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1 [The R.M.C. 803 session was called to order at 0907,  
2 5 December 2017.]

3 MJ [COL POHL]: Commission is called to order.  
4 Mr. Mohammad and Mr. Bin'Attash are present. The other  
5 detainees are absent.

6 Trial Counsel, any changes since the last time we  
7 were in open session from your table?

8 CP [BG MARTINS]: Your Honor, good morning. For the  
9 United States, everyone who was present prior to the first  
10 recess yesterday is present.

11 MJ [COL POHL]: Okay.

12 CP [BG MARTINS]: I also would like to put on the record  
13 that Kim Waltz of the Federal Bureau of Investigation is not  
14 present. And also present at counsel table who was not here  
15 yesterday is Legalman First Class Juanita Passwater. Thank  
16 you.

17 MJ [COL POHL]: Thank you.

18 Mr. Nevin.

19 LDC [MR. NEVIN]: No changes, Your Honor.

20 MJ [COL POHL]: Ms. Bormann.

21 LDC [MS. BORMANN]: No changes, Judge.

22 MJ [COL POHL]: Mr. Harrington.

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

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1 MJ [COL POHL]: Mr. Connell.

2 LDC [MR. CONNELL]: Your Honor, on behalf of  
3 Mr. al Baluchi, James Connell present. Ms. Pradhan and  
4 Lieutenant Colonel Thomas were excused yesterday. I would  
5 request permission for Major Wareham to be absent from the  
6 courtroom. He is in the ELC and is working on the 532 issues  
7 in anticipation of this afternoon's further hearing.

8 MJ [COL POHL]: Okay, permission granted.

9 Mr. Ruiz.

10 LDC [MR. RUIZ]: Judge, Lieutenant Commander Dave Furry  
11 and Major Joseph Wilkinson are present today. They were not  
12 present yesterday.

13 MJ [COL POHL]: Okay. Thank you.

14 LDC [MS. BORMANN]: Judge, I have a similar request to  
15 Mr. Connell, and that is at various points during this morning  
16 in preparation for the argument this afternoon, major Seeger  
17 and Captain Brady may exit the courtroom. Do you want to me  
18 to ask general permission now or interrupt the proceedings?

19 MJ [COL POHL]: General permission now is fine since the  
20 issue we are going to discuss is primarily dealing with  
21 Mr. Hawsawi's team. So the answer is ----

22 LDC [MS. BORMANN]: Thank you.

23 MJ [COL POHL]: ---- permission is granted for them to

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1 come and go.

2 LDC [MS. BORMANN]: Thank you.

3 MJ [COL POHL]: As long as the lead counsel always stays.

4 LDC [MS. BORMANN]: I'm going to be here.

5 MJ [COL POHL]: Okay. Thank you.

6 CP [BG MARTINS]: Major, if you could proceed to the  
7 witness stand, please. Raise your right hand for the oath.

8 MAJOR, U.S. ARMY, was called as a witness for the prosecution,  
9 was sworn, and testified as follows:

10 **DIRECT EXAMINATION**

11 **Questions by the Chief Prosecutor [BG MARTINS]:**

12 Q. You are the Assistant SJA?

13 A. That is correct.

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

15 Q. Three of the detainees are not here this morning.

16 Did you have occasion to talk with them this morning?

17 A. I did meet with all three of them.

18 Q. All right. Let's go ahead and talk about

19 Mr. Binalshibh first. This is AE 539 consisting of three  
20 pages, should be on the top.

21 A. That is correct.

22 Q. All right. Did you advise Mr. Binalshibh of his  
23 right to attend today's proceedings?

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1           A.    I did.  I met with him this morning.  I introduced  
2 myself, asked if he -- advised him that he had a commission  
3 this morning, asked him if he wanted to come to the commission  
4 this morning.  He advised that he did not want to come.

5           Q.    All right.  Did he execute a form, the 539?

6           A.    He did.  I asked him if he wanted me to read the form  
7 in English and have it translated.  He said no, just read it  
8 in English, so I read the entire document, the first two  
9 pages, to him; asked him if he had any questions.  He  
10 indicated he had no questions.

11                    I then gave him the -- he asked for the form to sign,  
12 and he signed page 2 in my presence, gave it back to me, and  
13 then I signed it.

14           Q.    All right.  Do you have any question about the  
15 voluntariness of his absence this morning?

16           A.    I do not.

17           Q.    All right.  Let's move on now to Ali Abdul Aziz Ali.  
18 What time did you advise him of his right to attend this  
19 morning?

20           A.    I met with him first.  I met with him and started  
21 reading the document at 6:46.  But again, I met with him, I  
22 introduced myself.  I advised him that he had a commission  
23 this morning.  He said he understood.  I asked him if he

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1 wanted to come to the commission. He indicated he did not.

2 Q. All right. I have a copy of AE 539A consisting of  
3 three pages. Did Mr. Ali execute the English or the Arabic  
4 version of the waiver?

5 A. Yeah. Again, I asked him if he wanted me to read the  
6 English version and have it translated, and he said he was  
7 okay with the English version. So I read the English version  
8 to him, asked him if he had any questions. He indicated he  
9 did not, and then I gave him the signature page to sign.

10 Q. Do you have any question about his voluntariness of  
11 waiving this morning?

12 A. I do not.

13 Q. All right. Move last to Mustafa al Hawsawi. This is  
14 Appellate Exhibit 539B consisting of three pages. What time  
15 did you meet with him?

16 A. I met with him just before I started reading the  
17 document. I started reading the document at 6:52. I again  
18 introduced myself, advised him that he had a commission this  
19 morning. He said he knew he had a commission. I asked him if  
20 he was going to come. He said he did not want to come.

21 Again, I asked him if he wanted me to read the  
22 document in English and have it translated, and he said he did  
23 want it translated. So I gave him the Arabic version. I read

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1 the entire English version as he followed along, and then the  
2 translator read the entire Arabic version to him. And he  
3 completed the Arabic version of the document.

4           Once we were done reading, I asked him if he had any  
5 questions. He indicated he did not. He then signed and dated  
6 the Arabic version of the document.

7           Q. All right. Do you have any questions about the  
8 voluntariness of his waiver?

9           A. I do not.

10          TC [MR. SWANN]: All right. Your Honor, I have no further  
11 questions.

12          MJ [COL POHL]: Any questions, Mr. Harrington?

13          LDC [MR. HARRINGTON]: No, Judge.

14          MJ [COL POHL]: Mr. Connell?

15          LDC [MR. CONNELL]: Sir, I wish to renew our objection to  
16 anonymous testimony. I have -- my objection is based on the  
17 Sixth and Eighth Amendments to the United States Constitution  
18 and three cases: Smith v. Illinois, 390 U.S. 129, a 1968  
19 case; United States v. Celis, C-E-L-I-S, 608 F.3d, 818  
20 D.C. Circuit case from 2010; and United States v. Gregory,  
21 369, F.2d 185, D.C. Circuit 1966.

22          MJ [COL POHL]: Okay. Your objection is overruled. Thank  
23 you.

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1 Mr. Ruiz?

2 LDC [MR. RUIZ]: No questions, Judge.

3 MJ [COL POHL]: Thank you. You're excused.

4 WIT: Thanks, Judge.

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

6 MJ [COL POHL]: I find the three accused have knowingly  
7 and voluntary waived their rights to be present at the hearing  
8 today.

9 That brings us to 502. Was there agreement on the  
10 stipulation?

11 TC [MR. RYAN]: Yes, Your Honor. Good morning, sir.  
12 Edward Ryan on behalf of the United States.

13 Your Honor, two stipulations to be entered. The  
14 first one is the defense, specifically Mr. Hawsawi, has agreed  
15 to stipulate to his identity, his physical identity by the  
16 witness to come later, that being Special Agent Abigail  
17 Perkins of the FBI.

18 MJ [COL POHL]: Was this the witness that you referred to  
19 yesterday that you wanted an in-court identification of?  
20 Actually Mr. Trivett did.

21 TC [MR. RYAN]: Correct.

22 MJ [COL POHL]: Got it.

23 TC [MR. RYAN]: That's correct, sir. The first witness,

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1 by the way, Special Agent Fitzgerald, I will not be asking for  
2 a physical identification.

3 MJ [COL POHL]: All right.

4 TC [MR. RYAN]: The second stipulation has to do with the  
5 accused's alienage. And in the record right now under 502VV  
6 Attachment C is a Certificate of Nonexistence written by a  
7 woman named Heather Williams who works for the Department of  
8 Homeland Security, specifically in the office and section  
9 regarding records of persons entering the United States and  
10 seeking benefits of legal presence here, including and up to  
11 citizenship.

12 The certificate states that there are no such records  
13 indicating any presence or any sort of legal presence or any  
14 status such as citizenship for Mr. al Hawsawi. She would  
15 testify and she was prepared to testify today that it is the  
16 position of the Department that this man was not a citizen of  
17 the United States.

18 MJ [COL POHL]: Okay. Mr. Ruiz, do you agree to the two  
19 stipulations on behalf of your client?

20 LDC [MR. RUIZ]: Judge, with a little bit of additional  
21 information; which that is that each of these stipulations are  
22 an agreement only for purposes of this motion and this narrow  
23 issue. It's not intended to be a stipulation moving forward

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1 for -- at trial.

2 MJ [COL POHL]: Agree, Mr. Ryan?

3 TC [MR. RYAN]: I agree, sir.

4 MJ [COL POHL]: Okay.

5 LDC [MR. RUIZ]: And just to articulate further on the  
6 identity will be that Mr. al Hawsawi is the same person who  
7 was interrogated in early January on four occasions by Special  
8 Agent Perkins and Special Agent Fitzgerald. So the identity  
9 is as to that specific time frame.

10 MJ [COL POHL]: Agree, Mr. Ryan?

11 TC [MR. RYAN]: I agree, sir.

12 MJ [COL POHL]: Okay. I'll accept the two stipulations,  
13 again only for the issue that's before me.

14 TC [MR. RYAN]: Your Honor, I have one other housekeeping  
15 matter if I could bring it up at this time regarding  
16 scheduling.

17 MJ [COL POHL]: Sure.

18 TC [MR. RYAN]: I heard Your Honor's dictates as to our  
19 schedule for today, with 532 coming back for this afternoon's  
20 session. This morning we are here starting on 502. We're  
21 prepared to put Agent Fitzgerald on the stand. I expect that  
22 will take roughly the morning.

23 What I am asking permission from the commission at

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1 this time is that we have a date -- a time and date certain  
2 for Special Agent Perkins, that being not sooner than 9:00  
3 tomorrow morning, Wednesday, just for the simple reason,  
4 Judge, that her testimony is lengthy and involved. We would  
5 prefer not to start and stop, especially if it's going to be  
6 for a short period of time.

7 MJ [COL POHL]: Okay. Any objection to that procedure?  
8 Mr. Connell.

9 LDC [MR. CONNELL]: I know I probably have the least right  
10 of anyone to talk, but I will say that I understood the  
11 military commission to say that 532 would be no earlier than  
12 this afternoon.

13 MJ [COL POHL]: Right.

14 LDC [MR. CONNELL]: I didn't understand it to be a dictate  
15 that necessarily 532 ----

16 MJ [COL POHL]: That's exactly right. Let's just talk a  
17 little bit about the 532 issue, is is that -- and it's been  
18 kind of alluded to with requests of counsel have been not  
19 being present so preparing for 532. The idea was that we  
20 would not start it before noon -- before after lunch; but if  
21 there's more time to prepare, because we're now wandering into  
22 the world of the security regulations, and therefore, we're  
23 not prepared to go at that time, then we could always adjust

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1 fire on that.

2 That being said, we will tentatively schedule to do  
3 the first agent today, the second one tomorrow.

4 Mr. Hawsawi's -- and you have a third witness, Mr. Ryan? How  
5 many witnesses do you have?

6 TC [MR. RYAN]: We have two witnesses here. The third  
7 witness was Ms. Williams, who's now been stipulated to. There  
8 is no fourth witness at this time, sir.

9 MJ [COL POHL]: Okay. And then, Mr. Ruiz, how many  
10 witnesses do you have?

11 LDC [MR. RUIZ]: Judge?

12 MJ [COL POHL]: How many witnesses do you have?

13 LDC [MR. RUIZ]: We have one witness, Judge.

14 MJ [COL POHL]: Okay. So I think we can fit them in with  
15 the schedule we're at now, and then ----

16 LDC [MR. RUIZ]: I do have a couple of points I need to  
17 make on the scheduling.

18 MJ [COL POHL]: Sure.

19 LDC [MR. RUIZ]: If I could have a minute to confer?

20 MJ [COL POHL]: Sure.

21 [Pause.]

22 LDC [MR. RUIZ]: Judge, with respect to Special Agent  
23 Fitzgerald, we're going to ask that the commission allow us to

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1 defer the cross-examination of the special agent to another  
2 date and to another time.

3           This morning I had two documents premarked for  
4 submission to the commission. They have been provided to your  
5 court security officer. They were provided in discovery last  
6 night after 9:00, I think is when the communication came  
7 through from the prosecution.

8           MJ [COL POHL]: Okay. They're marked 502XX and 502YY.  
9 Okay. When you say another date, another time, you mean later  
10 in the week?

11           LDC [MR. RUIZ]: At this point, yes. But I have a couple  
12 of other points I need to make. And just for purposes of the  
13 record, what those two documents are are -- they're marked at  
14 the bottom as MEA-LHM-1430, and it's a document dated January  
15 10, 2007; I believe that's XX, 502XX. And the second document  
16 is MEA-LHM-1427, which is marked May 19, 2004.

17           We received those documents last night for submission  
18 by the prosecution in terms of discovery. These are pretty  
19 significant documents. I have never seen these documents, but  
20 they clearly impact on my preparation for the  
21 cross-examination of Special Agent Fitzgerald.

22           I provided it to your court security officer because  
23 I didn't want to be in the middle of a cross-examination

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1 asking questions that sounded an awful lot like they might be  
2 classified. So I thought it was important that that document  
3 be reviewed with an eye towards future cross-examination.

4 Judge, this document raises some questions that  
5 pertain to discovery issues. It provides for us insight --  
6 and I read these this morning -- provides some insight into  
7 discovery that we think is important to request to inform our  
8 cross-examination of Special Agent Fitzgerald.

9 I think it's also important, Judge, to let the court  
10 know that these are documents and these are areas that we have  
11 been exploring for years in terms of our discovery. The  
12 relationship between the Federal Bureau of Investigation and  
13 the Central Intelligence Agency has been the subject of many,  
14 many discovery requests over the years, not only by members of  
15 Mr. al Hawsawi's legal team, but also by members of other  
16 defense teams who have sought access to the information that  
17 would give great context to exactly what the relationship was  
18 between the Federal Bureau of Investigation and the CIA,  
19 particularly at the time of the interrogation of  
20 Mr. al Hawsawi.

21 These documents are directly on point and point to  
22 the existence of particular databases, couriering methods,  
23 screening -- methods by which the CIA would review the Federal

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1 Bureau of Investigation's work product and pass on whether  
2 those could be publicly disseminated or not.

3           There is a lot of substance in these two documents.  
4 And to have to stand up now and cross-examine Agent Fitzgerald  
5 with this document being provided to us after 9:00 last night  
6 after years of litigation is not a position that I think we  
7 should be put in at this point, Judge.

8           And so when you ask the question, do I mean later in  
9 the week? Well, perhaps. And the reason I say that is  
10 because, as I said, I think these documents put us in a  
11 position where we can make better, more pointed discovery  
12 requests that we think are material to our cross-examination.

13           How quickly those discovery requests could be  
14 resolved? If history is any teacher in this litigation, I  
15 doubt that it would be very quickly. But what we can do is we  
16 can examine these documents, we can analyze the information,  
17 and we can draft our discovery requests with better  
18 particularity now that we have these documents. So for those  
19 reasons, I'm going to ask to defer both of those  
20 cross-examinations.

21           What we would do today, and it's obviously going to  
22 be difficult because we're going to be in court, would be to  
23 draft the specific discovery requests that we think are

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1 important and that go directly to this issue, and then see  
2 what the government says in terms of those discovery requests.  
3 We -- if they want to -- if they want to put the agents on and  
4 do the direct examinations, that would not really be our  
5 preference, but we can see that still, if we have the  
6 opportunity to analyze these documents and prepare the  
7 documents and the discovery requests I have related, that that  
8 may be a solution for us.

9           What I don't want to say for certainty, Judge, is if  
10 I'm asking, for example, until Wednesday or Thursday, because  
11 I think that's not altogether in my controls, also in the  
12 government's control, the ability to provide us that  
13 information.

14           MJ [COL POHL]: Would not questioning the witnesses may  
15 lead you to focus your discovery request, talking about  
16 databases and things like that?

17           LDC [MR. RUIZ]: It could, Judge. But again, it puts us  
18 in a position that we shouldn't be in, which is we're poking  
19 in the dark. Really, I mean, this is a 2007 document and a  
20 2004 document, and we get it after 9:00 last night. And our  
21 preference would be to construct those discovery requests  
22 after a careful analysis of these documents.

23           MJ [COL POHL]: Mr. Ryan, response?

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1 TC [MR. RYAN]: Your Honor, this motion being a rather  
2 large one, we all had different responsibilities. It's my  
3 witness, could I -- Mr. Swann handled this part. Could he  
4 answer for me, sir?

5 MJ [COL POHL]: Sure. Go ahead, Mr. Swann.

6 TC [MR. SWANN]: Your Honor, that document, I think, is  
7 like seven or eight pages. Any lawyer can read it and he can  
8 see it, exactly what it consists of.

9 Now, it would be prudent for counsel to simply ask  
10 the question as to -- if their intent is to get to what else  
11 the particular witness looked at prior to the interview, they  
12 could ask that witness the question.

13 And, in fact, if the witness were to say we looked at  
14 nothing, which might well be the answer in this case, counsel  
15 can do what they need to do this week. We have brought down  
16 two federal -- a former Federal Bureau of Investigation  
17 witness, a witness that's currently with the FBI. We have  
18 turned over all of the notes so that we could avoid the  
19 R.C.M. -- the 914 issue and the Jencks issues.

20 So they've had all of those notes. They've got this  
21 particular document. It's eight pages. Any counsel could  
22 look at those eight pages and formulate their questions of the  
23 witnesses without having to delay these proceedings.

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1 MJ [COL POHL]: When did you give these documents to the  
2 defense?

3 TC [MR. SWANN]: They went through a classification review  
4 and they got them last night when they said. Because we have  
5 been working hundreds of issues and hundreds of documents over  
6 the last few days.

7 We came across this -- essentially it's another  
8 lawyer telling lawyers, here's what should happen in the  
9 interviews, and if this does happen, here is how you document  
10 that particular information. That's all this document is.

11 MJ [COL POHL]: Got it. Thank you.

12 Mr. Ruiz, do you wish to be heard?

13 LDC [MR. RUIZ]: Yes, Judge, I need to -- Mr. Swann  
14 indicated that they have provided all of the agents' notes.  
15 That is not correct.

16 TC [MR. SWANN]: They're getting them today, sir. I'm  
17 sorry.

18 LDC [MR. RUIZ]: I'm sorry. We are getting them when?

19 MJ [COL POHL]: I'm sorry, Mr. Swann?

20 TC [MR. SWANN]: There are 68 pages, and they're getting  
21 them today.

22 LDC [MR. RUIZ]: My point exactly, Judge.

23 MJ [COL POHL]: Excuse me. They're getting them today?

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1 TC [MR. SWANN]: Yes, sir.

2 LDC [MR. RUIZ]: I think this is what he's referencing  
3 that we have gotten, Judge. These are the agents' notes. I  
4 have about 89 pages worth of this.

5 MJ [COL POHL]: Just for the record, Mr. Ruiz is holding  
6 up a black piece of paper with a white border.

7 LDC [MR. RUIZ]: It's MEA-FBI-20765. I have 89 more of  
8 these. Some of them have maybe two or three lines on them,  
9 Judge. So let me ----

10 MJ [COL POHL]: Is that what we're talking about,  
11 Mr. Swann?

12 TC [MR. SWANN]: We are talking about that, yes, sir.

13 MJ [COL POHL]: Okay.

14 LDC [MR. RUIZ]: If I may, Judge?

15 MJ [COL POHL]: Just a second. Ms. Bormann, do you have  
16 something you want to add?

17 LDC [MS. BORMANN]: I do, Judge, on the issue of the FBI  
18 documents referred to by Mr. Ruiz. To inform the court of  
19 exactly how long those documents have been requested, I would  
20 direct your attention to AE 538 (WBA). It contains at  
21 Attachment B our request for these documents along with others  
22 dealing with how the FBI agents were instructed to interrogate  
23 our client along with Mr. al Hawsawi and the other men charged

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1 in this case.

2 That request was tendered to the trial counsel on 29  
3 July 2014. Let me repeat that, 29 ----

4 MJ [COL POHL]: I heard you, Ms. Bormann.

5 LDC [MS. BORMANN]: ---- July 2014.

6 LDC [MR. RUIZ]: Judge, if I may?

7 LDC [MS. BORMANN]: Ah -- oops. I'm sorry. I'm not done.

8 In response to that, the government replied to us on  
9 12 August 2014; that's Attachment D to 538. And they said  
10 they were conducting their due diligence. It appears that the  
11 government has been conducting due diligence at this point for  
12 three and a half years. And the idea that we received this at  
13 9:07 last night, I received it when I walked into the office  
14 this morning.

15 When I received these documents, the government still  
16 didn't claim they were responsive to this request, although  
17 clearly they are part of what should be the response.

18 So I'd like to put on the record that Mr. Ruiz is  
19 correct. These documents are being requested for years.

20 MJ [COL POHL]: Thank you.

21 Mr. Ruiz.

22 LDC [MR. RUIZ]: Judge, just for purposes of perfecting  
23 our record, our request was submitted on 25 September of 2013

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1 for this category of information.

2 And, Judge, I also want to -- since Mr. Swann made  
3 representations in regards to the FBI agents, I want to throw  
4 out a couple of dates and facts at you on the production or  
5 the lack of production of the agents' notes in this case.

6 Judge, on September 12 of 2013 we first began  
7 litigating the issue of the contents of the FBI agents' notes.  
8 The FBI agent in question at the time was Agent Fitzgerald.  
9 If you may recall, this is an oldie but a good one, as you  
10 normally like to refer to, is AE 008MM (MAH). It was in the  
11 context of that litigation in 2013.

12 During the course of that interrogation and  
13 thereafter, I moved for production of the unredacted notes  
14 from Special Agent Fitzgerald. During the course of that  
15 colloquy, at page 4171 of the transcript, you asked this  
16 question, Judge, and the question, I believe, was of Mr. Ryan:  
17 "Will the statements of the accused -- will they be given to  
18 each of the defendants' lawyers once they sign the MOU; is  
19 that correct?"

20 The position of the prosecution at the time was that  
21 the reason we couldn't be given the unredacted notes despite  
22 the agent having testified on the stand was because at that  
23 time, as you may well recall, our team had not yet signed the

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1 memorandum of understanding. That was in September of 2013.

2 We followed that up, that colloquy, with a discovery  
3 request on September 25 of 2013. The prosecution responded to  
4 us on November 8 of 2013 and reiterated what they had told the  
5 commission during the hearing: No MOU, no discovery. The  
6 implication being that the notes were classified and,  
7 therefore, could not be provided to the defense until we  
8 signed the memorandum of understanding.

9 Now I'm going to fast-forward to present day, Judge.  
10 On October 4, 2017, we sent DR-82 which is one our internal  
11 numbering sequences, DR-82 to the prosecution again requesting  
12 for the agents' notes. But this time, Judge, we reminded them  
13 that in AE 375L, you had actually ordered the production of  
14 the unredacted notes.

15 If you may recall, Judge, in AE 375L, we had moved to  
16 compel a number of different items in discovery, included the  
17 unredacted notes from the FBI agents in this case. And in AE  
18 375L you granted the request for that discovery in order to  
19 produce to the defense. That was on July 26 of 2017 where you  
20 in fact granted AE 375L. That was your ruling.

21 As I said, we followed that up in October 4, 2017  
22 with a discovery request reminding the prosecution that you  
23 had actually ordered the production of those notes.

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1           The response came on November 9 of 2017 to our  
2 renewed request, and here was the response: "The notes of  
3 Special Agents Abigail Perkins and James Fitzgerald taken  
4 during the Federal Bureau of Investigation's interview of  
5 Mr. al Hawsawi and Mr. Ali are undergoing classification  
6 review and will be provided to you following said review as  
7 soon as practicable which will be in time for you to prepare  
8 for the scheduled hearing."

9           So here we have, Judge, in 2017 -- I hope you see the  
10 irony here. In 2013 we couldn't get these notes because we  
11 hadn't signed the MOU and they were classified, right? Now we  
12 can't get the notes because they're not yet declassified.  
13 They're going under classification review, and we will get  
14 those today.

15           And we're expected to cross-examine Agent Fitzgerald  
16 because any lawyer can look at a document and any lawyer can  
17 digest that and then move forward. And you know what, I  
18 probably could, Judge, but we shouldn't be put in this  
19 position.

20           The prosecution bellyaches about bringing down two  
21 Federal Bureau of Investigation agents whose job it is to take  
22 the stand and testify in these cases. One of them is retired.  
23 Oh, well.

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1           They choose the method and the means and the timing  
2 of when they provide information to us. Doing this by ambush  
3 is not the way of doing it. We have been diligent. We have  
4 tried to prepare ourselves for this examination as well as we  
5 can. They have chosen when they have provided the information  
6 to us.

7           Between last Monday and today, they have provided us  
8 close to 2,000 pages of documents they intend to introduce to  
9 this commission. Beginning last Monday, leading up until  
10 yesterday, we have received close to 2,000 pages of their  
11 proposed exhibits.

12           We provided them our proposed exhibits on  
13 November 14. November 16 is when we filed it with the  
14 commission. It got rejected because there were some issues  
15 with actual borders or fonts or whatever it was. But they had  
16 notice because the document actually came through and went to  
17 the prosecution. We provided that to them a month ago.

18           They started their production a week ahead, when they  
19 knew we were flying down on Monday on the commission flight.  
20 This is the way they choose to conduct their evidence  
21 dissemination. And then they complain when we ask for a  
22 deferral of cross-examination of the agents. I think it's  
23 perfectly reasonable, Judge.

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1           Quite frankly, it would be perfectly reasonable if  
2 you decided that they would not testify during this hearing  
3 and we'd have time to digest this information and to prepare  
4 ourselves the way we need to in a capital prosecution of a man  
5 who is ultimately facing the death penalty as a result of this  
6 case being tried here in this court under these circumstances.

7           So that's what I'm asking you to do, to allow us to  
8 defer those cross-examinations.

9           MJ [COL POHL]: Okay. Thank you.

10          Mr. Ryan.

11          LDC [MR. CONNELL]: Sir, since we're establishing context,  
12 may I be heard?

13          MJ [COL POHL]: I'm sorry?

14          LDC [MR. CONNELL]: Since there's context being  
15 established, may I be heard?

16          MJ [COL POHL]: Sure.

17          LDC [MR. CONNELL]: Sir, with respect to the production of  
18 notes, I just wanted to point out to the military commission  
19 that, in fact, the note production issue is on the docket in  
20 502MM, which is the R.M.C. 914 issue.

21                 In its response, the prosecution's position in 502RR,  
22 which was sharply worded, shall we say, the government's  
23 position was: "Despite the clear language -- despite what the

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1 clear language of the rule states, the prosecution does not  
2 ever intend to wait until after the witness's testimony to  
3 provide R.M.C. 914 materials. While the defense cites to  
4 judicial economy as the basis for their request, it can only  
5 be said that the instant motion serves the exact opposite  
6 purpose and wastes judicial resources and the prosecution's  
7 time. It should not be the case that a party is allowed to  
8 file a motion whenever they wish where there is no actual  
9 dispute for the commission to adjudge."

10 The rhetoric of the prosecution on this topic does  
11 not match their actions. Thank you.

12 MJ [COL POHL]: Okay. Thank you.

13 Mr. Swann or Mr. Ryan. I'm losing track of who's in  
14 charge of this.

15 TC [MR. RYAN]: Sorry, Judge.

16 MJ [COL POHL]: The issue before me is simply whether or  
17 not to permit deferral of the cross-examination.

18 TC [MR. RYAN]: Yes, sir. That's fine.

19 MJ [COL POHL]: Yes, sir, what's fine?

20 TC [MR. RYAN]: We agree to the deferral if the commission  
21 sees as fit. We believe it can be accomplished on Thursday.

22 MJ [COL POHL]: Okay. You want to call your witnesses?

23 TC [MR. RYAN]: I do, sir, yes.

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1 MJ [COL POHL]: Okay. Here's what we're going to do: We  
2 will do the direct examination of the two witnesses as  
3 scheduled. On Thursday, Mr. Ruiz, you will be offered the  
4 opportunity to cross-examine them if you so desire, with the  
5 understanding that once you file additional discovery  
6 requests, if you wish to recall the witnesses for further  
7 cross-examination based on that discovery, you certainly can.

8 It seems to me as the issue -- the immediate issue  
9 before me relates to the two documents that were given to you  
10 on last night. I'm not sure what you mean by further  
11 discovery, but it seems to me as these documents can be  
12 digested in time for a Thursday cross-examination. But  
13 understand that if other avenues of discovery come up, the  
14 witnesses can certainly be recalled for further  
15 cross-examination.

16 LDC [MR. RUIZ]: Correct, Judge. Two documents as well as  
17 the unredacted agents' notes from the interrogation.

18 MJ [COL POHL]: Understand. Okay. So you understand,  
19 Thursday you can cross-examine them, and then if you get  
20 further discovery that you need to recall them, we certainly  
21 can do that.

22 LDC [MR. RUIZ]: Assuming I get the notes today, that may  
23 be feasible, Judge.

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1 MJ [COL POHL]: Okay.

2 TC [MR. RYAN]: Your Honor, United States calls Special  
3 Agent James Fitzgerald.

4 MJ [COL POHL]: Before you do that, let me -- let me ask  
5 you just kind of a procedural question.

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

7 MJ [COL POHL]: And that deals with displaying documents.

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

9 MJ [COL POHL]: The rules require that they go for review  
10 prior to display.

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

12 MJ [COL POHL]: And the government's in a position to do  
13 that review outside the -- going through the CISO for it.

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

15 MJ [COL POHL]: But the rules also require that a copy of  
16 the documents be provided to the CISO that are going to be  
17 displayed an hour before going up on the ELMO. And my  
18 understanding is there's hundreds, if not thousands of  
19 documents the government may or may not display, but they have  
20 not identified them in any particularity of which ones they're  
21 going to do.

22 I mean, do you have a binder of the documents you  
23 wish to display?

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1 TC [MR. RYAN]: We have provided them, Your Honor, in the  
2 two exhibits -- or in the two pleadings, 502SS and 502VV.

3 MJ [COL POHL]: And you plan to use every one of those?

4 TC [MR. RYAN]: No, sir. But a good chunk of them, yes,  
5 sir.

6 MJ [COL POHL]: But see, that's the problem, is how do we  
7 know what you are ----

8 TC [MR. RYAN]: Well, first of all, Judge, we -- these are  
9 all items that have been through discovery and classification  
10 review.

11 MJ [COL POHL]: No. And again, the classification review  
12 piece, I've got that, how that's been resolved. But, you  
13 know, if I'm requiring the defense to make sure that I know  
14 what they're going to display before it goes on the Elmo and  
15 they have to provide me copies of that, and I hold them to  
16 that; and the government provides me a whole stack of stuff  
17 and -- with the apparent is some may go on and some may not,  
18 then I'm not sure that's -- that's putting me in the position  
19 of guessing what you're going to put on.

20 TC [MR. RYAN]: Your Honor, the two pleadings ----

21 MJ [COL POHL]: And the rule is clear. So I just -- I  
22 just want to make sure it applies both ways.

23 TC [MR. RYAN]: I understand, Judge. And I think maybe

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1 the sort of practical solution going forward, although I  
2 believe we met it this time, was to say specifically one, two,  
3 and three are going to be shown in the courtroom on the screen  
4 for all of world to see, or that is our intention.

5 MJ [COL POHL]: Yes.

6 TC [MR. RYAN]: Respectfully, sir, when it came to SS and  
7 VV, this is the personal jurisdiction motion. This is a big  
8 ball of wax. We did have to file an awful lot of pleadings,  
9 but this is the way we're going to prove our case -- or an  
10 awful lot of documents. When we filed SS and VV, as  
11 opposed -- as pertaining to 502, it was our saying these are  
12 the ones we are going to display. There was further  
13 communication from the prosecution in which we said the same  
14 thing.

15 That all being said, we can, in the future, be even  
16 clearer about it.

17 MJ [COL POHL]: Okay. It's just that this came up  
18 actually last time with a slide, I believe, from Mr. Connell's  
19 team, where there was a bunch of PowerPoint, and there was  
20 like a thousand other pages. And the issue is what's actually  
21 going to be displayed.

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

23 MJ [COL POHL]: And I'm not -- Mr. Connell, don't get

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1 excited, I'm not ----

2 LDC [MR. CONNELL]: I'm not excited, sir. We identified  
3 the specific pages after that.

4 MJ [COL POHL]: But the initial thing we got was a whole  
5 bunch. My only point is this, for everybody to understand  
6 going forward: If you wish to display an item, you've got to  
7 provide it to the CISO. And these are ones you intend to  
8 display; not a thousand pages, and I may pick three or four,  
9 okay?

10 Now, again, things can thing change. I've got that.

11 TC [MR. RYAN]: Yeah.

12 MJ [COL POHL]: But my concern is that -- is particularly  
13 this motion and some other motions, I see huge volumes of  
14 things being offered ----

15 TC [MR. RYAN]: I understand, Judge.

16 MJ [COL POHL]: ---- that aren't going to be put on, and  
17 so we get in the position -- okay.

18 TC [MR. RYAN]: I don't think ----

19 MJ [COL POHL]: Okay.

20 TC [MR. RYAN]: That really wasn't the case here, sir.

21 MJ [COL POHL]: Okay. Understand. And I just wanted to  
22 kind of set that groundwork for both sides, that the rules  
23 apply to both parties ----

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1 TC [MR. RYAN]: Okay.

2 MJ [COL POHL]: ---- and there's no -- there's a review  
3 process but then also just the pre-court notification to the  
4 CISO.

5 TC [MR. RYAN]: With that being the case, Your Honor, as  
6 you will see in the course of the testimony of the two  
7 witnesses, although it's a heck of a lot of paper, an awful  
8 lot of it is going to be introduced at this time. And that is  
9 why we will put those two pleadings in.

10 MJ [COL POHL]: Okay.

11 LDC [MR. RUIZ]: Judge, may I be heard?

12 TC [MR. RYAN]: So I understand the commission's concerns.

13 MJ [COL POHL]: Yeah, Mr. Ruiz.

14 LDC [MR. RUIZ]: Judge, since you raised the subject of  
15 exhibits, I think it's an appropriate time to address one  
16 particular issue. There are a number of these exhibits that  
17 we're not going to object to. Again, that's only for purposes  
18 of this hearing.

19 MJ [COL POHL]: Right.

20 LDC [MR. RUIZ]: And we think that that's -- that's just  
21 our strategy as an appropriate method to proceed. However, we  
22 do have -- and I would like to renew an objection to one of  
23 the exhibits and I'd like to do it for purposes of the record

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1 as far as clarity. I have already raised the objection, but I  
2 want to do that to this particular exhibit to pinpoint your  
3 attention to it as well as the prosecution, but also to make.

4 Sure that my record is complete on this particular issue.

5 MJ [COL POHL]: Which exhibit are you referring to?

6 LDC [MR. RUIZ]: It's 502SS, P. That particular exhibit,  
7 Judge, is the exhibit where the prosecution intends to  
8 introduce Mr. al Hawsawi's statements through the LHM document  
9 produced by the Federal Bureau of Investigation.

10 And in that sense, I want to refer your attention  
11 back to AE 502N (MAH). It was submitted on June 30, 2017, and  
12 I would like to reaffirm the objections that we raised in AE  
13 502N (MAH) June 30, 2017.

14 Those objections, of course, are to the admissibility  
15 of those statements at this stage of the proceedings, but more  
16 particularly to receiving that evidence and allowing that  
17 evidence to be publicly disseminated prior to an adjudication  
18 of the admissibility of those documents.

19 So we've indicated in numerous pleadings, Judge, you  
20 have in fact ruled on the relevancy of those statements. We  
21 understand that. So it is not my intention to revisit that  
22 issue. But it is my intention to reaffirm our objections as I  
23 have indicated as previously raised and submitted to this

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1 commission, to the method and manner of receiving this  
2 evidence, in the discourse, in the public discourse as  
3 Mr. Ryan has indicated to be publicly-disseminated evidence  
4 that ultimately may very well, and we think, will be  
5 inadmissible, will be highly prejudicial, but which we are not  
6 yet, because, once again, of the government's discovery  
7 practices, not in a position to fully litigate.

8           But more importantly than us not being in a position  
9 to fully litigate this, Judge, you're not in a position to  
10 determine the admissibility of these documents because you  
11 don't have all of the information that you have to have in  
12 order to make appropriate findings.

13           Judge, in terms of our ability to properly litigate  
14 this issue, in September 25 of 2013, we first requested the  
15 production of the full SSCI report. We sought the production  
16 of that report because we thought the information contained  
17 with that report would help us perfect our challenge to the  
18 statements that were collected of Mr. al Hawsawi, not only  
19 from the 2003 to 2006 timeframe, but also from the 2007  
20 timeframe, which is what will be the focus of these  
21 proceedings.

22           We have good reason to believe, because of the  
23 disclosure in 2014 of the executive summary of the SSCI

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1 report, that Mr. al Hawsawi was subjected to a number of  
2 different rounds of torture and interrogation, which we  
3 believe ultimately will taint even the statements that the FBI  
4 attempted to collect.

5 Of course, again, we today received -- or last night  
6 received a piece of information that cements the link between  
7 the CIA and the FBI. Again, we're reacting. We haven't had  
8 the opportunity to digest that.

9 Judge, in April 2014, once again, we moved to compel  
10 the SSCI -- actually, Mr. Ali moved to compel the SSCI in AE  
11 286 (AAA). Once the documents were released by the Senate in  
12 December of 2014, we submitted an addendum or basically our  
13 own memorandum indicating why it was critical for us to have  
14 the underlying information in that report in order to be  
15 properly able to litigate this issue. We have not received  
16 that information to date, Judge.

17 Again, we have actually never received the  
18 information from the prosecution. The only information we  
19 ever received from the SSCI's "torture report" was something  
20 that came about because of the Senate's hard-fought victory to  
21 actually disseminate that information and brought some greater  
22 transparency to what actually had happened to Mr. Hawsawi.

23 You have deferred ruling on the production of the

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1 full SSCI report, Judge, and you did that -- and let me find  
2 it here -- January 10 of 2017, Judge, you agreed to  
3 refer that -- defer that ruling in AE 286T. So that ruling is  
4 deferred in terms of the underlying documents to the executive  
5 summary.

6           So we are in a position, and will be in a position if  
7 you admit this evidence and allow it to be publicly  
8 disseminated, where we will later be challenging the  
9 admissibility, hopefully, with all of the information that we  
10 need to make the appropriate challenge to this information.

11           As I've said, we have good reason to believe that  
12 this evidence is irrevocably tainted. We have that  
13 information because of the SSCI's disclosure and also because  
14 of a FOIA release that was produced that also gave us a little  
15 bit more of insight into Mr. al Hawsawi's treatment.

16           But the important point, Judge, is that the court is  
17 on notice. I think you've heard these facts a number of  
18 times, that there is great risk that this information is  
19 tainted. We know from Agent Fitzgerald's testimony in 2013  
20 that there was no audio recording, no video recording.  
21 Mr. Hawsawi's language proficiency is at issue. And when you  
22 put that together with the 2014 disclosures as well as the  
23 other information that came out, you have a species of

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1 evidence that is most likely irrevocably tainted.

2           Now, we raised this issue of personal jurisdiction.  
3 I understand that. We framed it in terms of the existence of  
4 hostilities because we think that's the heart of the matter.  
5 If the prosecution can't prove that hostilities, it doesn't  
6 matter what else they prove, and we believe they can't.

7           They've come back and they've decided they wanted to  
8 make this issue of the statements an issue to prove other  
9 prongs of the existence of hostilities. I understand that. I  
10 understand that there is an interest in the government in  
11 providing evidence to the commission and an interest in the  
12 commission in receiving evidence that will support their  
13 burden. I get that.

14           Because of that, I proposed a method by which the  
15 government's interests would be served and you would minimize  
16 the risk and the damage prejudicial to Mr. al Hawsawi's  
17 defense in the future. That procedure was that you receive  
18 the documents in evidence, if you deemed that they were  
19 relevant, which you have; that you seal those documents, and  
20 that you consider them for the facts that the prosecution  
21 wants you to consider them.

22           They could pinpoint that information by the MEAs, by  
23 the exhibit, and they could provide that to the commission.

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1 And in that procedure, both interests would be served.

2 The only interest that would not be served was  
3 broadcasting information that ultimately may be inadmissible,  
4 ultimately may reach potential jurors' ears and taint these  
5 proceedings further down the line.

6 Now, I don't know what kind of jury pool we're going  
7 to have whenever we try this case, but I'm pretty certain it's  
8 not going to be the kind that you have in a federal court or  
9 in a state court where you have hundreds of people sitting in  
10 one room waiting to be called if other people are excluded. I  
11 would urge the commission to adopt the procedure that  
12 minimizes the risk for that damage.

13 Sure, I know you have indicated that we can address  
14 it through voir dire, but under these kinds of circumstances  
15 where we have a very fragile, at best, presumption of  
16 innocence, I think the vast majority of the public believes  
17 that when Mr. al Hawsawi sits in this room, he is a guilty  
18 man.

19 You must adopt the procedure that serves both the  
20 government's interests and minimizes the risk and the damage  
21 to Mr. al Hawsawi's defense, the risk to his due process  
22 rights, the risk to ultimately having a fair trial.

23 You have acted decisively in other areas to minimize

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1 the risk of implicating trial rights. You did that when it  
2 came to resourcing issues in Guantanamo. You acted decisively  
3 to prevent any chance, or any particular chance of taint.

4 Here we're talking about a particular piece of  
5 evidence that is irrevocably tainted, we have reason to  
6 believe is tainted and was obtained through coercion, torture,  
7 cruel and inhumane and degrading treatment that the  
8 prosecution wants to broadcast to the world before we actually  
9 are able to determine and litigate its admissibility. And  
10 why? They have yet not to provide us with information to  
11 fully do that.

12 So what I would like to reiterate, Judge, is the  
13 admission of that document ----

14 MJ [COL POHL]: To the admission or the publication?

15 LDC [MR. RUIZ]: Well, publication. Yes. If you want to  
16 be precise, publication, of those documents.

17 MJ [COL POHL]: You were talking about the two interviews,  
18 the CSRT I believe is one ----

19 LDC [MR. RUIZ]: 502SS, P is the proposed LHM. It is 50  
20 pages and also the CSRT, correct, yes.

21 MJ [COL POHL]: Okay.

22 LDC [MR. RUIZ]: We -- if you want to be more precise,  
23 yes, it is the publication at this stage of the litigation.

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1 MJ [COL POHL]: Okay. Got it. Okay. Thank you.

2 Mr. Ryan.

3 TC [MR. RYAN]: The court's indulgence?

4 LDC [MR. RUIZ]: Sir, may I come back while they are doing  
5 this? I just want to make sure I'm consistent with my  
6 objections.

7 So as I've indicated, we have laid a number of  
8 objections out to the admissibility of the documents, right?

9 MJ [COL POHL]: Yes.

10 LDC [MR. RUIZ]: So we ultimately persist in those  
11 objections. But if the fallback position for purposes of this  
12 hearing is you determine that they are relevant for your  
13 purposes in determining this issue, then our request would be  
14 that that be done under seal to protect the danger of unfair  
15 prejudice and also to serve the prosecution's interests in  
16 proving their case.

17 MJ [COL POHL]: Got it. Okay.

18 Mr. Ryan.

19 TC [MR. RYAN]: Your Honor, this motion was filed by the  
20 defense. They chose to bring it. They understand what it  
21 entails and what the government now is obligated to prove. It  
22 has never been a secret, the big part of the government's  
23 proof is the statements by the detainees, by the accused, to

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1 FBI agents in late '06, early '07 in which the agent says will  
2 be demonstrated to you went through great steps to ensure the  
3 voluntariness, reliability, knowledge of the accused in making  
4 such statements.

5           Going forward from there, after the filing of this  
6 motion, it was initially agreed upon between the parties that  
7 the -- what's generally been referred to as the LHM statement,  
8 the FBI statement, would come into evidence without the need  
9 for any further testimony, and we would go forward from there.

10           At some point, Mr. Hawsawi withdrew from that  
11 agreement. So now we are in the position of this is the proof  
12 we are ready to put on. Agent Perkins is ready for it.

13           By the way, I should point out, Judge, I don't know  
14 that the -- that this is as ripe as it could be, simply for  
15 the reason that Special Agent Fitzgerald will not be  
16 testifying to the LHM today.

17           As far as how it is handled, once special agent takes  
18 the stand, I will tell the commission right now that she will  
19 be asked many questions about the LHM itself and give her  
20 recitation of the answers that came from Mr. Hawsawi. This is  
21 our proof. This is how we meet the motion. As far as what  
22 happens to a paper document at that point, I would suggest  
23 that Your Honor take up that objection at the time.

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1 MJ [COL POHL]: Okay. Got it.

2 LDC [MR. RUIZ]: Judge, may I make one more point based on  
3 Mr. Ryan's assertions?

4 MJ [COL POHL]: Sure. I mean, if you're only going to  
5 discuss about the offer to stipulate and the foundation of the  
6 statement, we don't need to go through that. I mean, it  
7 really doesn't make any difference. We are where we are.

8 LDC [MR. RUIZ]: Again, what I want to say about that was,  
9 Judge, that we realized that that was the government's  
10 understanding of what had been said in court. In response to  
11 that, we filed an additional motion which clarified our  
12 position. And our position was, in essence, if this is going  
13 to be in open court and is going to be disseminated out, then  
14 there is no stipulation to the foundation. But if, in fact,  
15 it was something that the prosecution was going to provide to  
16 you for your in camera review, then we were willing to do  
17 that, we were willing to stipulate to the foundation of the  
18 documents for those purposes. And that was AE 502Q (MAH).

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1 MJ [COL POHL]: Okay. Thank you.

2 I tell you what, we're going to take a 15-minute  
3 recess, and then we'll call the witness. Commission is in  
4 recess.

5 [The R.M.C. 803 session recessed at 0959, 5 December 2017.]

6 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1016,  
2 5 December 2017.]

3 MJ [COL POHL]: Commission is called to order. Appears to  
4 be no changes in the personnel.

5 Mr. Nevin.

6 LDC [MR. NEVIN]: I -- except that Lieutenant Colonel  
7 Poteet is absent, will be here shortly, Your Honor.

8 MJ [COL POHL]: Okay. He will join us. Okay.

9 Mr. Ryan.

10 TC [MR. RYAN]: The United States calls Special Agent  
11 James Fitzgerald.

12 [Conferred with courtroom personnel.]

13 CP [BG MARTINS]: Special Agent, please proceed to the  
14 witness stand, remain standing, raise your right hand for the  
15 oath.

16 SPECIAL AGENT JAMES M. FITZGERALD, civilian, was called as a  
17 witness for the prosecution, was sworn, and testified as  
18 follows:

19 DIRECT EXAMINATION

20 Questions by the Chief Prosecutor [BG MARTINS]:

21 Q. Would you please state your full name.

22 A. My name is James M. Fitzgerald.

23 TC [MR. RYAN]: May I proceed, Your Honor?

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1 MJ [COL POHL]: Go ahead.

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

3 Q. Special Agent Fitzgerald, could you tell us about  
4 your educational background, please?

5 A. Yes. I received a bachelor's degree from Norwich  
6 University in 1987.

7 Q. I'm going to ask you to sit up a little closer to the  
8 mic.

9 Following your education, can you tell us about your  
10 employment history?

11 A. Yes. I was employed as a state trooper for  
12 approximately three years, and then in 1996 I was employed by  
13 the FBI.

14 Q. State trooper in what state?

15 A. Massachusetts.

16 Q. You joined the Bureau in '96, did you say?

17 A. Correct.

18 Q. And what's the first step upon joining the Bureau?

19 A. You attend the academy in Quantico, Virginia.

20 Q. You have been an agent for how many years now?

21 A. About 21 and a half years.

22 Q. After Quantico, you became a special agent?

23 A. Correct.

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1 Q. Before that, you were a trainee?

2 A. Yes.

3 Q. From -- you became a special agent in what year? Was  
4 it '96?

5 A. Yes.

6 Q. Upon graduation from Quantico and becoming a special  
7 agent, where did you go from there?

8 A. I was assigned to the New York office in  
9 approximately September 1996.

10 Q. And what sort of cases did you work in the New York  
11 office?

12 A. Criminal investigations, mostly involving organized  
13 crime.

14 Q. And for how long were you in the OC unit?

15 A. Until roughly 2001; from late '96, early '97, to  
16 2001.

17 Q. What happened in September of 2001 that changed?

18 A. The attacks of September 11th.

19 Q. Were you in New York that day?

20 A. Yes, I was.

21 Q. Where were you?

22 A. Upon the initial plane strikes, I was on my way in to  
23 New Jersey. After the Towers came down, I was able to make my

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1 way into Manhattan.

2 Q. All right, and as far as your career is concerned,  
3 what happened from that point going forward?

4 A. I was essentially assigned to the 9/11 investigation  
5 for the next several years.

6 Q. And can you tell -- first of all, I direction your  
7 attention -- you're aware of something called PENTTBOM?

8 A. Yes, I am.

9 Q. What is PENTTBOM?

10 A. A PENTTBOM is the name that the FBI gave for all four  
11 crashes and the subsequent investigation into the attacks of  
12 9/11.

13 Q. And for how long were you a part of the PENTTBOM  
14 investigation?

15 A. So roughly 2006 through the prosecution of Zacharias  
16 Moussaoui at which point I was working other counterterrorism  
17 cases in New York.

18 Q. So is it correct to say that certainly from 9/11  
19 through the end of the Moussaoui case you were working on  
20 nothing but 9/11?

21 A. Correct.

22 Q. At some point, were you transferred from New York to  
23 someplace else?

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1 A. Yes.

2 Q. Where did you go?

3 A. In 2013 I was transferred from New York down to  
4 headquarters in Washington, D.C.

5 Q. Okay. Did you become part of a team there?

6 A. Yes, I did.

7 Q. And as part of your work on that team, were you  
8 involved in the military commissions prosecutions?

9 A. Yes, I was.

10 Q. And for what period of time was that?

11 A. From 2013 to approximately 2017, although I was  
12 working some military commissions matters prior to 2013 on a  
13 temporary duty basis.

14 Q. So 2017 you left commissions; am I correct?

15 A. Correct.

16 Q. Did you transfer?

17 A. Yes, I did.

18 Q. To where?

19 A. To Boston.

20 Q. In the course of your work while you were focusing on  
21 PENTTBOM and the attacks of 9/11, did you have occasion to  
22 testify -- and I'll ask first about the trial of Zacharias  
23 Moussaoui?

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1 A. Yes, I did.

2 Q. And did that occur in the Eastern District of  
3 Virginia?

4 A. Yes, it did.

5 Q. Did you testify in your capacity as an FBI agent?

6 A. Yes.

7 Q. What was the general subject matter you testified  
8 about?

9 A. In general terms, the activities of the 9/11  
10 hijackers.

11 Q. Did you also at some point have occasion to testify  
12 before something known as the 9/11 Commission?

13 A. Yes, I did.

14 Q. Can you tell us what the 9/11 Commission was?

15 A. The 9/11 Commission sought to identify, understand,  
16 and provide recommendations for corrective action for all of  
17 the matters involving the attacks of 9/11.

18 Q. And what year was that, sir?

19 A. In 2004.

20 Q. Special Agent Fitzgerald, as part of your involvement  
21 with PENTTBOM and the military commissions prosecution team,  
22 have you spent a good part of your career during those time  
23 periods just focused on the FBI's investigation?

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1 A. Yes, I have.

2 Q. Do you believe you're well aware, understanding how  
3 large it is, of a good part of that investigation?

4 A. Yes.

5 Q. And would you tell us -- give us an idea of how large  
6 this investigation was.

7 A. The -- at some point it involved virtually every  
8 agent and every office in the FBI in the beginning. Of  
9 course, that tapered off as other demands came around. But  
10 the case file itself is very large, having well over 100,000  
11 FD-302 investigative reports, many thousands of items of  
12 evidence.

13 Q. And you told us that in the case of Moussaoui you  
14 testified in regard to hijackers; is that correct?

15 A. Yes.

16 Q. Is that an area that you had spent -- you tended to  
17 focus some of your attention on through the years?

18 A. Yes, it is.

19 Q. Okay. Before we get to the hijackings and the  
20 hijackers, Special Agent Fitzgerald, let me turn your  
21 attention to the attack on the USS COLE.

22 A. Yes.

23 Q. First of all, do you recall roughly generally when

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1 that happened?

2 A. Yes, in October of 2000.

3 Q. And can you tell us what nation that occurred in?

4 A. Yes. It was in Yemen, in Aden.

5 Q. Were you assigned to that investigation as an  
6 investigator?

7 A. I was not.

8 Q. Did you at any point have any involvement in that  
9 investigation at all?

10 A. Yes, I did.

11 Q. Tell us about that, please.

12 A. On two separate occasions I traveled with individuals  
13 from the FBI New York office over to Aden to support the  
14 investigation there. Again, I was not one of the case agents,  
15 but I was one of the agents who went there to provide  
16 additional support.

17 Q. What was your support role?

18 A. I was part of the tactical team in the New York  
19 office so that we would help provide physical security, set up  
20 convoys, things of that nature.

21 Q. Tactical team, is that generally referred to as SWAT?

22 A. Yes.

23 Q. How long were you a part of that?

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1 A. For approximately ten years.

2 Q. I think you told us you traveled on two separate  
3 occasions as part of the COLE investigation?

4 A. Yes.

5 Q. Those years were what?

6 A. Late 2000, between November and December of 2000, and  
7 then roughly mid 2001, approximately May to June of 2001.

8 Q. All right. You were back in the States in time for  
9 the 9/11 attacks?

10 A. Correct.

11 Q. In the course of your involvement with the teams  
12 investigating the COLE, were you able to observe what they  
13 were doing and have some involvement?

14 A. I made some observations, yes.

15 Q. Who was the onsite supervisor for the FBI at that  
16 time?

17 A. When I was initially there -- you have to pardon me a  
18 moment, the name's escaping me. It was John O'Neill.

19 Q. And did you know John O'Neill?

20 A. I met him during the course of that investigation.

21 Q. And what was his role in the COLE investigation?

22 A. He was the on-scene commander in Aden at the time.

23 He was -- his rank in the FBI was special agent in charge in

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1 the New York Office, and he specifically was the on-scene  
2 commander when I was first there in November-December of 2000.

3 Q. Did O'Neill at some point retire ----

4 A. Yes, he did.

5 Q. ---- after the COLE investigation?

6 A. Yes.

7 Q. And ultimately what happened to Mr. O'Neill?

8 A. He was killed on September 11th.

9 Q. Was he in the Towers that day?

10 A. Yes, he was in or around the Towers. I'm not sure,  
11 obviously, exactly where he was but ----

12 Q. In his capacity as an FBI agent or was that after his  
13 retirement?

14 A. It was after his retirement.

15 Q. Special Agent Fitzgerald, in the course of the --  
16 your role with the COLE investigation, what sort of things did  
17 you observe or have some involvement with the FBI doing as  
18 part of a criminal investigation in that case?

19 A. I observed the investigators meeting with their  
20 Yemeni counterparts. On a number of different occasions, we  
21 traveled to different areas of Aden with Yemeni counterparts  
22 to look at areas where the boat was purchased or where the  
23 lookout location was alleged to be, where a boat was alleged

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1 to have been put in the water. So we helped facilitate some  
2 of the travel for some of those activities.

3 Q. As part of FBI's work there, did you observe at any  
4 point or see at any point that they were involved in the  
5 recovery of bodies?

6 A. That mostly occurred before I got there.

7 Q. Who else was working with FBI -- well, I'm sorry.

8 It occurred before you got there. Did you know that  
9 it happened?

10 A. Yes, I did.

11 Q. Who else -- what other agency, if any, was working  
12 with the FBI in this investigation ----

13 A. The Naval ----

14 Q. ---- in terms of criminal investigation?

15 A. The Naval Criminal Investigative Service, NCIS.

16 Q. Was FBI and NCIS involved in the gathering of  
17 evidence as well?

18 A. Yes.

19 Q. Based on your knowledge, based on your involvement  
20 with the FBI in that investigation, tell us very briefly how  
21 the attack occurred on the COLE.

22 A. A small boat approached the USS COLE as it was docked  
23 in Aden Harbor at or around refueling operations. As the boat

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1 pulled up alongside the USS COLE, it exploded, putting a large  
2 hole in the side of the vessel.

3 Q. The people in the boat that exploded, the bomb, what  
4 happened to them?

5 A. They were both killed.

6 Q. It was a suicide attack?

7 A. Yes, it was.

8 Q. The USS COLE was a U.S. warship?

9 A. Yes, it was.

10 Q. Belonged to the United States Navy?

11 A. Yes.

12 Q. Were Americans killed as a result of this attack?

13 A. Yes.

14 Q. Was the American ship damaged?

15 A. Yes, it was.

16 Q. Based on your whole involvement through the years,  
17 both PENTTBOM and this investigation, was this attack on the  
18 COLE consistent with other attacks you're aware of sponsored  
19 by al Qaeda?

20 A. Yes, it was consistent.

21 Q. In the course of the years after the COLE and after  
22 9/11, are you aware of claims of responsibility by al Qaeda  
23 for the COLE attack?

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1 A. Yes, I am.

2 Q. Is it something that happened frequently?

3 A. Yes. I know there was a video produced, titled  
4 roughly "The Attack on the American Destroyer USS COLE."  
5 There were various video clips on the Internet reflecting  
6 al Qaeda claims or alleged claims of responsibility for the  
7 attack on the COLE.

8 Q. Is the FBI's investigation consistent with those  
9 claims; that is, that al Qaeda did the attack?

10 A. Yes, it is.

11 Q. Agent Fitzgerald, I'd like to turn your attention now  
12 to the hijackings on September 11th.

13 A. Yes.

14 Q. You said you were present in the New York area on  
15 that day.

16 A. Yes.

17 Q. Now, you, yourself, became aware of it how?

18 A. I saw the first Tower on fire as I was driving  
19 towards New York City in -- from New Jersey.

20 Q. Correct to say you had -- there was no investigative  
21 activity prior to the attacks that had any knowledge that it  
22 was on its way?

23 A. I had no knowledge, and I'm unaware of any such

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1 investigation.

2 Q. As you go back now -- strike that.

3 After the attacks, as you were doing the  
4 investigation, specifically as to the hijackings, did you  
5 become aware of some of the earliest ways in which American  
6 authorities or companies learned that the hijackings were  
7 taking place?

8 A. Yes.

9 Q. Tell us about some of those, please.

10 A. Some of those ways were, at least initially, with the  
11 air traffic controller trying to contact Flight 11. As the  
12 air traffic controller was issuing instructions to the flight,  
13 at some point the flight became unresponsive.

14 There were several transmissions over air traffic  
15 control radio that were of a suspicious nature which the air  
16 traffic controller didn't understand. The air traffic  
17 controller later put his audio in the entire room of the air  
18 traffic control station so that other controllers could hear  
19 it, and they were able to determine that something was wrong  
20 with the aircraft. And, of course, after it refused to  
21 respond to instructions, it later shut off the transponder,  
22 changed course, and flew towards New York City.

23 There were also several calls made by flight

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1 attendants from Flight 11 down to the ground; one by a flight  
2 attendant named Betty Ong down to the American Airlines  
3 reservations center in Raleigh, North Carolina. There was  
4 another flight attendant named Amy Sweeney who was making  
5 calls from the aircraft down to Boston Flight Services at  
6 Logan Airport.

7 Q. Ms. Ong's call, was it recorded?

8 A. About four minutes of it was.

9 Q. And who was that with?

10 A. It was with several different people, including a  
11 woman named Nydia Gonzalez.

12 Q. Have you heard that recording?

13 A. Yes, I have.

14 Q. Many times?

15 A. Yes.

16 Q. Have you spoken with Ms. Gonzalez?

17 A. Yes, I have.

18 Q. Turning to Ms. Sweeney's phone call, was that  
19 recorded?

20 A. It was not.

21 Q. Who was that to -- or where?

22 A. Again, it was to several different people, but  
23 eventually reaching a person named Michael Woodward at Boston

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1 Flight Services in Logan Airport.

2 Q. Were both of these women on the planes when they were  
3 making these calls?

4 A. Yes.

5 Q. Was information provided by them as to ----

6 MJ [COL POHL]: Mr. Ryan ----

7 Q. ---- what was happening on the ----

8 MJ [COL POHL]: ---- I'm going to ask you to stay near the  
9 mic, please.

10 TC [MR. RYAN]: Sorry, sir. I'll repeat it.

11 Q. Agent Fitzgerald, was information relayed by these  
12 two women regarding what was happening on the planes?

13 A. Yes.

14 Q. Based on your knowledge of the events and the  
15 hijackings themselves, is this, as it turned out, some of the  
16 earliest descriptions of what was happening and who was doing  
17 it?

18 A. Yes. Betty Ong provided information identifying --  
19 or certainly implicating several individuals on the aircraft,  
20 as did Amy Sweeney.

21 Q. Agent Fitzgerald, I want to turn now to each of the  
22 flights for a bit of information and context. I would like to  
23 discuss them each in chronological order based upon the time

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1 that they crashed ----

2 A. Yes.

3 Q. ---- which I think also coincides with when they took  
4 off. First, turn your attention to American Airlines Flight  
5 11. Where was that taking off from? Where was it bound to?

6 A. It was taking off from Logan Airport and it was  
7 headed to Los Angeles.

8 Q. And have you, in the course of your investigation,  
9 learned of the flight path of Flight 11?

10 A. Yes, I have.

11 Q. And can you describe it for us? At some point was it  
12 consistent with going to Los Angeles? Was there a change?

13 A. Yes. For the first several minutes after it took  
14 off, it was responding to directions from the air traffic  
15 controller. At some point, the air traffic controller gave  
16 Flight 11 an instruction to turn 20 degrees right to avoid  
17 other air traffic.

18 After that point, sometime roughly around 8:12, 8:13,  
19 8:14 a.m., the aircraft stopped responding to the air traffic  
20 controller. The transponder was shut off. The aircraft  
21 continued to fly in a westerly direction, and at some point it  
22 turned south, generally over the Hudson River or thereabouts  
23 and traveled down towards New York City.

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1 Q. What was the ultimate point at which it crashed?

2 A. In the North Tower of the World Trade Center.

3 Q. Is that -- there's two towers, correct?

4 A. Yes.

5 Q. And are they often referred to as North and South?

6 A. Yes.

7 Q. Is there another way they're referred to as well?

8 A. Tower 1 and Tower 2.

9 Q. So which would be the North Tower?

10 A. Tower 1.

11 Q. All right. Did you become aware through the years of  
12 the videotape of the actual impact of Flight 11?

13 A. Yes.

14 Q. This was the first crash; am I correct?

15 A. That's correct.

16 Q. Are you -- how many videotapes exist -- video  
17 recordings of the impact exist, if you know?

18 A. Of the first World Trade Center -- of the first  
19 Tower?

20 Q. Yes.

21 A. The one that I know of is one taken by the  
22 Naudet brothers who were journalists, photo or video  
23 journalists who were embedded with the Fire Department of New

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1 York, and they captured on video the striking of the North  
2 Tower, Tower 1 of the World Trade Center.

3           There may have been another much longer-range video,  
4 but in general terms the most vivid and closest video that I  
5 know of is the Naudet video.

6           Q. Is that the -- first of all, have you seen that one  
7 yourself?

8           A. Yes.

9           Q. Has it been collected previously as part of evidence?

10          A. Yes.

11          Q. Is it also publicly available?

12          A. Yes.

13          TC [MR. RYAN]: Your Honor, I'm going to ask for the feed  
14 from Table 3, please.

15          MJ [COL POHL]: Go ahead.

16          TC [MR. RYAN]: And I'm going to ask that 502SS Attachment  
17 PPP be played.

18          MJ [COL POHL]: Is that the video you just referred to?

19          TC [MR. RYAN]: It is, sir.

20          MJ [COL POHL]: Go ahead.

21          TC [MR. RYAN]: Sound, please.

22 [Video from AE 502SS (Gov) Attachment PPP played.]

23          TC [MR. RYAN]: Judge, for this one, we didn't need the

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1 sound to be played. We'll need it in the future. And this is  
2 fine.

3 MJ [COL POHL]: Okay.

4 Q. Agent, we'll go from here. The initial part of that  
5 video clip showed some firemen. Do you know where they were  
6 and what they were doing?

7 A. They were in Lower Manhattan investigating a gas  
8 leak.

9 LDC [MR. RUIZ]: Judge, just to perfect the record, no  
10 objection for purposes of this hearing ----

11 MJ [COL POHL]: Uh-huh.

12 LDC [MR. RUIZ]: ---- to the video itself.

13 MJ [COL POHL]: Okay.

14 LDC [MR. RUIZ]: ---- and that will be the case for other  
15 exhibits where we stand silent.

16 MJ [COL POHL]: Okay.

17 LDC [MR. RUIZ]: I will articulate objections to the ones  
18 that we do have.

19 MJ [COL POHL]: I understand, Mr. Ruiz, we are just  
20 talking about for purposes of this hearing and this hearing  
21 only, not for any other.

22 LDC [MR. RUIZ]: I just wanted to do that with the first  
23 piece of evidence, and I won't from there on.

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1 MJ [COL POHL]: Okay. Thank you.

2 Go ahead, Mr. Ryan.

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

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

5 Q. Approximately what time did that impact occur?

6 A. Approximately 8:46 a.m.

7 Q. And this is the first impact of all of the four on  
8 9/11; am I right?

9 A. Correct.

10 Q. I'd like to turn your attention now to the second  
11 which is United Airlines Flight 175.

12 A. Yes.

13 Q. Again, tell us where it originated and where that was  
14 heading.

15 A. That originated from Logan Airport, and it was also  
16 on its way to Los Angeles.

17 Q. And can you tell us again about its path?

18 A. Yes, it -- Flight 175 was actually diverted to the  
19 south after the apparent hijacking was recognized by the air  
20 traffic controllers. So Flight 175 took off. It was heading  
21 west. It was diverted south by the air traffic controllers.  
22 At some point, that aircraft was also hijacked. It did a  
23 large loop around New Jersey and approached the island of

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1 Manhattan from the south.

2 Q. And struck what?

3 A. It struck the South Tower, Tower 2 of the World Trade  
4 Center.

5 Q. Now, do you know what time that was?

6 A. It struck that tower at approximately 9:03 a.m.

7 Q. So how many -- by my math, 15 to 18 minutes later,  
8 after Tower 1 had been struck; is that about correct?

9 A. That's correct.

10 Q. What had happened in that time between the two  
11 impacts that would change things in terms of visuals?

12 A. There were many more people with video capability,  
13 either cameras or phones or security video or whatever,  
14 focused on the area of the World Trade Center, news cameras,  
15 helicopters, all of that sort of stuff.

16 Q. And through the years have those videos been  
17 obtained?

18 A. Yes, they have been obtained.

19 Q. And they've been in evidence?

20 A. Yes.

21 Q. And are they also publicly available?

22 A. Yes, they are.

23 Q. And, Agent Fitzgerald, have you seen the videos that

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1 we're about to show to the commission?

2 A. Yes, I have.

3 Q. And are they in fact of the impact of Flight 175?

4 A. Yes, they are.

5 TC [MR. RYAN]: Your Honor, I will ask to bring up  
6 502SSS [sic] Attachments QQQ, Quebec. And before you start  
7 it, sir, do we have sound?

8 Court's indulgence.

9 [Pause.]

10 TC [MR. RYAN]: Ask to publish, sir.

11 MJ [COL POHL]: Go ahead.

12 [Pause.]

13 TC [MR. RYAN]: Can we recess in place, Judge, for a  
14 moment?

15 MJ [COL POHL]: Sure.

16 [Pause.]

17 [Video from AE 502SS (Gov) Attachment QQQ played.]

18 MJ [COL POHL]: Mr. Ryan, do you need some time to fix  
19 this?

20 TC [MR. RYAN]: I can go without the sound right now,  
21 Judge. I'll need it in a few minutes or so. If you wish, we  
22 can just continue on.

23 MJ [COL POHL]: Go ahead and continue, please.

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1 TC [MR. RYAN]: Thank you.

2 Q. Special Agent, we're going to let the first video  
3 stand for the moment. First of all, what is shown -- what was  
4 shown in that quick video clip?

5 A. It's a video camera from the Brooklyn side looking  
6 towards Lower Manhattan capturing Flight 175 as it struck the  
7 South Tower of the World Trade Center.

8 Q. And just prior to impact, could you see the other  
9 tower?

10 A. Yes, I could see the North Tower on fire.

11 Q. What was going on with that at the time?

12 A. It was on fire, and the fire department had responded  
13 and was attempting to address the issues.

14 Q. Next turn your attention to American Airlines  
15 Flight 77. Tell us about that one. Where did it start?  
16 Where was it heading? What happened to it?

17 A. Flight 77 started at Dulles Airport. It was heading  
18 towards Los Angeles. It took off at approximately 8:20 p.m.,  
19 and -- excuse me, 8:20 a.m., and crashed at 9:37 a.m. into the  
20 Pentagon.

21 Q. Can you tell us like where on the Pentagon it hit?

22 MJ [COL POHL]: Just a second, Mr. Ryan. We've got two  
23 things going on here, and I'm a one-thing kind of guy.

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1 TC [MR. RYAN]: Great, sir.

2 MJ [COL POHL]: We're done with the video of the Tower 2.

3 Okay. Go ahead.

4 Q. Can you tell us where it hit on the Pentagon?

5 A. Yes. Roughly it hit on the south side of the  
6 Pentagon, in an area -- one of the sides, in general terms  
7 facing 395, going into Washington, D.C.

8 Q. Was there any video taken of the impact of Flight 77?

9 A. The only video that I'm aware of that roughly  
10 approximates or in some way captures the strike is a  
11 time-lapse security camera which captures a flash of an object  
12 as the aircraft is travelling towards the Pentagon, and then  
13 it also captures still images of the resulting fireball.

14 Q. Is this the type of security camera that takes a  
15 picture every few seconds or so?

16 A. Yes.

17 Q. How about video of the impact or video of the damage  
18 done after the impact?

19 A. Yes, I'm aware of a number of videos, news videos and  
20 other videos, taken of the Pentagon after it had been struck.

21 Q. And again, was it a part of the FBI's investigation?  
22 Was it also publicly available?

23 A. Yes to both.

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1 Q. Have you seen the video that we're playing in court?

2 A. Yes, I have.

3 Q. Is it consistent and is it part of the FBI's  
4 investigation?

5 A. Yes, it is consistent and part of the investigation.

6 TC [MR. RYAN]: I'd ask that we pull up and play  
7 502SSS [sic] Attachment NNN.

8 MJ [COL POHL]: Yeah, go ahead.

9 [Video from AE 502SS (Gov) Attachment NNN played.]

10 Q. Agent Fitzgerald, tell us what we were just watching.

11 A. That was videotape of the Pentagon, after a period of  
12 time after the Pentagon had been burning and the outer wall of  
13 the Pentagon crumbling and collapsing.

14 Q. Were people killed in the Pentagon?

15 A. Yes.

16 Q. As well as the Towers?

17 A. Yes.

18 Q. Turn your attention to the last flight now, United  
19 Airlines 93. Tell us about that.

20 A. United Airlines Flight 93 took off from Newark  
21 Airport. It was en route to San Francisco. It took off at  
22 approximately 8:42 a.m. and crashed roughly at 10:02,  
23 10:03 a.m.

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1 Q. Was there any video of that impact taken, to the best  
2 of your knowledge?

3 A. I know of no video when the impact occurred. There  
4 is video after the impact of Flight 93 in Pennsylvania.

5 Q. Now, where in Pennsylvania?

6 A. Roughly the area of Shanksville, Pennsylvania.

7 Q. As part of your investigation, have you been made  
8 aware of data collected, whether by radar or from the flight,  
9 that would indicate the flight's path?

10 A. Yes.

11 Q. And let me ask you this question: At the time of its  
12 impact in Shanksville, Pennsylvania, can you tell us what the  
13 data indicated the direction of the flight was toward?

14 A. In general terms, the aircraft was flying towards the  
15 city of Washington, D.C.

16 Q. Was any video taken of any part of it -- of part of  
17 the post-impact events?

18 A. Yes.

19 Q. Can you tell us about that?

20 A. There was an individual named David Berkebile who was  
21 roughly six miles away from the impact area. The video, which  
22 is publicly available and has been published by the news  
23 media, is a narrative showing Mr. Berkebile describing what he

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1 is seeing, which is a large smoke cloud and describing his  
2 house shaking at the moment of impact, and in general terms  
3 just shows the resulting smoke cloud.

4 Q. Have you seen this video that we're about to show?

5 A. Yes, I have.

6 Q. Is it consistent with everything that is known about  
7 the -- from the FBI's investigation?

8 A. Yes, it is.

9 Q. And by the way, did the FBI respond to the crash site  
10 in Shanksville?

11 A. Yes, it did.

12 TC [MR. RYAN]: Your Honor, I ask to pull up and publish  
13 502SSS [sic] Attachment 000.

14 MJ [COL POHL]: Go ahead.

15 [Video from AE 502SS (Gov) Attachment 000 played.]

16 Q. Agent Fitzgerald, are you aware of the items that  
17 were recovered from the Flight 93 crash site in Shanksville,  
18 Pennsylvania?

19 A. Yes, I am.

20 Q. Are you aware of something known as a cockpit voice  
21 recorder?

22 A. Yes.

23 Q. Tell us what that is.

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1           A.    The cockpit voice recorder is an approximately  
2 30-minute audio loop that plays, that records whatever audio  
3 is occurring in the actual cockpit.  So you can hear pilots  
4 talking or whoever happens to be in the cockpit at a  
5 particular time.  You would -- as long as the recorder was  
6 recovered intact, you would be able to hear that audio.

7           Q.    Was -- were any other cockpit voice recorders  
8 recovered from any of the other crash sites?

9           A.    No other working recorders.  No recorders were  
10 recovered from the World Trade Center area, and the one  
11 recovered from the Pentagon was not able to be repaired.

12          Q.    The one recovered from Shanksville, it was able to be  
13 listened to?

14          A.    Yes.

15          Q.    You've listened to it?

16          A.    Yes, I have.

17          Q.    Was it taken as evidence by the FBI?

18          A.    Yes, it was.

19          Q.    You -- in the course of listening to it, can you tell  
20 what's going on, especially towards the end of the recording?

21          A.    Yes.  At the end of the recording, you can hear  
22 Arabic voices and you can hear American voices.  You can hear  
23 what appeared to me to be sounds of a struggle and shouting

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1 and banging noises.

2 I have seen the Arabic translation of someone saying  
3 to Saeed to rock the plane or to move the plane, and I've also  
4 seen other data which indicates that the plane was  
5 deliberately forced into the ground.

6 Q. So those are the four impacts.

7 Now, turning your attention back to the Trade Center.  
8 The two Towers were burning when you described it for us.  
9 What ultimately happened to each of those towers?

10 A. Ultimately both towers collapsed after burning.

11 Q. What was the first one to collapse?

12 A. The South Tower of the World Trade Center.

13 Q. Was that the first or second to be struck?

14 A. It was the second to be struck.

15 Q. And have you seen video of that?

16 A. Yes, I have.

17 Q. Was there a lot of video out there available about  
18 this issue?

19 A. Yes, there is.

20 Q. Was it collected as evidence as well?

21 A. Yes.

22 Q. And also available publicly?

23 A. Yes, that's correct.

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1 Q. Have you seen the video we're about to play here in  
2 court?

3 A. Yes, I have.

4 Q. And is that, in fact, video of the South Tower as  
5 borne out by the FBI's investigation?

6 A. Yes.

7 TC [MR. RYAN]: I'd like to pull up and show 502SSS [sic]  
8 Attachment RRR. If we can have the feed from Table 3.

9 MJ [COL POHL]: Do you want to publish it?

10 TC [MR. RYAN]: Yes, sir. I'm sorry.

11 MJ [COL POHL]: Go ahead.

12 [Video from AE 502SS (Gov) Attachment RRR played.]

13 Q. Agent Fitzgerald, the man shown in the very beginning  
14 of that video was who?

15 A. A news reporter for Channel 7.

16 Q. You said that both towers collapsed, am I correct?

17 A. Yes.

18 Q. At some point thereafter did the North Tower collapse  
19 as well?

20 A. Yes, it did.

21 Q. Again, I ask, was video taken of that collapse?

22 A. Yes.

23 Q. Was it taken and possessed by the FBI as evidence?

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1 A. Yes, it was.

2 Q. Is it also publicly available?

3 A. Yes.

4 Q. And in regard to that specific video, is it  
5 consistent with all of the other investigation as to how that  
6 tower collapsed?

7 A. Yes, it is.

8 Q. As to the North Tower -- first of all, drawing your  
9 attention to both towers, on top, did either one of them have  
10 a large antenna?

11 A. Yes.

12 Q. Which one?

13 A. Tower Number 1, which is the North Tower.

14 Q. All right. So the video we're about to display is --  
15 have it -- have you seen it yourself?

16 A. Yes, I have.

17 Q. And is that, in fact, the North Tower?

18 A. Yes.

19 TC [MR. RYAN]: Court's indulgence, Your Honor.

20 Your Honor, I'm going to ask permission to pull up  
21 502SS Attachment SSS and ask to publish at this time.

22 MJ [COL POHL]: You may. Go ahead.

23 [Video from AE 502SS (Gov) Attachment SSS played.]

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1 Q. Agent Fitzgerald, in regard to the collapse of the  
2 North Tower, was that the sort of last significant event of  
3 the events of 9/11?

4 A. Yes.

5 Q. Can it be said that people were still dying  
6 thereafter?

7 A. People certainly have died thereafter from burns and  
8 smoke and dust inhalation, things of that nature.

9 Q. Based on the events that we saw on video, so the four  
10 crashes and the collapse of the two towers -- first of all,  
11 what is the count of how many people were killed that day?

12 A. 2,976.

13 Q. And what is -- starting with the impact of Flight 11  
14 on the North Tower and ending with the collapse of the North  
15 Tower, what is the total elapsed time?

16 A. Roughly 102 minutes.

17 Q. And is it correct to say that -- well, sir, are you  
18 aware of some people having been killed even before that  
19 impact?

20 A. Yes, I am.

21 Q. Who was that? Who were those people, if not by name,  
22 by station?

23 A. On the hijacked flights there are indications that

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1 the pilots were attacked and killed by the hijackers, reports  
2 from flight attendants that other flight attendants had been  
3 stabbed. There was a report from Flight 11 of one of the  
4 passengers on Flight 11, a person named Daniel Lewin who was  
5 attacked by the hijackers and killed.

6 Q. I'd like to turn your attention now, Agent  
7 Fitzgerald, to Logan Airport in Boston, the origination site  
8 of two of the flights; am I right?

9 A. Yes.

10 Q. I'd like to turn your attention to specifically the  
11 Flight 11, the first one to strike a building. Did FBI gather  
12 a certain piece of evidence at Logan Airport early on in the  
13 investigation?

14 A. Yes.

15 Q. What was that?

16 A. There were two suitcases that were checked under the  
17 name of Mohamed Atta that were unable to be loaded onto Flight  
18 11 before it took off. At some point, American Airlines  
19 notified state police personnel at Logan Airport of these two  
20 bags. A trooper responded, and then the FBI later obtained a  
21 search warrant, and reviewed the contents of both of those  
22 pieces of luggage.

23 Q. Have you seen these pieces of luggage?

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1 A. Yes, I have.

2 Q. And based on everything you could tell about them,  
3 were they supposed to have made it onto the flight?

4 A. Yes.

5 Q. Had they been checked?

6 A. Yes, they had been -- they had been -- the  
7 passengers, Atta in this case, had attempted to check these  
8 through. He boarded a flight in Portland, Maine, traveled on  
9 that night from Portland, Maine down to Logan Airport. At  
10 that point, those two pieces of luggage were supposed to be  
11 loaded onto Flight 11 for the trip to Los Angeles, but because  
12 of the very close connection time, they were unable to be  
13 loaded aboard Flight 11.

14 Q. So as a result the FBI got them?

15 A. Yes.

16 Q. In -- contained in that luggage, was there anything  
17 that became significant to the investigation?

18 A. Yes, there were several items there.

19 Q. Are there photographs that are now available for this  
20 commission to review of the luggage?

21 A. Yes, there are.

22 Q. Have you seen them yourself?

23 A. Yes, I have.

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1 Q. Fair and accurate?

2 A. Yes, they are.

3 TC [MR. RYAN]: I'd ask to publish at this time, Your  
4 Honor, for everyone, 502SS Attachment YYYYYY. And I'd ask for  
5 the feed for Table 3.

6 MJ [COL POHL]: Okay. Go ahead. You may publish them.

7 TC [MR. RYAN]: Agent, we're just going to wait for the  
8 screen above you to show it.

9 MJ [COL POHL]: There we go.

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

11 Q. Special Agent Fitzgerald, you see two photographs; am  
12 I right?

13 A. Yes.

14 Q. The first one on the left on your -- on the left side  
15 of the screen as you're looking at it, tell us what's shown  
16 there.

17 A. It's a black suitcase, and it's one of the two bags  
18 that was seized at Logan Airport on September 11th, checked  
19 under the name of Mohamed Atta.

20 Q. Now take a look at the photograph on the right; what  
21 is that?

22 A. That's a closeup of the luggage tag that was put on  
23 by the airline on the piece of luggage to check it through.

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1 Q. Can you tell us anything in there that is significant  
2 to you; that is, on the picture on the right-hand side of the  
3 screen?

4 A. Yes, under the right-hand side you can see the  
5 letters LAX. Below that, you can see the letters  
6 U.S. Airways, and below that, you can see the name,  
7 Atta/Mohamed.

8 Q. Now, why does it say U.S. Airways if it was  
9 ultimately -- if ultimately he was on American Flight 11?

10 A. That was the carrier, a Colgan Air, United Airways  
11 code share flight from Portland down to Logan. At Logan  
12 Airport, American Airlines Flight 11 was the flight going to  
13 Los Angeles.

14 Q. Okay. Now, within this luggage, you said you found  
15 items of significance; am I right?

16 A. Yes.

17 Q. Just tell us in general terms the things you found.

18 A. Some of the things in the luggage were a folding  
19 knife. There were two videotapes that in general terms were  
20 aviation-related videotapes. There was a can of mace. There  
21 were copies of documents such as a copy of a passport of  
22 Mohamed Atta. There was the actual passport of an individual  
23 named Abdul Aziz al Omari, other flight items related to a

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1 small private pilot such as a flight calculator, things of  
2 that nature, clothes, other things.

3 Q. Was there a document recovered totalling about four  
4 pages that you found of special significance?

5 A. Yes, there was.

6 Q. Have you seen it?

7 A. Yes, I have.

8 Q. Is it -- is it part of FBI's evidence?

9 A. Yes, it is.

10 Q. In what -- are there words on it?

11 A. Yes, there are.

12 Q. In what language are the words?

13 A. In Arabic.

14 Q. And as part of the FBI's work, were steps taken to  
15 have that document translated?

16 A. Yes.

17 Q. I'd like to -- first of all, have you seen the  
18 translation yourself?

19 A. Yes, I have.

20 Q. And translations to anything that I'm going to ask  
21 you about, tell us how FBI does that.

22 A. In general terms, a translator will be someone hired  
23 by the FBI and undergoes a certain testing process to verify

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1 their language ability, reading, writing. Once that person is  
2 qualified as a linguist, they can then begin work in  
3 translating items.

4 In a specific case where a document is translated for  
5 use in court, there's a quality control process, so that one  
6 translator will translate the document and provide his or her  
7 work to another qualified translator to verify the accuracy of  
8 it.

9 Q. In this case or in this investigation -- strike that.

10 As to the documents we're talking about today that  
11 will have an English translation, were they typically done by  
12 one translator of the FBI?

13 A. Yes, they were.

14 Q. And has he been qualified as an expert and testified  
15 in federal court?

16 A. Yes, he has.

17 Q. And is he the one who provided the translation of the  
18 document we're talking about right now?

19 A. Yes, he is.

20 TC [MR. RYAN]: I would like to publish at this time  
21 translation, that being 502SS at Attachment BBBB.

22 MJ [COL POHL]: Go ahead.

23 TC [MR. RYAN]: I'd ask for the feed from Table 3.

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1 MJ [COL POHL]: I'll just note for the record that the  
2 current format, they're not really readable.

3 TC [MR. RYAN]: We stipulate to that, Judge.

4 MJ [COL POHL]: Okay.

5 Q. Agent Fitzgerald, just tell us what is shown on the  
6 screen there.

7 A. On this screen is what has been referred to in the  
8 FBI as the four-page letter or a martyrdom letter. That's an  
9 FBI terminology for this particular letter based upon its  
10 content. But it's four pages in Arabic, in general terms  
11 describing preparation for an operation and some -- somewhat  
12 coded language in there. It involves a person saying specific  
13 prayers and being ready to fight and being prepared to execute  
14 an operation.

15 Q. All right. We'll come to that right now. But first  
16 of all, are these four pages -- is this a fair and accurate  
17 representation of the actual pages that were taken out of that  
18 suitcase that you've already identified?

19 A. Yes, it is.

20 TC [MR. RYAN]: I'd now ask to publish the translation  
21 which is at 502VV Attachment G.

22 Q. Special Agent Fitzgerald, first of all, does this  
23 translation match up to the four pages or some part of the

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1 four pages we already saw?

2 A. Yes, it matches part of the four pages.

3 Q. This is not the full document translated?

4 A. Correct.

5 Q. I would like to refer to you -- or direct you to read  
6 the first -- the first few lines that appear of the  
7 translation through what it says "The last night."

8 A. Okay. It states, "The last night. Number 1.  
9 Embracing death and renewing allegiance." There's an  
10 asterisk. "Shave the extra body hair and wear cologne." A  
11 second asterisk, "Wash."

12 Q. And I'll ask you also -- I'm not going to go through  
13 every one of them. I'm also going to ask you to read  
14 paragraph number two, please.

15 A. Paragraph number 2 states, "Familiarize yourself well  
16 with the plan from every aspect and anticipate reaction or  
17 resistance from the enemy."

18 Q. You told us before about some things you became aware  
19 of that went on on the flights. Was there anything that  
20 indicated to you that there was resistance from passengers or  
21 crew onboard the flights?

22 A. Yes, there was.

23 Q. Tell us.

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1           A.    On Flight 11, two of the flight attendants had been  
2 stabbed.  And it appeared to me from listening to the audio  
3 and listening to the reports from the aircraft on specifically  
4 American Airlines Flight 11 that there was resistance by some  
5 of the flight attendants to the hijacking.

6           Also, there was a report of a passenger named Daniel  
7 Lewin, seated in seat 9B on Flight 11, who was reported to  
8 have his throat slashed.  That seemed to be unusual when  
9 compared to the other three hijacked flights, and it appeared  
10 as though Mr. Lewin may have taken action on his own to  
11 interdict the hijacking.

12          Q.    What did you know about Mr. -- or what did you come  
13 to learn about Mr. Lewin's background that's consistent with  
14 that?

15          A.    Mr. Lewin had -- was a young man and had served in  
16 the military, and presumably had all of the training that went  
17 along with intense military training.

18          Q.    In the course of your investigation, did you  
19 ultimately see and take possession of videotapes released by  
20 al Qaeda which portrayed training of hijackers or potential  
21 hijackers?

22          A.    Yes.

23          Q.    In those videotapes that you saw, can you tell us

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1 about anything that would be consistent with this statement  
2 about expecting resistance?

3 A. Some of the videotapes advised to attack a person by  
4 slashing their throat or going for their neck to incapacitate  
5 them.

6 Q. And lastly as to this point, on Flight 93 in the  
7 cockpit voice recording, did you actually hear resistance?

8 A. Absolutely, yes.

9 Q. Did it sound like a struggle?

10 A. Yes.

11 Q. Did it sound like a fight?

12 A. Yes. It sounded like a life-and-death struggle.

13 Q. I'd like to now direct your attention to paragraph  
14 number 8 of this document and ask you to read that.

15 A. Paragraph number 8 states, "Be careful, for you have  
16 only a few moments between you and your marriage, after which  
17 a happy and satisfying life begins in the eternal paradise  
18 with the prophets, the righteous, and the martyrs. The best  
19 company one can have. We ask for God's favor, so be  
20 optimistic because he, peace be upon him, loved optimism in  
21 all his affairs."

22 Q. Now I'd like to direct your attention to paragraph  
23 number 12 and ask you to read that.

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1           A.   Paragraph number 12 states, "Gently blow breath over  
2 yourself, the suitcase, clothes, the knife, your tools, your  
3 IDs, your tic" -- that's pronounced phonetically -- "your  
4 passport, and all your documents."

5           Q.   Please read paragraph 13.

6           A.   "Examine your weapon before departure. It was said  
7 before the departure, each of you must sharpen his blade and  
8 go out and comfort his sacrifice."

9           Q.   Agent Fitzgerald, in both of these paragraphs, on  
10 number 12 there's a reference to knife, and in paragraph 13  
11 there's a reference to blade. As part of the FBI's  
12 investigation, did you gather evidence that's consistent with  
13 those terms?

14          A.   Yes. There were a number of knife purchases  
15 associated with the passengers who were aboard the four  
16 hijacked flights.

17          Q.   And in regard to the other reference in number 12  
18 about passport and documents, did you gather anything or see  
19 anything or know of anything that's consistent with those  
20 terms?

21          A.   Yes. In the two suitcases that were recovered, there  
22 were -- there was a passport, there was -- there were  
23 photocopies of another passport. And in some of the other

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1 locations at the crash site at Flight 93, there were passports  
2 and additional items of identification.

3 Q. Direct your attention just very quickly to the  
4 Flight 93 crash site. Was a passport or a remnants of a  
5 passport recovered there?

6 A. Yes.

7 Q. And who was that of?

8 A. Remnants of the passport of Ziad Jarrah.

9 Q. We'll come back to him in a bit.

10 So this document translation of which you just read  
11 was found in Atta's luggage?

12 A. Correct.

13 Q. Was this document or copies of it found anywhere else  
14 in the course of the investigation of the events of  
15 September 11th?

16 A. Yes. Copies of this document were found in two other  
17 locations.

18 Q. First of all, when we say copies, how do -- what do  
19 you mean when you are saying copies?

20 A. Like an exact copy, a photocopy.

21 Q. Could it have been a photo as in like a Xerox  
22 machine?

23 A. Yes.

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1 Q. Did it appear that way to you?

2 A. It appeared that way to me.

3 Q. Identical in every way?

4 A. I compared them side by side and they appeared  
5 identical in every way.

6 Q. You said two other locations. Tell me about the  
7 first one.

8 A. The first one was a Toyota Corolla recovered at  
9 Dulles International Airport.

10 Q. This car, this Toyota Corolla, did you ultimately  
11 determine whose car it was, who it was registered to?

12 A. Yes. It was registered to an individual named Mawaf  
13 al Hazmi, who was a passenger aboard American Airlines  
14 Flight 77.

15 Q. In researching about this car, did you determine that  
16 it had belonged at some point to someone else?

17 A. Yes.

18 Q. And who was that?

19 A. Initially, it belonged to a person named Khalid al  
20 Mihdhar, who was also a passenger aboard American Airlines  
21 Flight 77.

22 Q. Were other items found in the Corolla that were of  
23 interest.

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1 A. Yes.

2 Q. We'll come back to that. Now let me direct your  
3 attention -- so that's two locations where this letter was  
4 found. What's the third one?

5 A. The third location was at the crash location of  
6 United Airlines Flight 93 in Pennsylvania.

7 Q. And this is a couple of times that we've referenced  
8 the search of that site. Tell us -- first of all, describe  
9 for us remnants of the plane, if any.

10 A. There was not much left of the plane. Parts of the  
11 plane broke off and went into -- the plane hit an area, in  
12 general terms, of an open field. Parts of the plane broke off  
13 and went into the wood line and started the wood line on fire.  
14 Large parts of the aircraft were driven into the ground. And  
15 so there were not very many large pieces remaining of the  
16 aircraft.

17 Q. Now, you mentioned the letter being found. You also  
18 mentioned a moment ago the passport of Ziad Jarrah being  
19 found. Where were these types of items found, such light  
20 items?

21 A. They were found in the general area of the wood line  
22 where some of the scattered pieces were.

23 Q. In cases -- in cases of these types of items, was

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1 there evidence of damage or destruction to them?

2 A. Yes. In the case of the passport, it had been  
3 burned; in the case of the letter, it had been folded up and  
4 was tattered.

5 Q. Considering the degree of damage of a plane crashing  
6 into the earth like that, were human remains recovered as  
7 well?

8 A. Yes, there were.

9 Q. Can you tell us how that was?

10 A. There were DNA profiles recovered of all the  
11 individuals aboard the aircraft. Not all the DNA profiles  
12 were able to be positively identified. Specifically, there  
13 were three DNA profiles that were unidentified, and there was  
14 one DNA profile that was later matched and is believed to be  
15 the DNA of Ziad Jarrah based upon a letter that he sent and  
16 DNA recovered from that envelope or -- excuse me.

17 Q. Are you aware of any complete human bodies found at  
18 the 93 crash site?

19 A. No.

20 Q. Were the items at times very small?

21 A. Yes.

22 Q. Were the items at times not even recognizable as  
23 human remains?

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1 A. Yes.

2 Q. Did the FBI recover these items?

3 A. Yes.

4 Q. How long did that go on?

5 A. I don't know the exact time. Many weeks to process  
6 the scene.

7 Q. So we started on this discussion about the piece of  
8 luggage found at Logan; am I right?

9 A. Yes.

10 Q. Is Mohamed Atta, the first sort of significant name,  
11 identified in the course of the FBI's investigation?

12 A. Yes. Atta and several of the others, almost  
13 contemporaneously, aboard Flight 11.

14 Q. As far as Atta is concerned, is this piece of luggage  
15 the first physical piece of evidence that was recovered as to  
16 him?

17 A. Yes.

18 Q. In its early -- in the very earliest stages of the  
19 investigation by the FBI, were you interested -- was it a  
20 subject of interest to find out how -- not only who, but how  
21 many were involved?

22 A. Yes.

23 Q. What was the FBI's ultimate determination of how many

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1 people -- how many people constituted hijackers aboard the  
2 four flights?

3 A. Eventually, it was determined that 19 of the  
4 individuals aboard the four flights were hijackers.

5 TC [MR. RYAN]: At this time, I'd ask that we publish a  
6 document in the record and previously entered in the record.  
7 It's at 502XX Attachment B. It's also 511B Attachment C.  
8 It's what's known as the Islamic Response document, Your  
9 Honor, that we just discussed last time.

10 MJ [COL POHL]: Go ahead.

11 Q. Agent Fitzgerald, have you seen this before?

12 A. Yes, I have.

13 Q. Have you seen it also in the last few days?

14 A. Yes, I have.

15 Q. The document itself, what are you aware of in terms  
16 of the course of this case and the investigation?

17 A. It was filed with the court roughly in 2009.

18 Q. And on this page, is there a reference to a certain  
19 number that was consistent with what the FBI found?

20 A. Yes, there is.

21 Q. And did we blow up that specific reference?

22 A. Yes.

23 Q. If you would, read for us the top blowup section of

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1 this document.

2 A. The top section states, "So we ask from God to accept  
3 our contributions to the great attack, the great attack on  
4 America, and to place our nineteen martyred brethren among the  
5 highest peaks in paradise."

6 Q. And then below that, there is a blowup of some other  
7 words. You can read that for us, please.

8 A. Yes, it states, "Signed the 9/11 Shura Council,  
9 Khalid Shaikh Mohammad, Ramzi Binalshibh, Walid Bin'Attash  
10 Mustafa Ahmed al Hawsawi, and Abd Al-Aziz Ali."

11 Q. That document filed in this court in 2009. At what  
12 point roughly did the FBI conclude that there were 19  
13 hijackers?

14 A. Many years before in 2001.

15 Q. So these two numbers are consistent?

16 A. Yes, they are.

17 Q. The FBI and the five accused agreed on this one?

18 A. Yes.

19 Q. Following September 11th, at some point did you  
20 become aware of videotapes being released in the public sphere  
21 on the Internet as to the attacks and taking responsibility  
22 for the attacks?

23 A. Yes.

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1 Q. Did this happen once or many times?

2 A. It happened a number of times.

3 Q. Have you seen these videotapes?

4 A. Yes, I have.

5 Q. Was this -- were the collection of these videotapes  
6 part of the FBI's investigation?

7 A. Yes, they were.

8 Q. Did it constitute an admission of guilt by an  
9 organization?

10 A. Yes.

11 Q. The videotapes themselves are -- first of all, have  
12 you listened to them and also gotten translations of anything  
13 that are not in English?

14 A. Yes, I have.

15 Q. What is the purpose of the persons talking on them?

16 A. The purpose, as near as I can tell, is to explain why  
17 this person was going to commit a martyrdom operation.

18 Q. And I'm talking now about the organization-wide  
19 videotapes.

20 A. Yes.

21 Q. And were -- in the course of taking responsibility as  
22 an organization, what were they saying?

23 A. There -- a number of the videos contain what I would

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1 consider political statements stating things like the reason  
2 for an operation being conducted and the terms stated on the  
3 video, as they referred to it, a martyrdom operation, were to  
4 express dissatisfaction with the U.S. policy in Israel and  
5 specifically support which this organization determined was  
6 oppressing Palestinians.

7           There are other statements in there indicating  
8 unhappiness with the U.S. troops on the Arabian Peninsula back  
9 at that time.

10       Q. In preparation for your testimony today, did you help  
11 to select one such video for purposes of presentation?

12       A. Yes.

13       Q. Is it fairly typical of many you've seen?

14       A. Yes, it is.

15       Q. And when it was first released, was it only released  
16 in Arabic, or was it released in English as well?

17       A. It was released in Arabic.

18       Q. At some point was it translated?

19       A. Yes.

20       Q. At some point did you take steps to ensure that the  
21 translation was accurate?

22       A. Yes, I did.

23       Q. Was it submitted to FBI translators as well?

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1 A. Yes, it was.

2 Q. And has it been accepted as a fair and accurate  
3 translation into English?

4 A. Yes, it has.

5 Q. Are there parts of this video that we're about to  
6 see -- that I ask we're about to see, that are consistent with  
7 other al Qaeda-released videos through the years?

8 A. Yes, there are.

9 TC [MR. RYAN]: For purposes of presentation and  
10 publishing, I'd ask that we pull up 502VV Attachment F. It is  
11 a videotape that lasts a bit over six minutes, Your Honor.

12 MJ [COL POHL]: Go ahead.

13 [Video from AE 502VV (Gov) Attachment F played.]

14 Q. Agent Fitzgerald, the videotape we just watched, how  
15 many names did it ultimately cover as to the hijackers, who  
16 the hijackers were?

17 A. It covered 19 of them.

18 Q. So consistent as well?

19 A. Yes.

20 Q. At some point, did it also put them up there by group  
21 or flight group?

22 A. Yes, it did.

23 Q. And can you tell us how many there were per flight,

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1 according to that videotape?

2 A. There were five per flight, and one with four per  
3 flight.

4 Q. Five -- the three flights with five were which?

5 A. Flight 11, Flight 175, and Flight 77.

6 Q. And the one with four was 93?

7 A. Correct.

8 Q. Is that consistent with other evidence you developed  
9 through the course of the investigation?

10 A. Yes, it is.

11 Q. Now, we spoke before about that piece of luggage  
12 belonging to Mohamed Atta. Did his name appear in the course  
13 of that video as well?

14 A. Yes, it did.

15 Q. And did it refer to him as part of a specific flight?

16 A. Yes. It referred to him as a leader and part of  
17 Flight 11.

18 Q. Now, in the course of that videotape -- specifically  
19 I'm referring now to the English translation that kind of  
20 crawled along the bottom -- the names are spelled by the  
21 translator; am I right?

22 A. Yes.

23 Q. Can you tell us a little bit about how variations in

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1 spellings occur throughout the course of the investigation and  
2 evidence?

3 A. Yes. When names are translated by an FBI translator  
4 there's an agreed-upon way to spell certain names.

5 Q. Speak up a little bit, please, Agent.

6 A. Yes. So when names and words are translated by FBI  
7 translators, there's a specific procedure and way that they  
8 spell certain names. So whether they use a K or a Q to state  
9 a certain name is dependent upon agreed-upon standards for the  
10 intelligence community.

11 Q. Are those standards independent of the FBI?

12 A. Yes, they are.

13 Q. So is this a case of, even if you have a document  
14 that spells a name, the translators use a different standard?

15 A. Yes. So you might have a passport where the last  
16 name is spelled beginning with a Q or with a K, and then the  
17 subsequent translation it's spelled phonetically the same but  
18 different letters.

19 Q. Got it.

20 Now, in the course of the FBI investigation and in  
21 coming to sort of a formal, official identification of the 19  
22 names, what did you use to go by?

23 A. In general terms, I used business records. So when

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1 someone came to the United States, I would look at their visa  
2 application or the passport application, as would other  
3 investigators assigned to the 9/11 team.

4 Q. And were those ultimately relied upon by the FBI in  
5 general as to their official statements of identification of  
6 the hijackers?

7 A. In general terms, yes.

8 Q. How about the airlines? How did they go about these  
9 spellings in the course of items that you've seen, evidence,  
10 documents, business records, et cetera?

11 A. From what I have seen by reviewing business records,  
12 it appears to me that airlines spelled names based upon the  
13 documents, the business records that they received, such as a  
14 drivers's license if someone appeared in person, or a passport  
15 if they appeared in person; or more likely, a credit card, a  
16 name on a credit card.

17 Q. Now, as part of the investigation into the  
18 September 11th attacks, did the FBI gather lots of different  
19 kinds of documents?

20 A. Yes.

21 Q. And how about specifically within that, business  
22 records?

23 A. Yes, many different types.

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1 Q. Give us a general idea of the wide range of business  
2 records collected as part of this investigation.

3 A. So for a specific person of interest, their entry  
4 upon the United States, you would have a U.S. visa  
5 application; you might have other I-94 documents from INS;  
6 potentially a passport or a copy of a passport.

7 Also, if that particular person opened up a bank  
8 account, would have the name on the bank account, would have  
9 all of the associated documents from the bank account. Many  
10 times upon the opening of an account, a person would present a  
11 passport as an identification. So when we obtain the  
12 account-opening documents, we'd get an image of a passport or  
13 whatever other identification was used to open that account.

14 Q. Did the records collected by the FBI include those  
15 from the airlines?

16 A. Yes, they did.

17 Q. Not just United and American, others as well?

18 A. Yes, many different airlines.

19 Q. How about leases for apartments or hotel rooms,  
20 homes?

21 A. Apartment leases, car rental records, hotel rental  
22 records.

23 Q. Telephone records?

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1 A. Telephone records.

2 Q. How about cars?

3 A. Yes, many different car purchases and also rented  
4 vehicles.

5 Q. Now, what is the process -- what was the process by  
6 which the FBI would gather these records from especially  
7 private companies?

8 A. In general terms, we would present a subpoena to a  
9 company and request a return of service based upon a specific  
10 name or names that we were looking for.

11 Q. Did you work closely with the companies that you  
12 provided those subpoenas to?

13 A. Yes.

14 Q. Were these typically grand jury subpoenas?

15 A. Yes, they were.

16 Q. From one district, more than one district?

17 A. Many different districts across the United States.

18 Q. And in receiving the records -- first of all, were  
19 you looking for business -- official business records of the  
20 companies?

21 A. Correct.

22 Q. And did you receive many records back in pursuant to  
23 your grand jury subpoenas?

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1 A. Yes, we did.

2 Q. The items that we're going to be discussing today,  
3 have you reviewed them all previously?

4 A. Yes, I have.

5 Q. And were -- and I'm talking now about business  
6 records from private companies. Did you obtain them in the  
7 course of the investigation?

8 A. Yes.

9 Q. And were you asking and did you ask for records of  
10 regularly conducted business activity?

11 A. Yes.

12 Q. And is that what you received?

13 A. That's correct.

14 Q. In reviewing the records that we're going to present  
15 today, are you satisfied that they are records of these  
16 companies?

17 A. Yes, I'm satisfied they're true and accurate records.

18 Q. Among the records that we're going to talk about  
19 coming from the airlines, give me some ideas on some of those,  
20 please.

21 A. In general terms from airlines, the investigation  
22 focused on two separate classes of records: One would be  
23 passenger manifests for a specific flight, which would list

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1 all the passengers that actually boarded the aircraft. The  
2 other documents, in general terms, that were seized during the  
3 course of the investigation were passenger name records.  
4 Passenger name records were generated by the airlines and  
5 contained information about a specific customer, oftentimes  
6 listing their name, their address, sometimes method of  
7 payment, and sometimes a contact phone number.

8 Q. I'd like to start looking at some of these records.  
9 First off, I'm going to ask -- well, let me ask you this, sir:  
10 Did you collect or receive a flight manifest for American  
11 Airlines Flight 11?

12 A. Yes.

13 Q. And have you reviewed it?

14 A. Yes, I have.

15 Q. Fair and accurate?

16 A. Yes, it is.

17 TC [MR. RYAN]: I would ask to publish at this time 502SS  
18 Attachment MMMM.

19 MJ [COL POHL]: Go ahead.

20 TC [MR. RYAN]: Ask for the feed from Table 3.

21 Q. Special Agent Fitzgerald, there's -- it looks like  
22 one page as a blowup -- or part of a page is blown up in front  
23 of you, correct?

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1 A. That's correct.

2 Q. Do you recognize it?

3 A. Yes.

4 Q. What is that page?

5 A. It is part of the flight manifest of American

6 Airlines Flight 11 on September 11th, 2001.

7 Q. And do you see names there that we've highlighted?

8 A. Yes, I do.

9 Q. First off, at the very top, does it show it as  
10 American Airlines Flight 11?

11 A. Yes, it does.

12 Q. What is the date?

13 A. 11 September.

14 Q. What are the names that are shown on that flight  
15 manifest that are of interest to us?

16 A. There are five highlighted names in yellow.

17 Q. Tell us what those are, please.

18 A. Those names are the individuals that the FBI  
19 identified as hijackers aboard American Airlines Flight 11.

20 Q. Can you read them from that?

21 A. Yes. Name number 1, al Shehri Wail. Name number  
22 two, al Shehri, it states, Walee; the name is partially cut  
23 off. Down to line 13, Atta, and it's M-O-H-A-M, and the rest

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1 of the name cut off. Line number 14, al Omari, Abdul. And  
2 line Number 20, al Suqami, Satam.

3 Q. Now, first off, again, Mohamed Atta's name appears on  
4 this; am I right?

5 A. Yes, it does.

6 Q. Is that consistent with the luggage found at Logan?

7 A. Yes, it is.

8 Q. And as to the -- all of the names, all five of the  
9 names, is that consistent with the videotape we just watched  
10 at 502VV Attachment F?

11 A. The names are consistent, yes. There might be slight  
12 variations in spelling, but in general terms, the names are  
13 consistent.

14 Q. All right. Turn your attention to the flight  
15 manifest for United Airlines 175. Have we included that as  
16 well?

17 A. Yes.

18 Q. Have you reviewed it?

19 A. Yes, I have.

20 Q. Is it fair and accurate?

21 A. Yes, it is.

22 Q. Does it have highlighted names as well?

23 A. Yes, it does.

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1 TC [MR. RYAN]: I'd ask at this time to publish 502VV  
2 Attachment K.

3 MJ [COL POHL]: Go ahead.

4 Q. Tell us what we're looking at, Special Agent  
5 Fitzgerald.

6 A. That is a portion of the flight manifest of United  
7 Airlines Flight 175 on 11 September 2001.

8 Q. Does it list the flight number?

9 A. Yes, it does.

10 Q. Does it list the date?

11 A. Yes, it does.

12 Q. All right. Read for us the names of significance,  
13 please.

14 A. The names of significance are the first five names:  
15 Name number one, Ahmed, first initial F. Name number two, al  
16 Ghamdi, first initial A. Name number three, al Ghamdi, first  
17 initial M. Name number four, al Shehri, first initial M. And  
18 name number five, al Shehri, first initial M.

19 Q. Taking you back to line number three, you said al  
20 Ghamdi. I think you said M. Can you look at it closer?

21 A. Yeah. It's al Ghamdi, H., yes.

22 Q. And taking a look back up to line number one, it says  
23 F. Ahmed. Can you explain that to us? That seems different.

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1           A.    Yes, the investigation revealed that person's name to  
2 be Fayez Ahmed Banihammad al Qadi, he used a portion of his  
3 name which is consistent with his financial records of Fayez  
4 Ahmed.

5           Q.    Where it says F. Ahmed, that's consistent with other  
6 records that you've seen?

7           A.    Yes, it.

8           Q.    Based on the other record you've seen, what would be  
9 the full name?

10          A.    Fayez Ahmed Banihammad al Qadi.

11          Q.    With the things that you've identified, are the names  
12 that appear on this consistent with the videotape that we just  
13 watched?

14          A.    Yes, they are.

15          Q.    And is it consistent in terms of which flight these  
16 individuals appeared on?

17          A.    Yes.

18          Q.    Flight manifest for American Airlines Flight 77, have  
19 you seen that?

20          A.    Yes, I have.

21          Q.    Have you reviewed it as part of your testimony?

22          A.    Yes.

23          Q.    Is it a fair and accurate representation?

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1 A. Yes, it is.

2 TC [MR. RYAN]: Ask to bring up and publish 502SS  
3 Attachment RRRR.

4 MJ [COL POHL]: You may. Go ahead.

5 Q. Special Agent Fitzgerald, what is shown on this  
6 document?

7 A. This is the -- a portion of the flight manifest of  
8 American Airlines Flight 77 on 11 September 2001.

9 Q. And could you read for us the names, please.

10 A. Yes. Name number one highlighted, last name,  
11 Hanjour, first name Hani. Name number 12, last name al Hazmi,  
12 first name Mawaf. Name number 13, last name al Hazmi, first  
13 name Salem. Name number 19, last name Moqed, first name,  
14 Majed. And name number 20, last name, al Mihdhar, first name  
15 is cut off. It says, K-H-A-L-I. Short for Khalid.

16 Q. What's the letter that's missing?

17 A. A "D."

18 Q. And these names, are they consistent with those named  
19 in the videotape that we watched a few moments ago?

20 A. Yes, they are.

21 Q. Any variations at all?

22 A. There's some spelling variations but in general  
23 terms, phonetically consistent.

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1 Q. Flight manifest for United Airlines 93, have you  
2 reviewed that as part of your testimony?

3 A. Yes, I have.

4 Q. Was that gathered in the same manner that you've  
5 described?

6 A. Yes.

7 Q. Is it fair -- does it appear to be a fair and  
8 accurate representation?

9 A. Yes, it does.

10 TC [MR. RYAN]: I'd ask that we bring up at this time for  
11 publish -- publication 502SS Attachment GGGGG.

12 MJ [COL POHL]: Go ahead.

13 Q. Is the flight and date shown, first of all?

14 A. Yes, it is.

15 Q. And what's that?

16 A. 11 September 2001.

17 Q. And the flight is?

18 A. United Airlines Flight 93.

19 Q. Could you please read for us the names that appear on  
20 this flight manifest of interest?

21 A. Yes, the highlighted names, the persons of interest,  
22 name number -- line number two, last name, al Ghamdi, first  
23 name is truncated. It says S-A-E, short for Saeed. Line

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1 number three, highlighted, last name al Haznawi. First name  
2 is truncated, says A-M short for Ahmad al Haznawi. Name  
3 number four, last name is al Nami, first name is Ahmed. And  
4 line number 31, last name Jarrah, first name Ziad.

5 Q. And the names that are shown on this document, this  
6 flight manifest, are they also consistent with the names that  
7 are recited or stated during the course of the videotape that  
8 we watched?

9 A. Yes.

10 Q. Special Agent Fitzgerald, I want to draw your  
11 attention to something that's been generally known as  
12 something called "martyr wills." Do you know what that is?

13 A. Yes, I do.

14 Q. Can you tell us what that -- what your understanding  
15 of what these things are?

16 A. A martyr will is a videotaped statement by a person,  
17 in this specific context of a person associated with al Qaeda  
18 doing an operation to attack or kill people and which would  
19 lead to their personal death, a suicide.

20 Q. So I'm going to refer to them as pre-death statements  
21 rather than martyr wills. Are you aware through the years of  
22 these pre-death statements being released publicly?

23 A. Yes, I am.

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1 Q. What kind of circumstances would they be released, in  
2 what sphere?

3 A. Oftentimes on the anniversary of September 11th there  
4 would be a videotape release of a pre-death statement, a  
5 videotaped statement of a person that the investigation showed  
6 was part of 9/11 and specifically a hijacker, identified as a  
7 hijacker on 9/11.

8 Q. And how would they come to the FBI's attention? How  
9 did you know they existed?

10 A. They would be released on a site, for instance, such  
11 as As-Sahab or some other site on the Internet. It would gain  
12 some sort of publicity, and of course, we would go and look on  
13 the Internet for some of these statements.

14 Q. What is As-Sahab?

15 A. It's -- in general terms, it's a media organization  
16 that has been associated by some people with al Qaeda.

17 Q. And you stated released publicly, were others -- were  
18 some of these pre-death statements also obtained by seizures  
19 in other countries?

20 A. Yes.

21 Q. Have they been collected whenever possible as  
22 evidence by the FBI as part of their investigation?

23 A. Yes.

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1 Q. Did any of the 19 persons we have been discussing  
2 thus far appear in these pre-death statements?

3 A. Yes.

4 Q. How many are you aware of that appear in such video  
5 statements?

6 A. I'm aware of 11 statements.

7 Q. In general terms, what sort of things are said?

8 A. In general terms, the person expresses displeasure  
9 with the U.S. foreign policy, especially as it relates to  
10 Israel; displeasure with U.S. troops in the Arabian Peninsula;  
11 displeasure with U.S. support of foreign leaders, especially  
12 in the Middle East. Things in general terms, I have  
13 personally heard from statements by a person like Usama bin  
14 Laden, the political goals and general terms are the same.

15 These videos also refer to the person who is making  
16 the video is going to die in an operation based upon the  
17 context of the words ----

18 Q. You said ----

19 A. ---- or the legitimacy of a martyrdom operation.

20 Q. I'm sorry.

21 You said you were aware of 11 of the 19 having made  
22 such statements?

23 A. Yes.

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1 Q. Have you seen them?

2 A. Yes, I have.

3 Q. And as part of your testimony today, have you worked  
4 with us to select three separate clips from these pre-death  
5 statements?

6 A. Yes, I have.

7 Q. By the way, how long are these video statements?

8 A. Some of them are short. Some of them are 20 or 30  
9 minutes long. They're very long.

10 Q. Of the three clips we've selected, you've watched  
11 them yourself?

12 A. Yes, I have.

13 Q. Do they appear authentic to you?

14 A. They do.

15 Q. Are the faces of the persons who are appearing in the  
16 video consistent with other evidence you've seen of  
17 photographs of persons by that same name?

18 A. Yes.

19 Q. And are they -- are all of these statements  
20 consistent with the overall general FBI investigation?

21 A. Yes, they are.

22 TC [MR. RYAN]: Your Honor, I want to play three separate  
23 clips.

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1 MJ [COL POHL]: How long are they?

2 TC [MR. RYAN]: The first one is short, about a minute.

3 The second one is about eight minutes. And the third one is  
4 very short.

5 MJ [COL POHL]: Okay. We're going to hold on that.

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

7 MJ [COL POHL]: We'll take our lunch break now, and then  
8 we'll pick that up when we get back. The commission is in  
9 recess until 1:00.

10 [The R.M.C. 803 session recessed at 1145, 5 December 2017.]

11 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1301,  
2 5 December 2017.]

3 MJ [COL POHL]: Commission is called to order.

4 General Martins, any changes in the trial counsel  
5 team?

6 CP [BG MARTINS]: No, Your Honor.

7 MJ [COL POHL]: Mr. Nevin?

8 LDC [MR. NEVIN]: No, Your Honor.

9 MJ [COL POHL]: Ms. Bormann?

10 LDC [MS. BORMANN]: No changes -- well, actually, Captain  
11 Brady has joined us, but he may leave again.

12 MJ [COL POHL]: Okay.

13 Mr. Harrington.

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

15 MJ [COL POHL]: Mr. Connell?

16 LDC [MR. CONNELL]: Major Wareham has returned.

17 MJ [COL POHL]: Mr. Ruiz?

18 LDC [MR. RUIZ]: No changes, Judge. I do have one  
19 housekeeping matter, though, that I just want to put on the  
20 record for the sake of clarity here.

21 MJ [COL POHL]: Okay. Go ahead.

22 LDC [MR. RUIZ]: Those two exhibits I provided to the  
23 court earlier on were 502XX and YY.

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1 MJ [COL POHL]: Yes.

2 LDC [MR. RUIZ]: I don't think you ever technically  
3 accepted them. I know you looked at them, read them, but I  
4 don't think -- you didn't orally do that on the record.

5 MJ [COL POHL]: Okay. Yeah. Perhaps I don't always do  
6 that. I just -- when we're doing interlocutory matters, when  
7 you submit something, they're basically automatically put in  
8 the record and given the weight they deserve. So they're part  
9 of the record.

10 LDC [MR. RUIZ]: Okay. Thank you.

11 MJ [COL POHL]: Sure.

12 Mr. Ryan.

13 TC [MR. RYAN]: Yes, sir. Could I have Special Agent  
14 Fitzgerald return to the stand?

15 MJ [COL POHL]: Mr. Ryan, just for a time hack, how long  
16 do you think you're ----

17 TC [MR. RYAN]: I'm expecting about an hour, Judge.

18 MJ [COL POHL]: Okay. Go ahead.

19 Please take a seat. Agent Fitzgerald, I remind you  
20 you are still under oath.

21 WIT: Yes, Your Honor.

22 [Special Agent James M. Fitzgerald resumed his seat on the  
23 witness stand.]

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1 MJ [COL POHL]: Thank you.

2 Mr. Ryan.

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

4 **DIRECT EXAMINATION CONTINUED**

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

6 Q. Special Agent Fitzgerald, when we broke for lunch, we  
7 were talking about pre-death video statements. Do you recall  
8 that?

9 A. Yes.

10 Q. And we -- I asked you about had you helped in the  
11 selecting of three separate clips to play; am I correct?

12 A. Yes, that's right.

13 TC [MR. RYAN]: At this time, Your Honor, I will ask for  
14 the feed to Table 3, and I will ask to bring up two clips from  
15 the Exhibit 502SS Attachment ZZZ.

16 MJ [COL POHL]: Go ahead.

17 TC [MR. RYAN]: I'm just going to wait for the screen  
18 above your head, Agent Fitzgerald.

19 **[Video from AE 502SS (Gov) Attachment ZZZ played.]**

20 Q. Agent Fitzgerald, first of all, that person who is  
21 speaking, who was that?

22 A. That is Ahmed al Haznawi.

23 Q. And is his name one of the 19 names we have been

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1 talking about this morning?

2 A. Yes. He was identified as a hijacker aboard United  
3 Airlines Flight 93.

4 Q. And did his name appear on the flight manifest that  
5 we talked about this morning as well?

6 A. Yes, it did.

7 Q. In that video clip, did you see reference to two  
8 attacks other than September 11th?

9 A. Yes.

10 Q. Tell us what those were, please.

11 A. The attacks against the U.S. Embassies in East Africa  
12 and the attack upon the USS COLE in Aden, Yemen.

13 TC [MR. RYAN]: And within the same exhibit, I'd ask to  
14 publish at this time the second clip we have selected. And  
15 this one, Your Honor, runs about eight minutes.

16 MJ [COL POHL]: Go ahead.

17 [Video from AE 502SS (Gov) Attachment ZZZ played.]

18 TC [MR. RYAN]: And Agent Fitzgerald, I'd like to now turn  
19 to the third video clip that you helped us select, and I'll  
20 ask at this time to publish 502SS Attachment XXX.

21 MJ [COL POHL]: Go ahead.

22 [Video from AE 502SS (Gov) Attachment XXX played.]

23 Q. Agent Fitzgerald, the person speaking in this video

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1 clip who is still shown on the screen, who is that?

2 A. That's Abdul Aziz al Omari, who was a passenger and  
3 identified as a hijacker aboard American Airlines Flight 11.

4 Q. Does his name appear on the flight manifest we saw  
5 previously?

6 A. Yes, it does.

7 Q. As to these video clips, let me ask you the obvious  
8 question: For the two men who died in the crashes, how is it  
9 that their video image appears in front of scenes of the  
10 attacks of 9/11?

11 A. As I understand it, as it has been explained to me by  
12 technical personnel, the background was imposed behind the  
13 actual person speaking.

14 Q. I'm going to ask you to move just a little bit  
15 closer, sir.

16 And the videos that we saw in the course of the clips  
17 that showed what appear to be events as they were happening in  
18 Manhattan or at the Pentagon on September 11th, did you  
19 recognize those video clips?

20 A. Yes, they're some of the same clips that we have  
21 played today.

22 Q. And the ones that were different than the ones we've  
23 played today, have you seen them before?

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1 A. Yes, they are.

2 Q. Have they been released publicly?

3 A. Yes, they have.

4 Q. Have they been taken as evidence for the FBI as well?

5 A. Yes.

6 Q. And as far as you are concerned or as far as you can  
7 observe, are they accurate as well and consistent with other  
8 evidence?

9 A. They are accurate and consistent with other evidence.

10 Q. Agent Fitzgerald, as to the 19 hijackers -- strike  
11 that.

12 As to the four flights, they all took off from  
13 airports inside America on September 11th; am I correct?

14 A. Yes.

15 Q. The investigation into the hijackers, did it indicate  
16 their presence in America for some time period previous to  
17 9/11?

18 A. Yes.

19 Q. In general terms, if you would -- I'm not looking for  
20 person by person, but can you explain to us the rough time  
21 periods by which these people entered the United States?

22 A. In general terms, the hijackers who became pilots  
23 entered the United States roughly in May, June, and during the

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1 summer of 2000, up through roughly September and a little bit  
2 beyond that, of 2000; and beginning in April of 2001, the  
3 hijackers who have been referred to as muscle hijackers began  
4 entering the United States. Those hijackers entered the  
5 United States up through roughly July of 2001.

6 Q. So starting about when and ending about when?

7 A. So the first two hijackers came in in January of  
8 2000. Putting them aside for the moment, most of the pilot  
9 hijackers came in mid to late 2000; and then the muscle  
10 hijackers came in beginning April of 2001 through July of  
11 2001.

12 Q. Okay. Thank you.

13 During the time period that these people were living  
14 inside the United States, is it your -- did the FBI develop  
15 evidence of their life here, of what they were doing,  
16 different types of documents, different kind of businesses  
17 they worked with?

18 A. Yes.

19 Q. And could you just give us a general idea as to the  
20 kind of things you developed or gathered to show that?

21 A. Yes. It's primarily through business records. The  
22 investigation showed that, for instance, the pilot hijackers,  
23 when they came to the United States, stayed in local

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1 residences, rented hotel rooms, rented apartments, things of  
2 that nature, rented vehicles, bought some vehicles. They took  
3 flight training while in the United States, and we obtained  
4 the business records from the flight schools.

5           For some of the muscle hijackers, when they came to  
6 the United States, they also stayed in apartments, rented  
7 apartments, rented vehicles, stayed in hotels. They undertook  
8 activities such as going to the gym, additional travel. And  
9 we have those -- the flight records, the travel records,  
10 telephone records, rental car records, hotel records, things  
11 of that nature.

12           Q. Was it your observation of these records, documents,  
13 and other evidence that these individuals lived totally  
14 solitary lives or did things together?

15           A. The 19 associated with each other during that time.

16           Q. And you identified for us -- identified for us before  
17 the names broken down by individual flights; am I correct?

18           A. Yes.

19           Q. Would your observations of the records and documents  
20 and other evidence indicate that these 19 only did things  
21 within their own same flight group or did things spread out  
22 across the full flight group -- all four flight groups?

23           A. Things were spread out across the four flights; that

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1 is, a person from one flight may have had a bank account with  
2 a person from a different flight, for example.

3 Q. I want to start examining now for a bit the different  
4 types of evidence generated of their activities in the United  
5 States leading up to September 11th.

6 For the items that we will be identifying now, am I  
7 correct that you helped us identify those items?

8 A. Yes.

9 Q. And select those for purposes of this presentation?

10 A. That's correct.

11 Q. In some cases, will we be looking at business  
12 records?

13 A. Yes.

14 Q. And again, as to these business records, how were  
15 they gathered?

16 A. They were gathered during the course of the  
17 investigation, typically by grand jury subpoena provided to a  
18 business contemporaneous with the time that the record was  
19 identified.

20 Q. And were they generated and turned over to you as  
21 records of these companies' regularly conducted business?

22 A. Yes, they were.

23 Q. And is it -- did you say again through grand jury

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1 subpoenas?

2 A. Typically, yes.

3 Q. And some of the other items we're going to be looking  
4 at, were they the result of seizures?

5 A. Yes, they were.

6 Q. And did that come through some law enforcement  
7 agency?

8 A. Yes. A seizure such as a search warrant by a law  
9 enforcement agency or something along those lines.

10 Q. And in some cases was it actually gathered by the  
11 FBI?

12 A. That's correct.

13 Q. Other occasions, maybe by another agency or local  
14 police department?

15 A. Yes.

16 Q. Ultimately, were they all generated -- or, I'm sorry,  
17 turned over or in the possession of the FBI as evidence?

18 A. The items that we're speaking of today, yes.

19 Q. And maintained by the FBI as evidence?

20 A. That's correct.

21 Q. And have remained in FBI control and custody since  
22 that time?

23 A. Yes.

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1 TC [MR. RYAN]: Your Honor, at this time, I would like to  
2 present a document that we've turned over for review  
3 previously for which the agent is going to be making some  
4 markings on it. I don't -- I have to ask for a number for it.  
5 We have it ready to be displayed electronically if you want to  
6 see it first.

7 MJ [COL POHL]: 502ZZ? Okay. 502ZZ is the ----

8 Q. Agent Fitzgerald, the item that we were just -- I was  
9 just discussing with His Honor, 502, now known as 502ZZ, did  
10 you help in the construction of that?

11 A. Yes, I did.

12 Q. And just tell us what it is ahead of time, if you  
13 would, please.

14 A. In general terms, it's a listing of hijacker names  
15 displayed on a piece of paper.

16 Q. And does it also list the flights that they were on?

17 A. Yes, it does.

18 Q. And is it accurate as to the representation that we  
19 have shown in the course of the hearing thus far today?

20 A. Yes. The names displayed are color coded based upon  
21 the flight that they were manifested on. So for instance,  
22 people on Flight 11 are color coded with the same color.

23 TC [MR. RYAN]: Your Honor, at this time, I'll ask to pull

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1 that up, and have it displayed based on that explanation of  
2 what it is.

3 MJ [COL POHL]: Go ahead.

4 TC [MR. RYAN]: I'll ask for a feed to Table 3.

5 Q. All right. Agent Fitzgerald, if you would, look  
6 along the top where it says AA Flight 11.

7 A. Yes.

8 Q. First of all, there are names listed that are also in  
9 red?

10 A. That's correct.

11 Q. And are they consistent with the names that were on  
12 the flight manifest for American Airlines Flight 11?

13 A. Yes, they are.

14 Q. To the right, American Airlines Flight Number 77,  
15 there are five names in yellow; am I correct?

16 A. Yes.

17 Q. Are those consistent with the names that are listed  
18 on the flight manifest that we saw previously for Flight 77?

19 A. Yes, they are.

20 Q. Along the bottom in green, United Airlines Flight 93,  
21 there are four names in green; is that correct?

22 A. Yes.

23 Q. And is -- are those names consistent with the flight

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1 manifest that we saw previously today for Flight 93?

2 A. Yes.

3 Q. And then going up the left-hand side, United Airlines  
4 Flight Number 175, there are five names in blue; am I correct?

5 A. Yes.

6 Q. Are those names consistent with the names that appear  
7 on the flight manifest for Flight 175 that we saw earlier  
8 today?

9 A. Yes, they are.

10 Q. And are all 19 names consistent with the videotape  
11 that we saw -- propaganda film that we saw earlier today as  
12 well?

13 A. Yes. They are phonetically consistent with those  
14 names.

15 Q. Now, some of the names that appear on this chart are  
16 shaded in gray; am I correct?

17 A. Yes.

18 Q. Why is that? What does that denote?

19 A. That denotes that that particular individual has a  
20 martyrdom video or a pre-death video that was published on the  
21 Internet and recovered by the FBI.

22 Q. Okay. Now, Agent Fitzgerald, I want to turn your  
23 attention back to some things we discussed about previously,

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1 although briefly.

2 First of all, there was the discussion about a Toyota  
3 Corolla; am I correct?

4 A. Yes.

5 Q. Remind us, where was that found?

6 A. That was found at the parking lot at Dulles Airport  
7 in rural Virginia, near Washington, D.C.

8 Q. And from what -- which flight took off from Dulles?

9 A. Flight 77.

10 Q. Were there documents found in that Toyota Corolla  
11 that were of interest to you?

12 A. Yes, there were.

13 Q. And first of all, who was the car registered to?

14 A. It was registered to Mawaf al Hamzi.

15 Q. And previous to him owning it, it was registered to  
16 who?

17 A. To Khalid al Mihdhar.

18 Q. These two names, are they represented on this chart  
19 in front of you?

20 A. Yes, they are.

21 Q. Where? You don't have to draw. Just tell us  
22 generally where it is right now.

23 A. Okay. On the right-hand side in yellow.

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1 Q. Now, was there a document found in that car that was  
2 seized, and has it remained in FBI custody since that time?

3 A. Yes, there is.

4 Q. Fair and accurately represented?

5 A. Yes.

6 Q. You saw it previous to today; am I correct?

7 A. Yes, I have.

8 TC [MR. RYAN]: I ask that we go back to the other screen  
9 and pull up Exhibit 502SS Attachment EEEEEEE.

10 MJ [COL POHL]: Go ahead.

11 TC [MR. RYAN]: And I'll ask if the very middle of that  
12 piece of paper can be blown up a bit.

13 MJ [COL POHL]: Sure.

14 Q. First of all, Agent, as to the document as a whole,  
15 what is it?

16 A. It's a receipt for a cashier's check from Pan Am --  
17 or made payable to Pan Am International Flight Academy.

18 Q. And in the middle of this screen right in front of  
19 you right there, what's the part that we blew up?

20 A. It depicts the remitter, and the name above that,  
21 although it's partially obscured on the right-hand side,  
22 states Hani Hanjour.

23 Q. Is Hani Hanjour's name -- strike that.

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1 TC [MR. RYAN]: Can I ask now at this time, Judge, if we  
2 can go back to the chart that we just displayed.

3 MJ [COL POHL]: Sure.

4 Q. Agent Fitzgerald, do you see the name Hani Hanjour on  
5 this?

6 A. Yes, I do.

7 Q. Do you see the name Mawaf al Hazmi and Khalid al  
8 Mihdhar on this chart?

9 A. Yes, I do.

10 TC [MR. RYAN]: I'm going to ask the court's permission  
11 for the agent to draw a line -- draw lines between the three  
12 names he has just identified.

13 MJ [COL POHL]: Before he does that, are you going to be  
14 able to memorialize this for the record?

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

16 MJ [COL POHL]: Okay. Go ahead.

17 TC [MR. RYAN]: With your permission, sir.

18 MJ [COL POHL]: Sure. He can do it.

19 TC [MR. RYAN]: Good. At this time, Your Honor, we're  
20 going to take this in steps with the court's permission. I  
21 will ask if it can be captured by the court reporters.

22 MJ [COL POHL]: Okay. Keep all of these on the 502ZZ;  
23 just make them 1, 2, 3, 4 after that.

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

2 MJ [COL POHL]: Sure.

3 Q. Now, Agent, turning your attention back to the crash  
4 scene of Flight 93. You told us previously that a passport  
5 was recovered at the scene for one of the names of those  
6 you've identified as a hijacker. Do you recall that?

7 A. Yes, I do.

8 Q. And that person was who?

9 A. That person was Ziad Jarrah.

10 Q. And have you -- do we have a picture of that piece of  
11 evidence ready to be displayed?

12 A. Yes, we do.

13 Q. Fairly and accurately represented?

14 A. Yes, it is.

15 Q. It's in FBI custody?

16 A. Yes.

17 TC [MR. RYAN]: I'd ask that it be pulled up as 502SS  
18 Attachment ZZZZZ.

19 MJ [COL POHL]: Go ahead.

20 Q. Agent Fitzgerald, if you would, could you tell us  
21 what's shown there?

22 A. That's an image of part of the face of Ziad Jarrah  
23 taken from a U.S. visa placed in the passport of Ziad

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1 Jarrah's -- of Ziad Jarrah.

2 Q. To make it more visible, I'll ask if the left-hand  
3 side of that screen can be blown up. Can you point out to us  
4 what we're looking at, sir?

5 A. Yes. At bottom, typed -- at the bottom of the image  
6 is the last name Jarrah, spelled J-A-R-R-A-H. The "H" is not  
7 really visible. Followed by a space, the name Ziad, Z-I-A-D,  
8 followed by a space with the letters "S-A."

9 Going down to the next line, it lists what appears to  
10 be the passport number, or at least part of the passport  
11 number, again other spaces, and then the letters "L-B-N,"  
12 believed to be representative of the country Lebanon.

13 Q. And did this name appear in the manifest for  
14 Flight 93?

15 A. The name Ziad Jarrah did, yes.

16 Q. And was it also identified in the video, the  
17 propaganda video that we watched this morning?

18 A. Yes, it was.

19 Q. And was he identified as having a specific role on  
20 Flight 93?

21 A. Yes. Based upon his flight training, he's believed  
22 to be the hijacker pilot aboard Flight 93.

23 TC [MR. RYAN]: At this time I'll ask if we can go back to

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1 the chart, that is 502ZZ.

2 Q. Special Agent Fitzgerald, if you would, would you  
3 draw a circle around the name Ziad Jarrah, if you see it  
4 there.

5 A. [Complied.]

6 TC [MR. RYAN]: And I'll ask if this can be captured, sir.

7 MJ [COL POHL]: Got it. Go ahead.

8 Q. Agent Fitzgerald, turning your attention back to the  
9 piece of luggage found at Logan that you've identified as  
10 having been in the name of Mohamed Atta. You said this  
11 morning that there were other items found in it; am I correct?

12 A. Yes.

13 Q. Just to remind us, is that where that four-page  
14 letter was found?

15 A. Yes, it is.

16 Q. Any other items that were in it were of significance  
17 from an evidentiary standpoint?

18 A. One of the addition items that was of interest is a  
19 passport in the name of Abdul Aziz al Omari.

20 Q. And is that one of the names identified as a  
21 hijacker?

22 A. Yes, it is.

23 Q. And, in fact, is he -- is the name Abdul Aziz

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1 al Omari identified as the -- that you've identified as one,  
2 the person speaking in that last clip from that last pre-death  
3 video statement that we just watched a few minutes ago?

4 A. Yes, it was, consistent name ----

5 Q. Go ahead. I'm sorry.

6 A. Consistent name and photograph.

7 Q. And is he the one who said they have to rub America's  
8 nose in the dirt?

9 A. That's correct.

10 TC [MR. RYAN]: I will ask that we pull up 502SS  
11 Attachment DDDDDD.

12 Q. Agent Fitzgerald, do you see it in front of you?

13 A. Yes, I do.

14 Q. Point out to us what we're looking at, please.

15 A. That is a photograph of the seized passport of Abdul  
16 Aziz al Omari and it's open to the U.S. visa page of the  
17 passport.

18 Q. And the picture that is shown there, is that  
19 consistent with other photographs you've seen of Abdul Aziz  
20 al Omari?

21 A. Yes, it is.

22 Q. Is the likeness in it consistent with the picture  
23 that was shown in the videotape a few moments ago?

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1 A. Yes.

2 Q. And this was found in the piece of luggage named  
3 Mohamed Atta?

4 A. Yes.

5 TC [MR. RYAN]: I'll ask that we go back to the chart,  
6 502ZZ.

7 Q. Agent Fitzgerald, if you would, would you draw a line  
8 between the two names that you just talked about, the owner of  
9 the luggage, and Mr. al Omari. Both on the same flight?

10 A. That's correct.

11 Q. Which flight was that?

12 A. American Airlines Flight 11.

13 TC [MR. RYAN]: I'll ask if we can capture this by the  
14 court reporters, Your Honor?

15 MJ [COL POHL]: Go ahead.

16 Q. Agent Fitzgerald, as part of the investigation, did  
17 you do a lot of looking into methods of communication between  
18 the various hijackers?

19 A. Yes.

20 Q. And what is -- give us a general description of how  
21 they communicated.

22 A. In general terms, one of the ways that they  
23 communicated was via cell phone, and also via cell phone and

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1 calling card.

2 Q. Did you observe or in the course of the investigation  
3 did you find evidence of different cell phones being  
4 registered to different people, different hijackers in the  
5 case?

6 A. Yes.

7 Q. I'd like to draw your attention now to a telephone  
8 number, 954-815-3004. Do you recognize that phone number?

9 A. Yes, I do.

10 Q. What is it?

11 A. That is a cell phone that was in the name of  
12 Marwan al Shehhi.

13 Q. And we have heard the name Marwan al Shehhi  
14 previously today; is that correct?

15 A. Yes, we have.

16 Q. And how has he been identified previously?

17 A. He's identified as being on the Flight 175 manifest.

18 Q. And in what particular role did other evidence we've  
19 seen today indicate he had?

20 A. It indicates he was a pilot, a hijacker pilot aboard  
21 Flight 175.

22 Q. Did you at some point in the course of the  
23 investigation obtain subscriber information for that

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1 particular phone number?

2 A. Yes.

3 Q. And has it been in FBI custody?

4 A. That's correct.

5 Q. And have we selected it for presentation today?

6 A. Yes, we have.

7 Q. Fair and accurate representation?

8 A. Yes, it is.

9 TC [MR. RYAN]: I'll ask if we could show 502SS Attachment  
10 GGGGGG.

11 Q. That's a bit of a blowup, am I correct, Agent  
12 Fitzgerald?

13 A. Yes, that is a portion of the subscriber data from  
14 Verizon for a mobile phone number as indicated here,  
15 954-815-3004, registered in the name of Marwan al Shehhi.

16 Q. In the course of your investigation, did you find any  
17 evidence or indication that this was registered to anyone  
18 else?

19 A. No, I did not.

20 Q. During the course of your investigation did you  
21 develop evidence or obtain evidence that indicated other  
22 persons within the group of 19 also used that telephone number  
23 or also claimed that telephone number as theirs?

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1 A. Yes.

2 Q. And I think you mentioned today, but I don't think  
3 we've seen one before, something called a PNR; am I right?

4 A. Yes. I did mention or describe a passenger name  
5 record, or PNR, when I was describing airline company  
6 documents.

7 Q. Okay. And in the course of finding documents that  
8 are relevant to this particular phone number, did we find some  
9 PNRs as well?

10 A. Yes.

11 Q. And have we selected them for presentation today?

12 A. Yes.

13 Q. Are they fair and accurate representations?

14 A. Yes, they are.

15 TC [MR. RYAN]: I'll ask if we can display at this time  
16 502SS Attachment 0000.

17 MJ [COL POHL]: Go ahead.

18 Q. If you would, Special Agent Fitzgerald, tell us what  
19 we're looking at.

20 A. This is a portion of a passenger name record for a  
21 person with the last name Atta, first name Mohamed, and I'm  
22 referring to the area highlighted in yellow in the middle  
23 towards the right of the document. And the second person

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1 named al Omari, last name Abdul Aziz. And then looking to the  
2 left, you can see this is for a flight on 11 September 2001,  
3 from Boston to Los Angeles. And it is for American Airlines  
4 Flight 11.

5 Also, if you look above, it lists two spaces -- or  
6 two categories, one for phones, and one for address. The one  
7 for phones has been highlighted with the number 954-815-3004.

8 Q. Is that the same number we looked at in the  
9 subscriber information?

10 A. Yes, it is.

11 Q. Of Mr. al Shehri?

12 A. Mr. al Shehhi, yes.

13 Q. Shehhi, I'm sorry.

14 TC [MR. RYAN]: And I will ask if we can go back to 502ZZ.

15 Q. Special Agent Fitzgerald, going back to your chart  
16 now, which you've already drawn on, do you see the names of  
17 the two individuals that were on that PNR?

18 A. Yes, I do.

19 Q. Could you draw a line between those two, please.

20 A. [Complied.]

21 Q. All right. So we actually have three. You included  
22 Mr. al Shehhi, too, as well; is that correct?

23 A. That's correct.

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1 Q. And Mr. Atta and Mr. al Omari are the two individuals  
2 whose names were just on the PNR we were just looking at; am I  
3 correct?

4 A. Yes.

5 TC [MR. RYAN]: I'll ask, Your Honor, if this can be  
6 captured.

7 MJ [COL POHL]: Go ahead.

8 Q. Agent Fitzgerald, before we move on to the next, tell  
9 us what a PNR -- how is it generated? What is its purpose?

10 A. Based upon speaking to airline company professionals,  
11 a passenger name record is generated when someone makes a  
12 reservation with an airline. It typically contains the  
13 passenger's or prospective passenger's name, their address,  
14 the contact telephone number, and oftentimes method of  
15 payment.

16 Q. Now, the one we just looked at had two separate names  
17 on it; am I right?

18 A. Yes, it did.

19 Q. In your experience -- and have you looked at an awful  
20 lot of these in the course of the investigation?

21 A. Yes, I have.

22 Q. Is it unusual to see two names on one?

23 A. It's not unusual. It's typically indicative of a

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1 reservation made together.

2 Q. Now, I'd like to look at another PNR at this time.

3 Well, first of all, are there other PNRs that you -- where the  
4 number ending in 3004 was identified as well?

5 A. Yes.

6 Q. And have you selected those for us as well?

7 A. Yes, I have.

8 Q. And the items upon which the number is shown and the  
9 names are shown kept by the FBI and obtained as part of the  
10 investigation?

11 A. Yes.

12 Q. And they're fairly and accurately represented?

13 A. Yes, they are.

14 TC [MR. RYAN]: I'll ask to bring up 502SS

15 Attachment QQQQ.

16 Q. Agent Fitzgerald, what is this?

17 A. This is also a passenger name record. It's a  
18 passenger name record from American Airlines. It's -- if you  
19 look towards the middle of the page, it's an excerpt from the  
20 page. It indicates it's -- on 11 September, American Airlines  
21 flight from Boston to Los Angeles. The passenger's last name  
22 is al Shehri, the first name is Wail. Above that highlighted  
23 is his name, Wail al Shehri, with an address of 1861 North

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1 Federal Highway in Hollywood, Florida. And further below that  
2 also highlighted is a telephone number, 954-815-3004.

3 Q. Is there a connection to any other names on this --  
4 in this particular document?

5 A. The name Wail al Shehri is also associated with that  
6 address.

7 Q. Which address are we talking about?

8 A. The 1861 North Federal Highway.

9 Q. The name identified on the PNR is Wail; am I right?

10 A. Correct.

11 Q. And did you say there's another person as well?

12 A. Not on this particular PNR, on a separate PNR.

13 Q. How about as to the address?

14 A. The name Wail al Shehri is associated with that  
15 address.

16 TC [MR. RYAN]: I'll ask to bring up 502ZZ, please.

17 Q. Agent Fitzgerald, could you draw a line indicating  
18 the connection between the person who was on the PNR and the  
19 subscriber to that telephone number?

20 A. Yes. That particular telephone number as identified,  
21 the 954-815-3004, of Marwan al Shehhi was on the passenger  
22 name of Wail al Shehri.

23 TC [MR. RYAN]: And I will ask, Your Honor, if we could

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1 capture the line that was just drawn.

2 MJ [COL POHL]: Okay. Done. Go ahead.

3 Q. Agent Fitzgerald, before we leave it, the connection  
4 you just drew, the line between those two people, that's  
5 between two separate flights; am I correct?

6 A. That's correct, Flight 11 and Flight 175.

7 Q. And, Agent, as to some other records now, I'm going  
8 to just start asking you to identify them as we pull them up.  
9 I ask to go to 502VV Attachment L. Can you identify this  
10 record?

11 A. Yes, I can.

12 Q. Tell us what it is, please.

13 A. It's a passenger name record in the name of -- last  
14 name Ahmed, first name, Fayeze; also last name al Shehri, first  
15 name Mohand. There's a phone number listed. That number is  
16 954-815-3004.

17 Q. Same telephone number?

18 A. Yes, the same telephone that's registered to  
19 Marwan al Shehri. Looking further down on the passenger name  
20 record, the area that is highlighted indicates United Airlines  
21 Flight 175 on 11 September 2001 from Boston to Los Angeles.  
22 And again, it lists those two passengers, F., in this case,  
23 Fayeze, Ahmed and Mohand al Shehri.

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1 Q. And I think we talked before about that where it  
2 appears as F. and then Ahmed. You said there was another name  
3 as well?

4 A. Yes, Fayez Ahmed Banihammad al Qadi.

5 Q. And I'll ask to go back to 502ZZ.

6 Agent Fitzgerald, if you would, go through your  
7 process, draw the line between the names that are connected.

8 A. Yes. Mohand was associated with Fayez on the same  
9 reservation, and then Mohand al Shehri had the telephone  
10 number of Marwan al Shehhi as did Fayez Ahmed.

11 TC [MR. RYAN]: Your Honor, I'll ask to capture this one,  
12 please.

13 MJ [COL POHL]: Okay. Go ahead.

14 Q. Agent Fitzgerald, I'd like to leave telephone number  
15 ending in 3004 at this time and come to a different subject.

16 Did there come a time in the investigation when you  
17 were looking at how the 19 people, the 19 hijackers arrived in  
18 the United States?

19 A. Yes.

20 Q. Along with when?

21 A. I'm sorry, could you say that again?

22 Q. Along with when. Not only how, but when they arrived  
23 in the United States.

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1 A. Yes. Yes, correct.

2 Q. And the subject of where they were prior to coming to  
3 the United States and methods of travel to the United States,  
4 was that the subject of significant investigation?

5 A. Yes, it was.

6 Q. And were records obtained from different airlines  
7 showing different flights that were part of the investigation  
8 and brought evidence to your attention?

9 A. Yes.

10 Q. Were these records obtained in the methods that  
11 you've described for us today, through grand jury subpoenas?

12 A. Yes, they were.

13 Q. And were these records of airlines that were shown to  
14 you to be kept and generated in the normal course of business  
15 activities?

16 A. Yes.

17 Q. The items that were generated and received by the  
18 FBI, have they been kept as evidence in the case?

19 A. Yes.

20 Q. Have they been kept and appear to today in a fair and  
21 accurate way in shots that we're going to show to the  
22 commission; am I correct?

23 A. Yes.

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1 Q. Now, as to the 19 -- strike that.

2 As -- I'm going to direct your attention specifically  
3 to the persons that you've identified as muscle hijackers.  
4 First of all, where does that name come from? What does that  
5 mean?

6 A. I don't know exactly how it was generated, how it  
7 came to be.

8 Q. It was not your invention?

9 A. Not my invention, and no one that I know.

10 Q. At some point has it been generally accepted at least  
11 within the FBI?

12 A. Yes.

13 Q. And the public as well?

14 A. Yes.

15 Q. What does it refer to, though?

16 A. It refers to hijackers who were not pilots, whose  
17 main purpose was to subdue people to enable the taking of an  
18 aircraft.

19 Q. As to these people, these muscle hijackers, when was  
20 the general time period again for when they generally arrived?

21 A. In general terms, they arrived beginning in -- or  
22 excuse me, April of 2001, although several did arrive earlier.

23 Q. And continuing on, April 2001 to about when?

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1 A. April, May, June, and into July of 2001.

2 Q. So leading up to about, would you say, six weeks  
3 prior to the attacks?

4 A. Roughly, that's correct. Six, seven weeks.

5 Q. In the course of your investigation, looking at the  
6 records and other evidence, did you notice a pattern of where  
7 these people were coming from, where these muscle hijackers  
8 were coming from, how they traveled?

9 A. In general terms, yes.

10 Q. Describe that for us, please.

11 A. In general terms, a number of the hijackers traveled  
12 from Dubai through London to the United States. Sometimes  
13 in ----

14 Q. And what cities in the United States?

15 A. Pardon?

16 Q. What cities in the United States?

17 A. New York; Washington, D.C.; and several cities in  
18 Florida, either Miami or Orlando.

19 Q. Did you notice a pattern in how -- whether they  
20 traveled one at a time or in larger groups?

21 A. In general terms, they tended to travel in pairs,  
22 although on occasion, three traveled together, and on another  
23 occasion, one traveled alone.

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1 Q. And the records that you developed and gathered as to  
2 the arrivals of these muscle hijackers, were they generally --  
3 have they shown people travelling in more than one at a time?

4 A. Yes.

5 TC [MR. RYAN]: All right. I'm going to ask to bring up  
6 502SS Attachment TTTT.

7 Q. Agent Fitzgerald, is this one of the records that  
8 you've described for us?

9 A. Yes, it is.

10 Q. And it was turned over to the FBI by an airline?

11 A. That's correct.

12 Q. Is that American or United at this time?

13 A. No, it's a PNR from a different airline.

14 Q. Which one is this?

15 A. This -- this specific one is from Virgin Atlantic.

16 Q. Okay. And tell us what is shown on this particular  
17 document in front of you, 502SS Attachment TTTT.

18 A. Looking towards the middle of the document where  
19 28 May is highlighted, the first line states, EK, which is an  
20 abbreviation for Emirates Airlines, Flight 7, on 28 May, and  
21 then you see the initials DXB and LGW. So that's Emirates  
22 Airlines Flight 7 on 28 May, travelling from Dubai to London  
23 Gatwick. And then the second line, line number 2, VS, that

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1 stands for Virgin Airlines, Flight 5, on 28 May, from London  
2 Gatwick to Miami. And for the three individuals at the top  
3 highlighted, Mohano al Shehri, Ahmed al Nami, and Hamza Saleh  
4 al Gandi.

5 Q. Are those three names of hijackers?

6 A. With some minor variations, yes, there is some  
7 spelling difference.

8 Q. And I'll ask to go back to 502ZZ.

9 Agent Fitzgerald, if you would, draw a line linking  
10 those three names.

11 A. [Complied.]

12 Q. Done?

13 A. Yes.

14 TC [MR. RYAN]: I'll ask to capture this, Your Honor.

15 MJ [COL POHL]: Okay. Done. Done.

16 TC [MR. RYAN]: I'll ask to bring up another PNR, 502SS  
17 Attachment QQQQQ.

18 Q. Agent Fitzgerald, do you recognize this document and  
19 is it a record that was received in the course of the  
20 investigation?

21 A. Yes, it was.

22 Q. Is it a business record from a company?

23 A. Yes, it's a business record, a passenger name record

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1 from Virgin Airlines.

2 Q. And what is shown on this?

3 A. Again, reading from the center where 23 April is  
4 highlighted, EK, standing for Emirates Airlines, Flight 7 on  
5 23 April, from Dubai to London Gatwick. And then continuing  
6 on, Virgin Airlines Flight 27 on 23 April from London Gatwick  
7 to Orlando for two individuals under the same locator number,  
8 first name al Shehri Waleed, and second name, al Suqami,  
9 Satam.

10 Q. And are those names, understanding any variation of  
11 spelling, that have been identified previously as two of the  
12 19 hijackers?

13 A. Correct.

14 TC [MR. RYAN]: I'll ask to go back to 502ZZ.

15 Q. Agent Fitzgerald, if you would draw a line, please.

16 TC [MR. RYAN]: And I'll ask to capture this, Your Honor.

17 MJ [COL POHL]: Okay. Go ahead.

18 TC [MR. RYAN]: I ask to go to 502SS Attachment NNNNN.

19 Q. Agent Fitzgerald, what are we looking at?

20 A. These are two separate passenger name records, again,  
21 from Virgin Airlines.

22 Q. What is shown in this? I'm sorry. Strike that.

23 Before you do that, were these also records obtained

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1 from Virgin Airlines representing their normally conducted  
2 business activities?

3 A. Yes, they are.

4 Q. And they have been kept by the FBI?

5 A. Yes, that's correct.

6 Q. And these are fair and accurate representations with  
7 the blowups?

8 A. Yes, they are.

9 Q. Tell us what's shown here, please.

10 A. Okay. There's only one name highlighted, that's the  
11 one on the right. Fayez is the first name, last name is  
12 Banihammad. Looking down below that, what's highlighted are  
13 two flights, EK, which stands for Emirates Airlines, Flight 7  
14 on 27 June, from Dubai, that's DXB, to London Gatwick, LGW,  
15 with a connecting flight on Virgin Airlines Flight 15 on 27  
16 June from London Gatwick to Orlando.

17 Looking to the left, to a name that is not  
18 highlighted, last name al Ghamdi, first name Saeed, again  
19 looking below that, although it's not highlighted, the same  
20 day, the same flights taken, Emirates Airlines Flight 7 on 27  
21 June, from Dubai to London Gatwick, continuing on Virgin  
22 Airlines Flight 15 on 27 June from London Gatwick to Orlando.

23 Q. So I think you stated that these are two separate

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1 PNRs that are being shown together; am I correct?

2 A. That's correct.

3 Q. What is the link between them?

4 A. The link between them is they're on the same flights,  
5 the same day.

6 Q. I'll ask to go back to 502ZZ.

7 A. On additional, they also have the same contact number  
8 listed between the two PNRs.

9 Q. Thank you.

10 And pulling up the chart again for 502ZZ, Agent  
11 Fitzgerald, do you see the two names on the chart?

12 A. Yes, I do.

13 Q. Would you draw a line indicating the connection,  
14 please.

15 A. Yes. Would you go back to the previous exhibit for  
16 just one second?

17 Q. Previous exhibit? Sure.

18 TC [MR. RYAN]: Agent -- I'm sorry. Mr. Cox, if you  
19 could.

20 A. Okay. Thank you.

21 Q. And I'll -- agent, have you drawn the line?

22 A. Yes, the line goes from Saeed al Ghamdi to Fayez  
23 Banihammad.

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1 Q. And these were on two separate flights?

2 A. Yes, Flight 175 and Flight 93.

3 TC [MR. RYAN]: I'll ask that we capture that, Your Honor.

4 MJ [COL POHL]: Okay. Go ahead.

5 TC [MR. RYAN]: And I'll ask to bring up 502SS

6 Attachment WWWW.

7 Q. Agent Fitzgerald, what are we looking at?

8 A. This is also a snippet from a passenger name record.

9 Looking towards the middle, 8 June is highlighted ----

10 Q. Stop there for a moment. The record is from where?

11 A. It's a passenger name record from Virgin Airlines.

12 Q. And again, was this obtained by the FBI as a normal  
13 business record of that company?

14 A. Yes, it was.

15 Q. And is this a fair and accurate representation?

16 A. Yes, it is.

17 Q. All right. Tell us what's being shown, please.

18 A. Okay. It's a flight reservation. It's the same  
19 booking locator for two individuals. For Emirates Airlines  
20 Flight 7 on 8 June from Dubai to London Gatwick, continuing on  
21 to Virgin Airlines Flight 5 on 8 June from London Gatwick to  
22 Miami. It's for two individuals, Ahmad Ibrahim al Haznawi and  
23 Wailma al Shahri.

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1 Q. And as to these individuals, Agent Fitzgerald, do  
2 they, in fact, appear on the flight manifests as well as on  
3 the chart 502ZZ?

4 A. Yes.

5 Q. They've been identified today as two of 19 hijackers?

6 A. Yes.

7 Q. The first name, Ahmed al Haznawi, was that one of the  
8 video clips that we saw of the pre-death statements?

9 A. It was, the first two clips.

10 Q. That's the one that was talking about bones and  
11 skulls?

12 A. Yes, correct.

13 TC [MR. RYAN]: I'll ask to return to 502ZZ.

14 Q. Agent Fitzgerald, do you see those names?

15 A. I do.

16 Q. Would you draw a line, please.

17 A. [Complied.]

18 Q. Representing two different flights; am I correct?

19 A. Yes. So those two individuals who were on the same  
20 booking locator and the same flights at that time were on two  
21 separate flights which were hijacked on September 11th.

22 TC [MR. RYAN]: I ask to capture this by the court  
23 reporters, sir.

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1 MJ [COL POHL]: Okay. Go ahead.

2 TC [MR. RYAN]: I ask to go to 502SS Attachment BBBB.

3 Q. Agent Fitzgerald, is this part of the collection of  
4 records we've been talking about today?

5 A. Yes, it is.

6 Q. Is it a record of a particular company?

7 A. Yes, it is.

8 Q. Which one is that?

9 A. I'm not sure on this particular one. I believe this  
10 one is Emirates Airlines.

11 Q. Is this also a record that was obtained through the  
12 course of the investigation by subpoena, to the best of your  
13 knowledge?

14 A. Yes, it is.

15 Q. And has the record been kept by the FBI since that  
16 time?

17 A. Yes, it has.

18 Q. Do the blowups that are shown on the screen  
19 accurately reflect the way the record looks itself?

20 A. Yes, it does.

21 Q. Tell us, please, what's being shown.

22 A. This is part of a flight manifest. It's three  
23 snippets from a flight manifest, Flight 925, on May 2nd, 2001,

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1 originating in London Heathrow and flying to Dulles Airport.  
2 In the middle snippet, you can see the name highlighted, Ahmed  
3 Saleh al Ghamdi, and then he's in seat 32G, as in golf. And  
4 then further below that, there's a name that's highlighted,  
5 Mayed, and then Mashaan Moged, seat 32C, as in Charlie.

6 Q. We have been looking previously at PNRs and now this  
7 is a flight manifest; am I right?

8 A. That's correct.

9 Q. The names that are listed on a flight manifest, what  
10 does it mean in terms of the flight? Was it just names on a  
11 reservation or was it more than that?

12 A. It means they were physically on board the aircraft.

13 TC [MR. RYAN]: I will ask to go back to 502ZZ.

14 Q. Agent Fitzgerald, do you see those two names?

15 A. I do.

16 Q. Would you draw a line, please.

17 A. [Complied.]

18 Q. Done?

19 A. Yes.

20 TC [MR. RYAN]: Your Honor, I'll ask that this be  
21 captured.

22 MJ [COL POHL]: Okay. Go ahead.

23 Q. Agent Fitzgerald, we've gone through a lot of

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1 connections here that are all shown by a red line on this  
2 chart. In the records that we used -- that you used to draw  
3 those lines, is that the full breadth, the full universe of  
4 documents out there showing connections between any or all of  
5 these 19 individuals?

6 A. No. There are many, many more connections.

7 Q. If we had brought every single one of them, how many  
8 lines do you think would be up there?

9 A. Many tens of lines.

10 Q. For the ones that we chose just for the purposes of  
11 today's presentation, is it correct to say there are roughly  
12 11 separate lines or separate documents or exhibits showing  
13 connections between these people?

14 A. Yes.

15 TC [MR. RYAN]: Court's indulgence, Your Honor.

16 [Pause.]

17 TC [MR. RYAN]: Agent Fitzgerald, thank you.

18 Your Honor, that's all I have of this witness.

19 MJ [COL POHL]: Mr. Ruiz, do you want to reserve your  
20 cross-examination until Thursday?

21 LDC [MR. RUIZ]: Yes, Judge.

22 MJ [COL POHL]: Okay. Mr. Fitzgerald, you're excused  
23 until Thursday.

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1 WIT: Yes, Your Honor.

2 MJ [COL POHL]: Thank you for your testimony.

3 [The witness was temporarily excused and withdrew from the  
4 courtroom.]

5 MJ [COL POHL]: Okay. Let's do 532, then.

6 LDC [MR. CONNELL]: Sir?

7 MJ [COL POHL]: Yeah.

8 LDC [MR. CONNELL]: On 532, we have called and e-mailed  
9 Mr. Williams in an attempt to interview him.

10 MJ [COL POHL]: Okay.

11 LDC [MR. CONNELL]: We haven't reached him yet, so we'd  
12 like a little more time to try to complete that interview.

13 MJ [COL POHL]: Okay. Okay. So we'll wait on 532 then.

14 Your other witness will not be available until  
15 tomorrow?

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

17 [Pause.]

18 MJ [COL POHL]: You can start with her today, and ----

19 TC [MR. RYAN]: Sir, based on our discussion with you this  
20 morning, we had set her aside until tomorrow morning. We  
21 would ask that that go, only because she is going to take a  
22 while. We'd rather start and finish at the same time.

23 MJ [COL POHL]: Okay. That gives us -- options for today

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1 would be to do 530. That's done with the regular prosecution  
2 team, as I recall. Okay. I don't see anybody leaping up to  
3 argue 530.

4 LDC [MR. NEVIN]: Your Honor, if we're going to do 530, I  
5 need a recess, a brief recess before we do that, just to  
6 gather materials.

7 MJ [COL POHL]: Okay. Yeah, I mean, we're kind of working  
8 around here now, but ----

9 LDC [MR. NEVIN]: I understand.

10 MJ [COL POHL]: ---- my intent this week was to get 502,  
11 530, and 532.

12 So we'll go ahead and take a 15-minute break.  
13 Commission is in recess.

14 [The R.M.C. 803 session recessed at 1406, 5 December 2017.]

15 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1427,  
2 5 December 2017.]

3 MJ [COL POHL]: Commission is called to order. All  
4 parties are again present that were present when the  
5 commission recessed.

6 During the recess it occurred to me that there may be  
7 an issue of whether we want to do -- 502 only implicates  
8 Mr. Ruiz and Mr. Hawsawi's team, and it is not -- who are not  
9 part of the 532 litigation.

10 530 deals with everybody, and it deals with the  
11 laptops that belong to the detainees. Now, I can understand  
12 if one were to take the position that you wanted to have the  
13 532 issue resolved before we got to anything that implicated  
14 your team, but on the other hand, I could also see an argument  
15 that you'd want to address 530 since it benefits the client.

16 So with that groundwork, Mr. Nevin.

17 LDC [MR. NEVIN]: Yes, Your Honor. And I did misspeak  
18 when I leapt up here at the end of the last session and just  
19 asked for time to get my papers. Our position, I think I  
20 articulated it before to the military commission, is that we  
21 believe there is a conflict of interest. I do ask that we  
22 resolve 532 before we move on to 530.

23 MJ [COL POHL]: Okay.

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1 LDC [MR. NEVIN]: I do understand the concern of other  
2 counsel. I'm not saying it has to be resolved today or this  
3 minute, but I do request that it be in that order.

4 MJ [COL POHL]: Okay.

5 LDC [MR. NEVIN]: Okay. Thank you.

6 MJ [COL POHL]: Any other defense counsel have a different  
7 position?

8 LDC [MR. RUIZ]: Judge ----

9 MJ [COL POHL]: Go ahead, Ms. Bormann. You're already  
10 walking up.

11 LDC [MR. RUIZ]: On behalf of Mr. al Hawsawi, Judge, we  
12 are prepared to proceed with 530.

13 MJ [COL POHL]: Okay. Ms. Bormann.

14 LDC [MS. BORMANN]: We adopt the position of Mr. Nevin.

15 MJ [COL POHL]: Mr. Harrington.

16 LDC [MR. HARRINGTON]: I agree with Mr. Nevin and  
17 Ms. Bormann, Judge.

18 MJ [COL POHL]: And, Mr. Connell.

19 LDC [MR. CONNELL]: Sir, I'm ready to proceed, but I also  
20 understand everything that you articulated. I do have an  
21 aspect of -- I do have a slide aspect of 530 that I could  
22 argue to the military commission. It only affects  
23 Mr. al Baluchi.

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1 MJ [COL POHL]: Is this a long argument? What I'm saying  
2 is is that I'm trying to figure out how it would only impact  
3 on him and not everybody else.

4 LDC [MR. CONNELL]: That's fine, too, sir. The issue is  
5 that -- [counsel away from podium; no audio.]

6 Sir, the issue is that we submitted our slides and  
7 our documents for use in open session, and they came back  
8 severely redacted from the OCA, even though they're all  
9 unclassified. So that's why it would only affect  
10 Mr. al Baluchi, and I'm prepared to argue it right now, or I'm  
11 prepared to argue it, you know, in connection with ----

12 MJ [COL POHL]: You mean argue your slides, the redaction  
13 of the slides?

14 LDC [MR. CONNELL]: Argue the redaction of the slides.

15 MJ [COL POHL]: Do I have those?

16 LDC [MR. CONNELL]: I have both the original and the  
17 redaction version that I can hand up, if we're going to argue  
18 this.

19 MJ [COL POHL]: Okay. I'm not sure how far I will go down  
20 this road, but let me start at least just to make sure I  
21 understand what you're talking about, because we're going to  
22 get to this eventually.

23 Are you talking about AE 530F, the redactions on

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1 that?

2 LDC [MR. CONNELL]: Yes, sir. Let me be more clear.

3 There are two -- there are a set of -- we submitted  
4 three sets of documents for review, and I intentionally did  
5 not include any FOUO information in the slides themselves.  
6 The slides are called AE 530, and I can -- if we're -- if you  
7 want me to argue it, I'll hand out the slides and make the  
8 record and do properly, or I'll wait. Your call, sir.

9 MJ [COL POHL]: Let's wait. Let's do it ----

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

11 MJ [COL POHL]: Let's not piecemeal it.

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

13 LDC [MR. RUIZ]: Judge, may I?

14 MJ [COL POHL]: Mr. Ruiz.

15 LDC [MR. RUIZ]: Judge, so the way that I view 530 in the  
16 manner in which we framed it for the commission is that it  
17 only affects Mr. al Hawsawi. We're not litigating the return  
18 of the laptops for all of the detainees, but what we're  
19 challenging is the prosecution's evidence, essentially, for  
20 taking Mr. al Hawsawi's computer, and the application of 018U  
21 as it relates specifically to Mr. al Hawsawi.

22 We framed it as an absence of any evidence whatsoever  
23 that would provide them with the ability to do what they've

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1 done as it relates to Mr. al Hawsawi, so it's a narrow issue  
2 in that sense from our standpoint.

3 MJ [COL POHL]: Well, the -- and again, I understand --  
4 count that on the laptop issue, the accused are not similarly  
5 situated, at least on the allegations. Okay. Okay.

6 What I understand the government is saying is before  
7 they return anyone any laptop, they want to ensure things have  
8 not been enabled that were supposed to be disabled, and before  
9 they'll do that, they want to do their forensic examination  
10 without examining content.

11 Is that the government's position, essentially?

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

13 MJ [COL POHL]: Okay. So ----

14 LDC [MR. RUIZ]: And we have provided a very specific, and  
15 I think -- I think this has been the only team to take this  
16 position, which is, we have suggested that we can do that with  
17 an IT specialist within our office that can certify that the  
18 computer has never been opened or tampered with. It could be  
19 ordered by the court. It would be an independent examination.

20 So we've offered that up. That's something that  
21 could happen fairly quickly and put us in a position where we  
22 could return the computer to Mr. al Hawsawi. And so in that  
23 sense, our argument is unique, I think.

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1 MJ [COL POHL]: Trial Counsel, do you have any objection  
2 to that procedure?

3 TC [MR. RYAN]: Absolutely, sir. The procedure we've  
4 outlined in our motion is what we seek.

5 MJ [COL POHL]: Okay.

6 TC [MR. RYAN]: An independent, quote/unquote, analysis,  
7 although I understand it, will not be sufficient for our  
8 purposes. Camp won't accept it either, sir.

9 MJ [COL POHL]: Okay.

10 LDC [MR. RUIZ]: Judge, that's the procedure that has been  
11 in place, which is, that there's a certification by defense IT  
12 specialists that the computer pass the programs that it need  
13 to, that it was properly sealed. That's the procedure that  
14 was put in place with the government's agreement.

15 Now, if this doesn't satisfy the CIA, that's not our  
16 problem. But what we're saying is, Judge, we think you can  
17 order an independent examination that addresses their exact  
18 concerns that can happen fairly quickly ----

19 MJ [COL POHL]: Isn't that what the government is offering  
20 here, a walled-off ----

21 LDC [MR. RUIZ]: I didn't see ----

22 MJ [COL POHL]: ---- a walled off IT examination of the  
23 computers looking for certain things?

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1 LDC [MR. RUIZ]: I think what we would have an issue with  
2 there is the unit that they have identified, which I believe  
3 is an Army battalion. Not that I have anything specific  
4 against the Army, Judge, but we do think that there are  
5 resources within our office that are independent and would  
6 certify the same issues that the government -- part of that  
7 involves obviously, in terms of removal, transport, access to  
8 those things.

9 From our perspective, because we have a duty and a  
10 responsibility to preserve privilege to the greatest extent,  
11 having IT professionals who can provide the same  
12 certifications, who are still within the ambit of the Chief  
13 Defense Counsel's Office provides a much more palatable  
14 alternative, especially where we're in a system where we're  
15 constantly worried about inappropriate intrusions into the  
16 attorney-client relationship. So we -- that's why we push  
17 back on the government's proposed method of procedure in that  
18 regard.

19 But in terms of certifying what their concerns are, I  
20 think there are qualified professionals who can do that and  
21 who can put their name on the dotted line who are still within  
22 the Office of the Chief Defense Counsel and have independent  
23 duties to also preserve confidentiality in terms of the

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1 defense.

2 MJ [COL POHL]: Okay. Mr. Ryan, do you want to be heard  
3 on this? Again, we're not litigating 530 for anybody else.  
4 And I'm not even litigating it now, quite frankly. I'm just  
5 going to see if there's a shortcut for Mr. Hawsawi.

6 Go ahead.

7 TC [MR. RYAN]: It seems to bleed into the argument on the  
8 motion itself, sir. And I prefer to wait and address that at  
9 the appropriate time as to all parties.

10 MJ [COL POHL]: Okay. I tend to agree with that.

11 That being said, the commission is in recess until  
12 0900 tomorrow.

13 [The R.M.C. 803 session recessed at 1437, 5 December 2017.]

14 [END OF PAGE]

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