going to be going into a closed  
13 session ----

14 MJ [Col COHEN]: Yes, sir. I think that's a good idea.

15 CP [BG MARTINS]: ---- and turn back on the device. But  
16 let's do a careful scrub of everybody.

17 MJ [Col COHEN]: Sir, I absolutely agree. We'll do that.  
18 Everyone, if you'll just take your stuff out.

19 Sir, I'm going to temporarily excuse you. I will  
20 have you return at -- just to be safe, I'm just going to say  
21 we're going to do closed session testimony at 1400, so if you  
22 could be available at 1400 today.

23 WIT: Okay.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: And then you may have an extended lunch,  
2 or whatever, but that will also allow us to take security  
3 precautions with respect to the system and gives us some time  
4 to have that checked out.

5 You are released until 1400. Please do not discuss  
6 the content of your testimony with anyone other than the  
7 prosecution and the defense.

8 WIT: Okay. Thank you.

9 MJ [Col COHEN]: Thank you. Carry on. You're temporarily  
10 excused.

11 [The witness was warned, temporarily excused, and withdrew  
12 from the courtroom.]

13 MJ [Col COHEN]: Counsel, I'm going to take a -- a quick  
14 10-minute recess just for comfort. And we'll get back on the  
15 record no later than 1130, which we'll continue to -- until  
16 1230 or as needed. All right. We're in recess.

17 [The R.M.C. 803 session recessed at 1118, 25 September 2019.]

18 [The R.M.C. 803 session was called to order at 1136,  
19 25 September 2019.]

20 MJ [Col COHEN]: The commission is called to order. All  
21 parties are present as were previously present when we  
22 recessed. Okay. All right.

23 Mr. Connell, why don't we just start. You had asked

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 for 20 minutes to kind of briefly address, I believe it was  
2 the 538/561 discussion ----

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

4 MJ [Col COHEN]: ---- as well as some other matters. And  
5 so I will -- I will definitely -- let's call it a discussion  
6 for now.

7 LDC [MR. CONNELL]: Let me get my -- yes, sir. And my  
8 time hack is 1139.

9 MJ [Col COHEN]: That's fine. I won't hold you to the  
10 very minute, I promise.

11 LDC [MR. CONNELL]: The -- I have produced a set of slides  
12 which are -- have been marked AE 538Y. I have been informed  
13 by the CISO that they have not been approved for public  
14 display, and ----

15 MJ [Col COHEN]: Okay. I'm aware of what this is then.  
16 He had mentioned this to me.

17 LDC [MR. CONNELL]: We have agreed that we will just show  
18 them to the parties and to the court.

19 MJ [Col COHEN]: Sounds good.

20 LDC [MR. CONNELL]: Thank you. So the first issue that I  
21 want to address is the proposed path forward on witnesses.

22 MJ [Col COHEN]: Okay. Sounds good.

23 LDC [MR. CONNELL]: I took the military commission's

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 comments the other day about the military commission's  
2 intention is to move forward on witnesses as expeditiously and  
3 as fulsomely as possible. And so I have -- do you have the  
4 slides in front of you, sir?

5 MJ [Col COHEN]: I will now. Thank you.

6 LDC [MR. CONNELL]: Yes, sir. I have laid out a proposal,  
7 I gave this to the government yesterday for them to work. But  
8 essentially, in the first column, which is for the next  
9 hearing, just to give you my thoughts on it -- yes, please.  
10 May we have the feed from Table 4?

11 MJ [Col COHEN]: You may. Just not to the public. Just  
12 to ----

13 LDC [MR. CONNELL]: Not to the public.

14 MJ [Col COHEN]: Just to counsel and myself.

15 LDC [MR. CONNELL]: Thank you, sir. I appreciate that.  
16 The -- and I'll just summarize the positions of the parties.  
17 The -- with respect to Antoon, the government is waiting for  
18 the resolution of 650 ----

19 MJ [Col COHEN]: I understand.

20 LDC [MR. CONNELL]: ---- and the pieces that flow from  
21 that to make it -- to formalize its position.

22 MJ [Col COHEN]: We are busily working on that. My goal  
23 is to get that to you all as soon as possible.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

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

2 With respect to the camp commander, the government  
3 has been working hard to produce the additional discovery that  
4 it committed to. And as soon as they produce it, I will have  
5 it to the analysts for their review, and we'll intend to be  
6 prepared at the next hearing to go forward.

7 MJ [Col COHEN]: Okay.

8 LDC [MR. CONNELL]: Fitzsimmons is -- so my idea on --  
9 those are two carryovers from this time.

10 With respect to the third -- the other three, my idea  
11 was to group them by Karachi 2002-2003, is the idea ----

12 MJ [Col COHEN]: Makes sense.

13 LDC [MR. CONNELL]: ---- because they're basically all  
14 about the same subject matter. It's easier for everybody to  
15 follow, easier for people to prepare, et cetera.

16 And so that would be Special -- retired Special  
17 Agent Fitzsimmons, and I understand that the government is  
18 checking his availability.

19 MJ [Col COHEN]: Okay.

20 LDC [MR. CONNELL]: Special Agent Butsch, who I don't  
21 think there's any real issue with.

22 The -- Special Agent Zebley -- or retired Special  
23 Agent Zebley is marked in blue there because he is not a

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 person that the government thus far has agreed to produce.

2 MJ [Col COHEN]: Okay.

3 LDC [MR. CONNELL]: If called upon to do so, I am prepared  
4 to argue his one piece of 628B to compel him.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. CONNELL]: But I think his name will be very  
7 familiar to the military commission from how often he was  
8 mentioned as a sort of central coordinator around flow of  
9 information between CIA and FBI by Special Agent Fitzgerald  
10 and Special Agent Perkins.

11 In addition, I will tell you that Special  
12 Agent Perkins testified a little bit about her experience in  
13 Karachi in 2002. Special Agent Zebley's experience was much  
14 more in-depth, and he has the -- she mentioned sort of  
15 generally the ideas, but his experience was much closer tied  
16 to the ultimate issues which are before this military  
17 commission ----

18 MJ [Col COHEN]: Copy.

19 LDC [MR. CONNELL]: ---- in the motions to suppress.

20 MJ [Col COHEN]: Okay.

21 LDC [MR. CONNELL]: Furthermore, he actually has a lot of  
22 information about the number, quality, sequence, and  
23 circumstances of the exchange of information between the FBI

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 and the CIA in the requirements. And the court may recall  
2 that in the Moussaoui decision from the Fourth Circuit, he is  
3 the only special agent that is mentioned by name because he  
4 was so central to that process and provided information to the  
5 Fourth Circuit and to the Eastern District of Virginia about  
6 that.

7           If -- he prepared a declaration, which we'd be  
8 prepared to file with the military commission, if necessary.  
9 But I'm not sure that -- I'm not sure -- the government is  
10 assessing its position on Special Agent Zebley, but our  
11 position is, let's do the Karachi witnesses at one time, let's  
12 get these people here, and this seems like about two weeks'  
13 worth of work.

14       MJ [Col COHEN]: Okay. I understand.

15       LDC [MR. CONNELL]: Sir, with respect to the former  
16 interpreter, we have a -- it seems like a consensus is  
17 emerging over dates for ----

18       MJ [Col COHEN]: Let's not discuss the dates at this  
19 point.

20       LDC [MR. CONNELL]: No, no, I'm not ----

21       MJ [Col COHEN]: No, no, I just wanted to make -- I think  
22 that's one of the issues that we're dealing with.

23       LDC [MR. CONNELL]: It's not -- we can -- it's not exactly

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 what I had notated here.

2 MJ [Col COHEN]: Okay. Okay.

3 LDC [MR. CONNELL]: But it's not far off of that. I will  
4 let the court reporters know, or we'll do an 802, however you  
5 choose.

6 MJ [Col COHEN]: Okay. Yeah. So the way I anticipate  
7 that I will do this is I meant it when I said you guys just  
8 tell me the dates we can do it, and I will be there. I'm  
9 going to be the deposition officer, and it's the -- a proposed  
10 location and time. I will issue an order, most likely under  
11 seal, and -- yeah, you guys just let me know, whatever the  
12 consensus is. I am ready to help the parties get the  
13 information so that we can address this issue once and for  
14 all.

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

16 With respect to January, you know, one of the things  
17 we were all trying to do this week was assess how these things  
18 work and what takes longer and what can move faster.

19 MJ [Col COHEN]: Right.

20 LDC [MR. CONNELL]: We've seen examples of both.

21 MJ [Col COHEN]: We have.

22 LDC [MR. CONNELL]: Special Agent Fitzgerald took longer  
23 -- took 50 percent longer than the government thought and 25

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 percent longer than I thought; whereas Special Agent Perkins,  
2 we were able to move through very expeditiously.

3           You asked me once how long I thought my -- just my  
4 questioning of Mitchell would take, and at the time I gave a  
5 three-day estimate. I now think that that was optimistic,  
6 having watched how this process works. In part because there  
7 are -- the Mitchell examination is so document intensive. I  
8 mean, it has so many documents which are attached to it, which  
9 creates some friction, slows things down.

10          MJ [Col COHEN]: Absolutely.

11          LDC [MR. CONNELL]: Especially, if he is the sort of  
12 person who wants to review each document before answering  
13 questions about it. I'm not blaming him for that, but that --  
14 it's also a -- an examination that involves a lot of video and  
15 audio, which can also add some friction, slow things down at  
16 some times.

17           So I -- I also think, from my conversations with my  
18 colleagues, that it will be difficult for at least some of  
19 them to let Mitchell go by without questioning him. So that's  
20 my belief.

21          MJ [Col COHEN]: I would -- that would not shock me. So I  
22 understand.

23          LDC [MR. CONNELL]: Right. And then I've also proposed --

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 obviously, this is a little farther out. We can cross that  
2 bridge maybe when we come to it, but I have proposed a path  
3 forward for February as well.

4 But the important part is that my proposal for  
5 February is in a different color because I think the best  
6 thing in February would be to do depositions in the National  
7 Capital Region, and I think that we could avoid some of these  
8 witnesses traveling to Guantanamo. And there are reasons why  
9 some of them should -- would not want to.

10 First, the first three are fairly short, and bringing  
11 them down here for a week for a half day or an hour and a half  
12 of testimony might not be the most efficient. With respect to  
13 the UFI witnesses, obviously those present their own special  
14 challenge. It's likely that they will be in closed session  
15 entirely, and doing them as a deposition sort of -- sort  
16 of evades a lot of problems.

17 MJ [Col COHEN]: Right.

18 LDC [MR. CONNELL]: And I will tell you that the  
19 government asked would my -- and I speak only for myself --  
20 intention be that it might be possible that we could play some  
21 of these depositions as trial depositions, and in many  
22 situations, I don't see why that wouldn't work.

23 Obviously, there could be examples, more discovery,

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 change of circumstances, something else that might change  
2 that, but, you know, in general I will tell you that when it  
3 comes to, especially sentencing phase, we may be playing some  
4 videos, and I -- it seems like that could work.

5 MJ [Col COHEN]: Okay.

6 LDC [MR. CONNELL]: So that's my proposal.

7 I'd like to turn from that -- I have 11 minutes left.  
8 I'd like to turn from that to the last slide, which is what I  
9 think we've learned about discovery this week.

10 The -- my thought, sir, and you've asked -- have  
11 allowed me some time to do those thoughts -- is that there are  
12 fundamentally two problems. The main problem is that the  
13 government's discovery practice has come unmoored from the  
14 rules, and the second is that the legal environment has  
15 changed while the discovery has remained static.

16 With respect to the major problem, like the theme  
17 that underlies so many of the difficulties in examining  
18 witnesses last week, and the invocations of national security  
19 privilege, and where it's unclear what's happening there, when  
20 witnesses can't answer because something's redacted, have to  
21 do with the unilateral redactions -- not the 505 process, but  
22 the unilateral redactions of the government which they claim  
23 under the authority of relevance.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           And I'll just give just a little bit of history of  
2 that. I'm conscious of my time. But if you look at AE -- the  
3 AE 161 series, it lays out sort of the origin of this and how  
4 it all went wrong. Just to give you an example, in the first  
5 tranche of 302s the government produced, it produced 6,384  
6 302s and in those 6,384 302s there were 128,833 redactions.

7           The -- I remember well that I calculated at the time  
8 that if you considered each of those redactions an inch and  
9 laid them out end to end, it would be 1.3 miles, which happens  
10 to be the exact distance from the ferry landing on the Leeward  
11 side to the ferry landing on the Windward side.

12           We objected in the AE 161 series. The government  
13 defended their position in AE 161B on relevance redactions,  
14 and then there were some subsequent productions which were  
15 less, but still heavily redacted versions.

16           The -- given the witness testimony this week, one  
17 thing that we know is that more than 90 percent of the 302s in  
18 the case have not been produced by the government. 165,000  
19 302s, generously -- I'm under pressure to slow down as well,  
20 as well as to go fast.

21           MJ [Col COHEN]: You're fine, Counsel. We're doing fine.

22           LDC [MR. CONNELL]: Generously, 13,000 302s produced by  
23 government, and so we're well under 10 percent.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           This leads to the situations, as it did this week,  
2 where, for example, the government had to produce a 302 after  
3 I had asked the witness, "Hey, why isn't there a 302 on this?"  
4 And I do appreciate that effort. I do not want to be  
5 misunderstood. I appreciate the conscientiousness of going  
6 back and checking and the effort of doing so, but it really  
7 should not be necessary that that have to happen.

8           There -- what we've seen, for example, is redactions  
9 on a lot of key items. And if I could show you -- Your Honor,  
10 if I could have access to the document camera?

11         MJ [Col COHEN]: You may.

12         LDC [MR. CONNELL]: I'm showing you FBI-21253, which is  
13 found in the record at AE 628CC Attachment H. It's hard to  
14 see how these, for example, are relevance redactions. This,  
15 you might recall, is the loop about al Shorabi. And the  
16 al Shorabi loop -- information loop was unique in that it  
17 suggested, at least, that Special Agent Grave de Peralta, with  
18 the assistance of Special Agent Fitzgerald, was interrogating  
19 someone at Guantanamo and then at least receiving information  
20 from the interrogations of Mr. Bin'Attash and Mr. Khalid  
21 Shaikh Mohammad, and then returning back and using the answers  
22 to that.

23           And so when you look at the redactions on, for

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 example, FBI-21253, it seems to be redactions relating --  
2 describing the very detainees who were at issue. The --  
3 al Shorabi insisted that he knows those who have been talking  
4 about him are being tortured to say things about him, an echo  
5 of Mr. Mohammad's statements in the CSRT. al Shorabi stated,  
6 "If" -- long redaction -- "are brought to him and they tell  
7 him they are not being tortured, then he will tell everything  
8 that he knows." It's hard to see how that is a redaction for  
9 relevance, a unilateral redaction for relevance, as opposed to  
10 for actually hiding information.

11           There's one more good example -- there's lots of good  
12 examples, but another example of the same thing in this at  
13 FBI-21255 is, "al Shorabi stated" -- redaction, redaction --  
14 "are brought to him and they tell him personally they have not  
15 been tortured, then he will tell everything that he knows."

16           It looks very much like the same reference because we  
17 know -- and I won't take the time to put it up there, but we  
18 know from the next 302 in the series that Grave de Peralta  
19 leaves for a substantial period of time, comes back and says,  
20 "You told me that I should talk to Mr. Mohammad and  
21 Mr. Bin'Attash. I held up my end of the bargain. Now it's  
22 time for you to hold up your end of the bargain."

23           So this is like a fairly -- it's unique in my

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 experience of this discovery, a uniquely powerful example of  
2 the coordination between FBI, CIA, and how powerful the CIA  
3 information and access to it is in interrogations. But to the  
4 actual point, it's very difficult to see how that is a  
5 relevance redaction.

6           It leads us to the same issue -- and we know since  
7 this is a 302, that it was originally unclassified, because  
8 Special Agent Fitzgerald testified that 302s -- they had to  
9 use an LHM in this case, for example, because 302s could not  
10 be classified.

11           But we have -- I don't know what this paragraph says.  
12 It follows -- and I'm on page 21254. It follows another  
13 discussion of possible use of torture, and the interviewing  
14 agent here is mocking the idea of torture. And then there's a  
15 completely blacked-out paragraph. And it's hard to see how,  
16 given the context of the paragraph above it and the context of  
17 the paragraph before it, as well as every other paragraph in a  
18 long series of 302s, that this would be redacted for relevance  
19 as opposed to something else.

20           MJ [Col COHEN]: Okay.

21           LDC [MR. CONNELL]: Now, we are at a structural  
22 disadvantage there, Your Honor. Because we can go with -- and  
23 sometimes do, with individual 302s and say, "Hey, can I have a

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 less redacted version of this?" And sometimes, you know, they  
2 will unredact an item. Recently one, we asked for a  
3 less-redacted version of a 302 and they unredacted the word,  
4 "source." So we still didn't know who the witness was, it was  
5 just it said "source." But the key thing to that is there's  
6 been zero judicial review of that process. It is not like the  
7 505 process, it is an entirely unilateral decision made by the  
8 government.

9           Now, the -- when the military commission addressed in  
10 AE 161J, it held that the government could make unilateral  
11 redactions in unclassified material for relevance, although  
12 not for PII. But the government has taken that same view and  
13 applied it to classified, which falls under a much different  
14 rule. 506 is structured very differently than 505 is.

15           And M.C.R.E. 505(f)(1)(A) is quite clear: If the  
16 government seeks to delete or withhold classified information,  
17 it must go through the 505 process. Relevance redactions do  
18 not apply in -- within a document, do not apply to classified  
19 information because obviously the government can entirely  
20 withhold some documents. Like 99.999 percent of classified  
21 documents in the world are irrelevant to us. But having  
22 decided that the document is relevant, if it wants to withhold  
23 or delete information under 505(f)(1)(A), it has to come

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 through the military commission. However, the government has  
2 done so unilaterally.

3 I won't put this example on the screen because it is  
4 marked SECRET, although every paragraph on this page is, in  
5 fact, marked UNCLASSIFIED. But the government -- but the  
6 example is found in AE 628DD at FBI-20557, and this is the  
7 follow-up to the example that I just gave about al Shorabi.

8 And the -- Special Agent Grave de Peralta says,  
9 "However, there are a number of items in which al Shorabi did  
10 not answer accurately" -- redacted, redacted. "The  
11 interviewing agent reminded al Shorabi that it was al Shorabi  
12 who stated that the interviewing agent should go and talk with  
13 Bin'Attash regarding al Shorabi's involvement in al Qaeda and  
14 the trip to Malaysia. The interviewing agent told al Shorabi  
15 he had lived up to his end of the bargain, but now it is up to  
16 al Shorabi to address the issues."

17 I think that redaction -- which would be hard to see  
18 how it would be for relevance -- would shed a lot of light  
19 about the debate which sort of took place about, was Special  
20 Agent Grave de Peralta -- had he actually gone to see  
21 Bin'Attash and interrogate him in CIA custody, or was he  
22 referring to some sort of ruse? What's the answer to that?  
23 We don't know, and there's no real way for us to know. It's

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 not a 505 redaction because it was never approved by the  
2 military commission.

3 Now, the government, however, what we -- now that  
4 we're actually into testimony, we see that the government has  
5 gone beyond deletions and withholding under  
6 M.C.R.E. 505(f)(1)(A) to unilateral substitutions, which can  
7 only be authorized by a judge under M.C.R.E. 505(f)(2)(C).

8 And the example that I want to give, and I can't put  
9 it on the screen, but is found in AE 628T Attachment B, at  
10 PRG-777. This is the piece of information that I have  
11 described as the most important single piece of discovery that  
12 I ever received. And it's an e-mail which is from CIA officer  
13 to CIA officer, and then a bunch of other CIA officers are  
14 mentioned, and then one real name, and one UFI.

15 And when I went -- and, sir, I'll tell you that my 20  
16 minutes are expired. If I could have just a couple of more  
17 minutes, I'll wrap up.

18 MJ [Col COHEN]: You may.

19 LDC [MR. CONNELL]: The -- when -- this is not a document  
20 that the government ever put through the 505 process. And so  
21 I sent a request to the government: Could you assign these  
22 people UFIs so that we could at least debate about them, you  
23 know, with a number as opposed to just one of dozens or

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 hundreds or maybe thousands of CIA officers.

2           The government's response was to decline that request  
3 but to say that they would treat it as a request for an  
4 interview under Protective Order #4, meaning that they would  
5 send their -- their request to them.

6           And I said, no, don't do that, because that's not  
7 actually what I'm asking for here. If I could figure out who  
8 they were, if I had a UFI, I might want to exercise option 2  
9 under Protective Order #4, as I described to the military  
10 commission that I've done before, where we leave the  
11 government out of it altogether and I go through OSS to ask  
12 for delivery of the letter.

13           But worst of all, Your Honor, in the discovery  
14 practice is 914. There's a direct and unambiguous order in  
15 AE 502ZZZ, but not only that, there's a very specific rule  
16 in -- in M.C.R.E. 505(1)(4) -- no, excuse me, (i)(4), India 4,  
17 which very specifically says that when we're talking about  
18 withholding prior statements of a witness, only a judge, a  
19 military judge, can authorize the withholding of portions of  
20 914 materials because, obviously, there's otherwise a direct  
21 rule requiring their production.

22           And an example of that, Your Honor, is found at  
23 AE 628T Attachment C, and AE 628 Attachment C at FBI-23728.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 And this is a document which was -- excuse me. Let me get a  
2 better example. The 628T Attachment C is actually a statement  
3 by Special Agent Fitzgerald that the government has made  
4 unilateral redactions to without coming through the military  
5 commission.

6 The last point I want to address is the problem of  
7 dates. This problem has flowed throughout numerous AE series:  
8 The 534 series, the 562 series, the 286 series. But I just  
9 want to give you this example.

10 And if I could have access to the document camera?

11 MJ [Col COHEN]: You may.

12 LDC [MR. CONNELL]: Your Honor, I'm showing the military  
13 commission AE 573 Attachment B, and this is FOUO. Could it be  
14 displayed to the gallery?

15 MJ [Col COHEN]: It may.

16 LDC [MR. CONNELL]: Sir, while that's coming up to the  
17 gallery, I'll say -- I'll represent that this is a summary of  
18 a CIA cable regarding statements by Mr. al Baluchi very early  
19 in his -- in his custody. The question of Karachi will come  
20 into play here. The -- there will probably be some testimony  
21 about this. And it just describes mid-2003 with no additional  
22 information.

23 It so happens, however -- and I'm showing you ----

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: What's the citation on that again,  
2 Counsel? Where will I find that at?

3 LDC [MR. CONNELL]: AE 573 Attachment B.

4 MJ [Col COHEN]: Thank you.

5 LDC [MR. CONNELL]: It so happens that the -- thanks to  
6 the conscientious work of Jason Leopold and BuzzFeed, the --  
7 the same cable was released under the Freedom of Information  
8 Act, and you can find that cable at AE 573 Attachment C.

9 And I just want to bring the military commission's  
10 attention to the sort of information which is being released  
11 to the public, which is not being -- so it's obviously  
12 unclassified, that is not being contained in these summaries  
13 that we receive.

14 The -- for example, it has headers that we know  
15 where -- first of all, we can tell it's a cable. Second of  
16 all, it has headers on the cable. Like we know it's going to  
17 Alec Station. We have a subject to it, "2 May 2003 Ammar  
18 al Baluchi interview," which means that we also know the  
19 date that the interrogation takes place.

20 Furthermore, we know -- and this is at the middle of  
21 the page -- the date that the cable was sent because we can  
22 read 021643 Zulu time on May 2003.

23 It gives us a little bit of other information as

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 well. For example, this is the document from which we know  
2 that American authorities were involved in this interrogation  
3 because unlike the cable, the FOIA version contains -- and  
4 this is the highlighted material at the bottom of the first  
5 page of AE 573 Attachment C -- that an officer monitored via  
6 CCTV and actively participated in the planning.

7 We know from the SSCI Report, which describes this  
8 particular cable in a footnote, that that was a CIA officer,  
9 which although that's blocked out of this, it's clearly a CIA  
10 cable.

11 The -- there are some other changes. For example,  
12 the -- there are -- for reasons that I've never fully  
13 understood, the -- there are some materials, and I was just  
14 showing some examples, some -- which appear in the document  
15 itself, some examples of material which is left out of the  
16 cable for no clearly apparent reason.

17 And I'm done with the document camera.

18 MJ [Col COHEN]: Thank you.

19 LDC [MR. CONNELL]: So the -- to wrap this up, I do  
20 believe that systemically there's a problem with the discovery  
21 process.

22 Now, at the 802 the other day, the government asked  
23 for the opportunity to try to address some of these problems,

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 and I met with the government for a substantial period of time  
2 and described my priorities; and to be fair to myself, I also  
3 described proposals for how I thought, within the interagency  
4 process, the government could actually solve some of these  
5 problems.

6 Now, my knowledge of the interagency process is very  
7 minimal. I'm sure I'm naive and don't really understand it,  
8 but I did my best to pitch -- not just here are my problems,  
9 but here are my solutions. And the government has said that  
10 it will report back by 10 October with the results of its  
11 investigations on those questions.

12 MJ [Col COHEN]: Okay.

13 LDC [MR. CONNELL]: Thank you so much for your indulgence,  
14 sir.

15 MJ [Col COHEN]: Thank you very much. Appreciate it.

16 Are there any other comments -- before we go into any  
17 other types of issues, are there any additional comments with  
18 respect to the matters, particularly the dates and the way  
19 forward, from any other defense counsel?

20 LDC [MS. BORMANN]: Dates of?

21 MJ [Col COHEN]: With respect to -- it would be the second  
22 slide of the one that went up. Ms. Bormann?

23 LDC [MS. BORMANN]: The dates of the ----

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Yeah.

2 LDC [MS. BORMANN]: ---- deposition, the ----

3 MJ [Col COHEN]: Yeah, the witnesses slide that was not  
4 published to the gallery.

5 LDC [MS. BORMANN]: Well, as I understand it right now, I  
6 can't talk about possible deposition dates in December because  
7 we can't go there; is that right?

8 MJ [Col COHEN]: Or November or January or whenever it is.  
9 Right.

10 LDC [MS. BORMANN]: Well, what Mr. Connell has down was  
11 not ----

12 MJ [Col COHEN]: Yeah, I'm not looking for a final date on  
13 that. I was just looking to see if there was ----

14 LDC [MS. BORMANN]: Well, we have an e-mail that's been  
15 going around amongst all of the parties.

16 MJ [Col COHEN]: Okay.

17 LDC [MS. BORMANN]: Those dates were not part of that  
18 e-mail.

19 MJ [Col COHEN]: Okay.

20 LDC [MS. BORMANN]: It's very close to those dates.

21 MJ [Col COHEN]: Okay.

22 LDC [MS. BORMANN]: So -- but I just don't know how many  
23 days you were anticipating.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Four days is what I planned on allotting.  
2 LDC [MS. BORMANN]: Okay. So I think we have ----  
3 MJ [Col COHEN]: Okay.  
4 LDC [MS. BORMANN]: ---- within a week of -- I mean, what  
5 I got from Mr. Ryan, via Mr. Trivett, was a particular week,  
6 and ----  
7 MJ [Col COHEN]: Okay. Great. So it sounds like we're  
8 all pretty close, then. Because I'll do whatever dates you  
9 guys tell me we need do, so ----  
10 LDC [MS. BORMANN]: We've narrowed it to a one-week  
11 period, and -- yeah, so ----  
12 MJ [Col COHEN]: Okay.  
13 LDC [MS. BORMANN]: ---- from our perspective.  
14 MJ [Col COHEN]: Excellent. Thank you, ma'am.  
15 Mr. Ryan.  
16 TC [MR. RYAN]: I imagine another e-mail or two and we'll  
17 have it ----  
18 MJ [Col COHEN]: Perfect.  
19 TC [MR. RYAN]: ---- solidified, sir.  
20 MJ [Col COHEN]: Like I said, you guys just tell me the  
21 date and the location and I'll put it in an order and issue  
22 that under seal.  
23 Mr. Trivett.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MTC [MR. TRIVETT]: So, sir, are you instructing us to  
2 find the location?

3 MJ [Col COHEN]: If you have a proposal of where -- what  
4 makes sense, that would be ideal. I'm -- I won't talk about  
5 the location. I know where I'm stationed. I don't have a lot  
6 of SA on other locations where we could do this. I'm  
7 stationed at Langley Air Force Base, so I know we probably  
8 can't do it there.

9 MTC [MR. TRIVETT]: Yes, sir, we'll look into it.

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

11 Ms. Radostitz.

12 ADC [MS. RADOSTITZ]: Your Honor, we're going to address  
13 some more in our argument on 639, 653 ----

14 MJ [Col COHEN]: Perfect.

15 ADC [MS. RADOSTITZ]: And I have spoken with Mr. Connell,  
16 I would appreciate if we could do that tomorrow morning which  
17 is when I had understood we were going to do it.

18 MJ [Col COHEN]: Absolutely, ma'am.

19 ADC [MS. RADOSTITZ]: I do want to make the record that we  
20 are opposed to doing any depositions when we cannot have  
21 access to Mr. Mohammad or cannot make an argument for him to  
22 be present.

23 MJ [Col COHEN]: I understand.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 ADC [MS. RADOSTITZ]: So we will make a record on that for  
2 now but we'll also address it in the other argument.

3 MJ [Col COHEN]: I understand.

4 ADC [MS. RADOSTITZ]: Thank you, sir.

5 MJ [Col COHEN]: Yes, ma'am. All right.

6 TC [MR. RYAN]: Pardon me, Your Honor?

7 MJ [Col COHEN]: Mr. Ryan.

8 TC [MR. RYAN]: May I address the issue of scheduling  
9 going forward as it pertains to witnesses over the next few  
10 sessions?

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

12 [Counsel conferred.]

13 TC [MR. RYAN]: I'm sorry.

14 MJ [Col COHEN]: That's okay.

15 TC [MR. RYAN]: Your Honor, I ask for the feed from that  
16 side of the room, Judge.

17 MJ [Col COHEN]: Yeah, absolutely, guys. Not to the  
18 public, just to the judge and counsel. Thank you.

19 TC [MR. RYAN]: Yes, sir. If I may?

20 MJ [Col COHEN]: You may, absolutely.

21 TC [MR. RYAN]: For the first week, I believe counsel's  
22 comments for the most part are consistent with what I believe.

23 As for Mr. Antoon, it's not just 650. More

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 specifically, 641 was ----

2 MJ [Col COHEN]: Yeah. I'm going to -- I'll set up a time  
3 or I'll issue an order for a date at the conclusion of this.  
4 I just don't -- I -- I want to be able to review those  
5 materials, probably the day before I have that discussion with  
6 you all.

7 TC [MR. RYAN]: Understood.

8 MJ [Col COHEN]: I've reviewed them several times already.

9 TC [MR. RYAN]: Understood.

10 MJ [Col COHEN]: Probably -- I hope to get 650 out before  
11 I have that discussion with you. I'm hoping to get 650 out  
12 towards the end of next week, if I can.

13 TC [MR. RYAN]: Understood.

14 MJ [Col COHEN]: Bear with me. Give me a couple of days  
15 left or right of that. And then probably towards the Thursday  
16 and Friday of the -- so the 7th of October is a Tuesday, I  
17 believe, or a -- maybe a Monday -- yeah, I think it's a  
18 Tuesday -- or it may be a Monday. Yeah, it's a Monday.  
19 Sorry. No calendar in front of me.

20 So the week of the 14th, probably towards that  
21 Thursday-Friday.

22 TC [MR. RYAN]: Very good, sir. We're at your service,  
23 then. Let us know.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: All right. Thank you. And if you guys  
2 could then start looking for a location to have that.

3 TC [MR. RYAN]: All right. I can clarify a little bit  
4 further as to some of the witnesses ----

5 MJ [Col COHEN]: And will that be enough time then to  
6 address the Antoon? If I can have that discussion with you  
7 all on the 16th -- or the -- between -- somewhere between the  
8 16th and 18th of that week, can you all then produce Antoon  
9 for the 26th of October?

10 TC [MR. RYAN]: It's certainly possible, sir.

11 MJ [Col COHEN]: Yeah.

12 TC [MR. RYAN]: And we'll take that under advisement,  
13 we'll be planning accordingly.

14 MJ [Col COHEN]: Okay.

15 TC [MR. RYAN]: As far as the other persons, I agree. We  
16 have agreed to produce former Special Agent Fitzsimmons. As  
17 counsel noted, he is not with the government, so we'll have to  
18 check his availability. But in principle, in theory, I don't  
19 disagree with him being scheduled for the next session.

20 We agree with the Mike Butsch being treated as well.

21 After consultation with fellow prosecutors and with  
22 representatives of the FBI, we believe the production of  
23 Zebley, Mr. Zebley is appropriate.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Okay.

2 TC [MR. RYAN]: We will agree to that. Again, he is out  
3 of the government. We will have to check as to his  
4 availability.

5 MJ [Col COHEN]: All right.

6 TC [MR. RYAN]: I at this point have no idea what that may  
7 or may not be.

8 MJ [Col COHEN]: All right. And I understand the  
9 limitations on subpoena power for nongovernment employees. If  
10 he -- if he's unwilling to travel to the island but we can  
11 still take his testimony via VTC, I mean, I think that will be  
12 preferable to not having his testimony at all.

13 TC [MR. RYAN]: All right. And Your Honor, as to this --  
14 that next session, 26 October to 9 November, although I think  
15 we've nailed down a few names for certain, if -- barring  
16 something unforeseen, I also want to point out that there are  
17 several witnesses that we -- that we, the prosecution, seek to  
18 bring down and have testify, to include Mr. Antol, who we made  
19 reference to ----

20 MJ [Col COHEN]: Yes.

21 TC [MR. RYAN]: ---- over the last few weeks, and also  
22 Special Agent Pellegrino ----

23 MJ [Col COHEN]: Okay.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 TC [MR. RYAN]: ---- who was the FBI's statement witness  
2 as to ----

3 MJ [Col COHEN]: I did hear that name quite a bit last  
4 week.

5 TC [MR. RYAN]: I would suggest, Judge, that maybe the  
6 best move is the parties can ----

7 MJ [Col COHEN]: Absolutely, yeah. It doesn't sound  
8 like -- it sounds like, as far as the witnesses, in particular  
9 between the AAA team and the government, that there's probably  
10 some consensus. I don't think they would be opposed to Antol  
11 or Pellegrino testifying either if we can fit it in, so ----

12 TC [MR. RYAN]: And the only other mention I wanted to  
13 make regarding witnesses, Your Honor, is for the 20 through  
14 31 January session. Mr. -- Dr. Mitchell and Mr. Jessen, I  
15 think, everyone understands, are closely situated in terms of  
16 expected testimony, involvement, and so on. Those two  
17 persons, we believe, over the course of a two-week session  
18 should be able to be accomplished by ----

19 MJ [Col COHEN]: Okay.

20 TC [MR. RYAN]: ---- a military commission sitting for a  
21 significant period of time each day. So we would request --  
22 and also, sir, I note that Mr. Mitchell and Mr. Jessen are  
23 both represented by counsel, who we have been in touch with.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 Counsel would wish to be present for their testimony, so  
2 obviously it helps -- it would help things if they were  
3 scheduled for the same time period as well. So we would seek  
4 to add Mr. Jessen to that 20 to 31 January time period.

5 MJ [Col COHEN]: Okay. I tell you what, I think everyone  
6 wants to question them. I think -- I think -- like I said, I  
7 will not be surprised if there are multiple questions of these  
8 witnesses by multiple -- by multiple parties.

9 We'll just plan on a general trial schedule for that  
10 time period of 0800 to 1800 for that two-week period, building  
11 in some additional time with an hour-and-a-half lunch each  
12 day.

13 TC [MR. RYAN]: Very good, sir.

14 MJ [Col COHEN]: And then if you all want -- both in those  
15 parameters want to get together and decide how much you really  
16 think you can get done in that two-week period, I'm open to  
17 all suggestions.

18 TC [MR. RYAN]: Very good.

19 MJ [Col COHEN]: I'll let you all talk about that. I  
20 don't want to go earlier than that, I don't want to go later  
21 than that on any given day.

22 TC [MR. RYAN]: Agreed.

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

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 TC [MR. RYAN]: Judge, I also failed to say, I hope I -- I  
2 don't think I was clear -- the counsel who represents these  
3 men is actually the same person.

4 MJ [Col COHEN]: Okay.

5 TC [MR. RYAN]: So being able to handle them both in the  
6 same session, I'm sure, would be ----

7 MJ [Col COHEN]: Understood.

8 TC [MR. RYAN]: ---- conducive for their schedules as well  
9 and certainly that should be taken into consideration, I  
10 think, to the extent possible.

11 MJ [Col COHEN]: Right. I understand. And like I said, I  
12 understand the significance of this testimony for everyone.

13 TC [MR. RYAN]: All right. May I have one moment, Your  
14 Honor?

15 MJ [Col COHEN]: You may.

16 [Counsel conferred.]

17 TC [MR. RYAN]: Your Honor, I just wanted to point out  
18 that, based on communications the prosecution had with those  
19 individuals as well as counsel, we believe that date -- those  
20 dates are available, are being kept available for them.

21 MJ [Col COHEN]: Excellent.

22 TC [MR. RYAN]: They have, I should note for the  
23 commission, agreed to be witnesses. They are private parties,

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 they have agreed to be witnesses. They have agreed thus far  
2 to be present in Guantanamo, which I think Your Honor would  
3 agree, after the last couple of weeks, makes things  
4 logistically easier in terms of displaying and showing  
5 things, so ----

6 MJ [Col COHEN]: I agree. It definitely would be  
7 preferable if they're willing to travel down here then ----

8 TC [MR. RYAN]: Right. So I think some good faith on the  
9 part of the parties of trying to work with them, their counsel  
10 to accomplish it, in what seems to me to be a significant  
11 period of time would make sense. So I just ask Your  
12 Honor ----

13 MJ [Col COHEN]: Absolutely. Yeah, like I said, I'll go  
14 ahead and give that as the generalized schedule, and then I  
15 will let you all talk about what we can do. If I needed to go  
16 into a Saturday that week, I can go into a Saturday.

17 TC [MR. RYAN]: Understood.

18 Your Honor, counsel is correct. We did meet for a  
19 significant period of time regarding, I'll call them, specific  
20 requests emanating from the 538/561 series. Your Honor was  
21 kind enough to give us a suspense date, I believe, of 10 of --  
22 10 October ----

23 MJ [Col COHEN]: That is correct.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 TC [MR. RYAN]: ---- in which to make our assessments and  
2 hand over anything that we deem appropriate at this time. I  
3 assure the commission we will work on that. I certainly can't  
4 assure the commission we'll come -- we come to an agreement on  
5 everything that counsel raised today, nor will I try to argue  
6 it in a vacuum. We'll take our time that's been allotted to  
7 us, we'll make our decisions, and we'll go from there.

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

9 TC [MR. RYAN]: With that, Your Honor, subject to any  
10 questions.

11 MJ [Col COHEN]: No. No. Like I said, I think -- like I  
12 said, the way forward that's been proposed makes sense to me.  
13 I think we'll be able to get -- we'll be busy over the next  
14 three or four months. I'm going to let conferencing within  
15 the defense community go and with the trial counsel with  
16 respect to depositions in February. I am not  
17 personally opposed to that idea for some -- for some of these  
18 witnesses. Obviously, we know that at least one party would  
19 not want that to happen.

20 So I guess just in general, what is the -- especially  
21 with some of the UFI witnesses, what is -- does the government  
22 have a preference with respect to depositions as opposed to  
23 bringing them down here in some kind of disguise or something

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 like that?

2 TC [MR. RYAN]: That requires a conversation with my boss,  
3 sir.

4 MJ [Col COHEN]: Absolutely.

5 TC [MR. RYAN]: If I may?

6 MJ [Col COHEN]: You may.

7 [Counsel conferred.]

8 MJ [Col COHEN]: Mr. Ryan.

9 TC [MR. RYAN]: Thank you, sir, for the consideration.

10 MJ [Col COHEN]: Absolutely.

11 TC [MR. RYAN]: Your Honor, if -- and I emphasize if --  
12 the commission was to make a determination that testimony in  
13 some form or another from a UFI witness was appropriate,  
14 meaning necessary under all of the rules that govern this  
15 very, very sensitive area, we would -- the prosecution would  
16 request that the testimony take place during a normal session  
17 of the commission where the witnesses could appear via VTC.

18 MJ [Col COHEN]: Okay. Thank you. I appreciate that.

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

20 MJ [Col COHEN]: All right.

21 Mr. Sowards.

22 LDC [MR. SOWARDS]: Just a couple of other thoughts, Your  
23 Honor ----

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: Absolutely, sir.

2 LDC [MR. SOWARDS]: ---- for your consideration. Thank  
3 you for the opportunity.

4 Just very briefly, I note that the decision, I  
5 believe, has not yet been made with respect to calling  
6 Mr. Reismeier and Foster.

7 MJ [Col COHEN]: That is -- that is correct. I need to --  
8 I, like counsel, probably need to see that -- those documents  
9 before I can make that decision, but I would have to -- I  
10 would need to factor that in to when we would be able to do  
11 that.

12 LDC [MR. SOWARDS]: Okay. And just for your thinking in  
13 that regard, with respect to the 26 October to November  
14 period, given some of the witnesses that Mr. Connell has  
15 listed, I can represent that we most likely would be examining  
16 some, if not all of them.

17 MJ [Col COHEN]: Excellent. Thank you for letting me know  
18 that.

19 LDC [MR. SOWARDS]: Sure.

20 MJ [Col COHEN]: That helps build that into it. All  
21 right.

22 LDC [MR. SOWARDS]: And that I think -- also, with respect  
23 to the time allotted, that if -- just in terms of -- I mean,

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 it's -- obviously, it's the government's decision if they want  
2 to add somebody on, but I think a witness of the significance  
3 of Mr. Pellegrino makes that pretty unrealistic to slot him in  
4 for the 26 October to -- I mean, 26 October to 9 November  
5 slot.

6 MJ [Col COHEN]: Okay.

7 LDC [MR. SOWARDS]: But if the military judge were to  
8 decide that Reismeier and Foster were to be called, that would  
9 make more sense to put them there.

10 MJ [Col COHEN]: I understand.

11 LDC [MR. SOWARDS]: With -- and also we have requests, as  
12 you know, pending for 524 witnesses ----

13 MJ [Col COHEN]: Yes.

14 LDC [MR. SOWARDS]: ---- which may be of a more economical  
15 nature. I don't want to call them fillers because we think  
16 they're important.

17 MJ [Col COHEN]: Right.

18 LDC [MR. SOWARDS]: But people who may be a little more  
19 flexible, but people like, I think, Pellegrino, as well as  
20 Drs. Mitchell and Jessen are fairly significant witnesses, so  
21 I just bring that to your attention.

22 MJ [Col COHEN]: No. Absolutely.

23 LDC [MR. SOWARDS]: And with respect, very briefly, to the

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 20 to 31 January proposal, I would just say, Your Honor -- and  
2 I know that you -- you have suggested before and we have done  
3 before the 0800 to 1800 time schedule and considering extra  
4 time.

5 Two pretty important considerations: One is that  
6 these will be -- as we know, these are the doctors who were  
7 directly involved with the torture ----

8 MJ [Col COHEN]: Definitely.

9 LDC [MR. SOWARDS]: ---- of the defendants. They're  
10 people that it's very important for not only the defendants to  
11 be present and alert and watching their testimony so they can  
12 consult with us before or after sessions to bring us up to  
13 date as to things that the witnesses may be saying that we  
14 should follow up on, in a certain cross-examine --  
15 cross-examination way.

16 MJ [Col COHEN]: Okay. I understand that. I understand  
17 that need.

18 LDC [MR. SOWARDS]: And that the hours that you're  
19 proposing would require, as I understand it, probably for them  
20 to depart the camp sometime around 5:00 a.m. to be able to get  
21 here to then be in the container modules outside around 6:45  
22 to capture ----

23 MJ [Col COHEN]: Okay.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 LDC [MR. SOWARDS]: ---- the sort of time that we  
2 ordinarily have available with them before court.

3 MJ [Col COHEN]: Copy.

4 LDC [MR. SOWARDS]: And the other consideration is that --  
5 and what I would very much want to avoid, and I know Your  
6 Honor has been scrupulous and generous in allowing everyone  
7 time to explore witnesses and take the time we reasonably need  
8 to cover different subjects.

9 I'm a little worried that even with that sort of  
10 latitude, there's going to be a sense of -- not quite  
11 Draconian, but a real impetus to meet the schedule with these  
12 two big witnesses.

13 And the one thing I can say about Mr. Connell is he's  
14 never been less than credible in telling you what he needs  
15 and, if anything, probably being optimistic. And given his --  
16 his estimate of the time he needs, and I know what we are  
17 talking about on our team, what we would need, again for the  
18 government's benefit -- they may want to bring down these  
19 folks anyway together, but that Dr. Mitchell is probably going  
20 to require most of that time.

21 And what I'm asking you not to do is to expand the  
22 work hours of each individual day because the other  
23 consideration is we have the sort of Hobson's choice of having

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 the benefit of the clients to be able to be present in the  
2 room with people -- and then you have to -- I think we can  
3 probably, just as human beings, without having clinical  
4 expertise, understand the psychic cost of being in a room with  
5 someone who has tortured you over the course of three or four  
6 years and hearing them answer questions in probably a very  
7 clinical, objective, scientific-sounding way about what they  
8 did to you and -- we also understand that that takes a big  
9 toll on the clients.

10 And so to -- to minimize the number of -- or reduce  
11 or mitigate the experience of that day by day would be  
12 something we would ask the court to consider.

13 MJ [Col COHEN]: Okay.

14 LDC [MR. SOWARDS]: And also understand that there is  
15 going to be a cumulative load in that regard.

16 MJ [Col COHEN]: I understand. Yes, sir. I understand.  
17 I'll definitely consider all of that. Yeah, with respect to  
18 whether to produce both of them or not, the parties can keep  
19 me apprised. You're welcome to send -- if you just want to  
20 send an e-mail to my staff, joint e-mail, as far as what those  
21 discussions are. I can always attach it as an appellate  
22 exhibit ----

23 LDC [MR. SOWARDS]: Thank you very much.

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 MJ [Col COHEN]: ---- later.

2 That's the parameters, left and right parameters. I  
3 would be willing to go 0800 to 1800 -- willing, not  
4 necessarily saying I will do that. I'm just saying I want  
5 everyone to consider all the different alternatives to include  
6 everything that you just said as well.

7 LDC [MR. SOWARDS]: Okay. And we're also happy -- to the  
8 extent it would help the military judge to present clinical  
9 expert testimony on that, because we think both from a  
10 clinical and a humane experience ----

11 MJ [Col COHEN]: Okay.

12 LDC [MR. SOWARDS]: ---- it would be ill advised.

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

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

15 MJ [Col COHEN]: And then the reality is, yeah, if  
16 everyone -- if significant cross-examination will be done by  
17 multiple parties, that's also something we need to take into  
18 consideration as to how many witnesses we can actually get  
19 through. No, absolutely, sir.

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

21 MJ [Col COHEN]: Yeah. So I think everyone's in  
22 agreement. We definitely should call Dr. Mitchell, confer,  
23 and we'll decide whether or not Dr. Jessen can actually also

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 testify realistically that week or during that time slot.

2 Ms. Bormann.

3 LDC [MS. BORMANN]: I want to reiterate what Mr. Sowards  
4 just -- the issues he just brought to your attention ----

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

6 LDC [MS. BORMANN]: ---- involving the sensitivity of  
7 what's going to happen in January and also the timing of it.

8 So for us to get here -- you know, if court starts at  
9 8:00, I meet with my client at 7:30, and so I need to get here  
10 by about 7:00, which is fine. But I don't have to leave my  
11 room at 5:00.

12 MJ [Col COHEN]: Right.

13 LDC [MS. BORMANN]: So there's that, right?

14 MJ [Col COHEN]: I understand.

15 LDC [MS. BORMANN]: But beyond that, I wanted to address a  
16 little bit of what's happening with Mr. Reismeier.

17 MJ [Col COHEN]: Okay.

18 LDC [MS. BORMANN]: So just to bring everybody full  
19 circle, right, because there's been no filing on this yet, you  
20 ordered the government to provide you some discovery  
21 materials ----

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

23 LDC [MS. BORMANN]: ---- that they clearly had not seen

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**



**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 yet because they still don't have them, and so they advised us  
2 earlier this week that they were going to need additional  
3 time.

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

5 LDC [MS. BORMANN]: Originally, your order was to have  
6 them to you by Friday. This coming Friday ----

7 MJ [Col COHEN]: Correct.

8 LDC [MS. BORMANN]: ---- two days from today.

9 They indicated in an e-mail that they were not going  
10 to be able to comply with that order. I raised no objection.  
11 And you told them in an oral order that they would have an  
12 additional week to comply.

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

14 LDC [MS. BORMANN]: The whole point of doing a motion to  
15 compel the discovery materials before the rest of the motions  
16 with respect to Mr. Reismeier and Mr. Foster is to apprise you  
17 and, I think, eventually the parties on the need for and the  
18 parameters of any witness examination.

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

20 LDC [MS. BORMANN]: That would inform the argument for the  
21 motion to compel Messrs. Reismeier and Foster.

22 MJ [Col COHEN]: I agree. And that is exactly what

23 Mr. Montross -- was it Mr. Montross last week?

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 LDC [MS. BORMANN]: Yes.

2 MJ [Col COHEN]: That's understood that's what he was  
3 saying, as well as was, hey, I want to address that after I  
4 have actually seen, because then I can make a more informed  
5 decision.

6 LDC [MS. BORMANN]: Right. I don't know what the  
7 documents say, but if they follow a certain way, it may be  
8 that the defense doesn't need to call Mr. Reismeier because  
9 the case has been made. We don't know.

10 MJ [Col COHEN]: I understand.

11 LDC [MS. BORMANN]: So -- but we're not in a position to  
12 argue for compelling either of those witnesses until we  
13 actually have the discovery.

14 MJ [Col COHEN]: I definitely understand that as well.

15 LDC [MS. BORMANN]: So assuming we get the discovery --  
16 you know, I don't know how long the commission will take to  
17 review it, but let's say we get the discovery a week after you  
18 review it, we could argue the motion to compel Mr. Reismeier  
19 at the beginning of the series of dates.

20 MJ [Col COHEN]: Okay.

21 LDC [MS. BORMANN]: Then if you were to grant the motions  
22 to compel their testimony, Mr. Foster and Mr. Reismeier, we  
23 could possibly do them at the end of the October-November

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 hearings.

2 So it's possible to have them testify, but at this  
3 early juncture, we're not in a position yet to argue it.

4 MJ [Col COHEN]: I understand. And I definitely  
5 understood that before, and I have not changed my thought.  
6 You know, another option that I -- that I have considered is,  
7 depending on what the discovery is, not only may you decide  
8 the case is made, I may decide that, yeah, I definitely need  
9 to hear from them as well, just after I -- after I see that,  
10 so --

11 But yes, I will definitely give -- unless I sua  
12 sponte order the -- order the testimony based on the filings  
13 and what I see, I'll give you the opportunity to be heard.

14 LDC [MS. BORMANN]: Thank you. That's all we ask for.  
15 Thank you.

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

17 LDC [MS. BORMANN]: That's all we ask for. Thank you.

18 MJ [Col COHEN]: Absolutely.

19 All right. Mr. Harrington. Good to see you today,  
20 sir.

21 LDC [MR. HARRINGTON]: Good to see you, Judge.

22 Judge, the first thing is with respect to the  
23 witnesses for October 26th. Four of those witnesses are

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 important witnesses on Mr. Binalshibh's case.

2 MJ [Col COHEN]: Okay.

3 LDC [MR. HARRINGTON]: We haven't decided yet what we're  
4 doing, but it's anticipated we will probably be questioning  
5 them, which will take a significant amount of time, I just  
6 wanted to alert you to that.

7 MJ [Col COHEN]: No. Thank you, sir. I appreciate --  
8 appreciate you doing that.

9 LDC [MR. HARRINGTON]: And then the second thing, Judge,  
10 is -- and this is just a housekeeping matter, but apparently  
11 last night in the rainstorm, the cameras at Echo II where we  
12 visit our clients, went out. And that's -- and they're not up  
13 today. And the SJA told me they probably will not be up  
14 tomorrow. So if we have -- we're going to have open session,  
15 as I understand it, tomorrow in court. I'm just alerting the  
16 court that we would be requesting that we be able to visit  
17 with our clients here in the courtroom in the afternoon  
18 whenever we finish.

19 MJ [Col COHEN]: Yeah. Not a problem. Like I said, in  
20 fact, as long as we can start the closed session at 1400  
21 today, how you all choose, if the government is going to let  
22 you use that time with your clients, whatever, I have no  
23 objection to that.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

1 LDC [MR. HARRINGTON]: I meant tomorrow, Judge.

2 MJ [Col COHEN]: Oh, right. But, yeah -- but tomorrow,  
3 like I said, I will -- my understanding, my general  
4 preference, I'll just state it now so you guys don't have to  
5 keep asking is, to the extent that the government can  
6 accommodate a reasonable amount of time to meet with clients,  
7 I understand the importance of that, it just makes sense, like  
8 I said.

9 So I would encourage the parties to continue to use  
10 the time that you have to meet with your clients, especially  
11 given the geographic separation, et cetera.

12 LDC [MR. HARRINGTON]: Okay. Thank you.

13 MJ [Col COHEN]: Thank you, Mr. Harrington. Absolutely.  
14 Tomorrow will be just fine as well.

15 I anticipate tomorrow we'll take argument from 0900  
16 to 1200 hours, if -- as needed. If we only need an hour and a  
17 half of argument, I'm not going to ask you to fill up the  
18 other hour and a half.

19 But then if you need to meet with your clients  
20 afterwards for a reasonable amount of time afterwards, just  
21 let the government know what that is, and -- like I said, it  
22 just makes sense to go ahead and allow that to happen. All  
23 right.

**UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1           Mr. Connell.

2           LDC [MR. CONNELL]: Sir, my parting comment on that last  
3 question is: You heard a lot of different views, a lot of  
4 ideas. How is that going to be decided, and could you give us  
5 the suspense? Just so we know whose ----

6           MJ [Col COHEN]: Yeah, okay. I tell you what, that's a  
7 great question. How about -- how about by 7 October the  
8 parties confer, and if the parties can let me know by the 7th  
9 of -- well, no -- yeah, that would be right. That would be  
10 next -- or not by the 7th, by next Friday, whatever that is.  
11 4th maybe, 3rd or 4th? 4th is what my -- that's why I have  
12 staff, let me know what the calendar says.

13           4th of October. If the parties can let me know by  
14 the 4th of October exactly who we can agree makes sense to  
15 bring down here and if there are some others that are in play,  
16 let me know those as well. And then if I need to rule and  
17 like, hey, let's go ahead and bring those just in case, I'm  
18 more than happy to issue an order along those lines.

19           LDC [MR. CONNELL]: Thank you, sir. Will do.

20           MJ [Col COHEN]: And the same will go with respect to  
21 Mitchell and Jessen. And if you guys can let me know by next  
22 Friday, based on what the parties believe will be the level of  
23 cross-examination by, you know, potentially up to four or

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**

1 five, you know, defense teams on them, I understand that  
2 that -- that that will -- that will extend testimony as well.

3 So I'm not opposed to trying to help the parties get  
4 to this evidence; but at the same time I don't want to rush  
5 through it either because I understand the -- the significance  
6 of this to -- to the defense and what you all have already  
7 indicated you're going to argue.

8 So all right, let's go ahead and take a lunch break.  
9 We'll reconvene at 1400, and I will see you guys at that time.  
10 Thank you.

11 [The R.M.C. 803 session recessed at 1235, 25 September 2019.]

12 [END OF PAGE]

13

14

15

16

17

18

19

20

21

22

23

**UNOFFICIAL / UNAUTHENTICATED TRANSCRIPT**