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1 [The R.M.C. 803 session was called to order at 0900,
2 6 December 2017.]

3 MJ [COL POHL]: The commission is called to order.
4 Trial Counsel, any changes since we recessed
5 yesterday afternoon?

6 CP [BG MARTINS]: Good morning, Your Honor. None for the
7 United States.

8 MJ [COL POHL]: Mr. Nevin?

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

10 MJ [COL POHL]: Ms. Bormann?

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

12 MJ [COL POHL]: Mr. Harrington?

13 LDC [MR. HARRINGTON]: No changes.

14 MJ [COL POHL]: Mr. Connell?

15 LDC [MR. CONNELL]: Your Honor, myself, Alka Pradhan and
16 Major Wareham are present. Colonel Thomas continues to be
17 excused.

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

19 And Mr. Ruiz.

20 LDC [MR. RUIZ]: No changes, Judge.

21 MJ [COL POHL]: And I would note that Mr. Binalshibh is
22 the only detainee who is here.

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

3 **DIRECT EXAMINATION**

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

5 Q. Major, are you the same major that testified
6 yesterday in these proceedings?

7 A. I am.

8 Q. All right. I remind you that you are still under
9 oath.

10 A. I understand.

11 Q. Did you have occasion to meet with four of the
12 detainees this morning?

13 A. I did meet with all of the detainees this morning.

14 Q. All right. Let's take Khalid Shaikh Mohammad first.
15 What time did you talk to him?

16 A. I met Mr. Mohammad and introduced myself, advised him
17 that he had a military commission this morning. He said he
18 understood. I asked him if he would be coming. He indicated
19 that he did not want to go. So I started reading the English
20 version of the statement of understanding at 0625 hours.

21 Q. All right. And did you have an interpreter to
22 interpret what you were telling him?

23 A. I had an interpreter with me. I asked Mr. Mohammad

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1 if he wanted me to read the English version and then have it
2 read in Arabic. He said no, just read the English version.
3 So I read the entire English version, both pages. And then I
4 asked him if he had any questions. He indicated he did not
5 have any questions. I handed him the sheets of paper, and he
6 signed page 2 above the word "Accused."

7 Q. All right. I'm looking at 539C consisting of three
8 pages. I know you said two. The English version consists of
9 two; the Arabic version consists of a single page. There are
10 no annotations on the Arabic page, but a signature appears on
11 the second page. Is that Mr. Mohammad's?

12 A. That is Mr. Mohammad's signature on the second page,
13 and there are three pages to the document that you handed me.

14 Q. Okay. Let's continue now to 539D, again, consisting
15 of three pages. What time did you advise Khalid -- excuse
16 me -- Khallad Bin'Attash?

17 A. Again, I met with Mr. Bin'Attash and introduced
18 myself, advised him that he had a military commission. He
19 also indicated that he understood. I asked him if he would be
20 coming. He indicated he did not want to come. I asked him if
21 he wanted me to read the document in English and then have it
22 translated. He said yes.

23 I started reading the English version at 0611 hours.

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1 He followed along with the Arabic version. And he then handed
2 back the Arabic version, and the Arabic version was then read
3 by the translator. And then he signed the Arabic version,
4 handed it back to me, and I signed the Arabic version at
5 0614 hours.

6 Q. All right. I see a signature that appears on page 3
7 of that document. Is that Mr. Bin'Attash's?

8 A. That is correct.

9 Q. With respect to Ali Abdul Aziz Ali, 539E, consisting
10 of three pages. Did you read it to him in English or in
11 Arabic?

12 A. I asked Mr. Ali if he wanted me to read the English
13 version and have it followed up with the Arabic. He said no,
14 he was fine with just the English version after he told me he
15 didn't want to come to the military commission. So I simply
16 read the English version to him, asked him if he had any
17 questions. He said he did not, and then he asked for the
18 signature page, and he signed page 2.

19 Q. All right. Is that his signature on page 2 of this
20 document?

21 A. That is his signature.

22 Q. With respect to Mustafa al Hawsawi, 539F, again
23 consisting of three pages, English or Arabic?

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1 A. We read both. So I again introduced myself, advised
2 him that he had a military commission. He said he understood.
3 I asked him if he would be coming. He indicated he did not
4 want to come. I read the entire English version to him. He
5 also followed along with Arabic -- in the Arabic version as I
6 read in English, and then he handed the Arabic version to the
7 interpreter.

8 The interpreter read the Arabic version, and then
9 the -- Mr. al Hawsawi filled out the Arabic version, and then
10 he asked for the English signature page. So he actually
11 signed both pages, so I went ahead and signed both pages.

12 Q. With respect to these four individuals, did you
13 deviate from the use of this form ----

14 A. I did not.

15 Q. ---- in any way?

16 A. I did not.

17 Q. All right. Do you believe that they voluntarily
18 waived their right to attend these proceedings?

19 A. I do believe that they voluntarily waived their right
20 to be at the commissions this morning.

21 TC [MR. SWANN]: Your Honor, I have no further questions.

22 MJ [COL POHL]: Mr. Nevin, any questions?

23 LDC [MR. NEVIN]: No.

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1 MJ [COL POHL]: Ms. Bormann?

2 LDC [MS. BORMANN]: Nothing, Judge.

3 MJ [COL POHL]: Mr. Connell?

4 LDC [MR. CONNELL]: Your Honor, same objection to
5 anonymous testimony as yesterday.

6 MJ [COL POHL]: Okay. But no questions?

7 LDC [MR. CONNELL]: Correct, sir.

8 MJ [COL POHL]: Okay. Mr. Ruiz?

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

10 MJ [COL POHL]: Thank you. You are excused.

11 WIT: You're welcome, Judge.

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

13 MJ [COL POHL]: Before we call the witness, there's an
14 issue I want to address that was raised yesterday on the 530
15 pleading, Mr. Connell.

16 Why don't you come up to the podium. I want to
17 make -- it's my understanding that certain documents were
18 submitted for review to be published at the commission.

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

20 MJ [COL POHL]: And after that -- and you give those to
21 the CISOs.

22 LDC [MR. CONNELL]: Sir, it's the trial judiciary mailbox.
23 It's my understanding that that mailbox is monitored by the

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1 CISOs.

2 MJ [COL POHL]: Okay. Okay. Correct. Okay.

3 Then they get them reviewed by whoever is the
4 appropriate review and then they give them back to you; is
5 that correct?

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

7 MJ [COL POHL]: And when you got them back, there was a
8 number of redactions?

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

10 MJ [COL POHL]: Okay. The base document itself, was it
11 classified or unclassified?

12 LDC [MR. CONNELL]: All base documents were unclassified.

13 MJ [COL POHL]: Okay. Were they FOUO?

14 LDC [MR. CONNELL]: Some of them.

15 MJ [COL POHL]: Okay. And the redactions came back and
16 you do not know why they were redacted?

17 LDC [MR. CONNELL]: Some of them ----

18 MJ [COL POHL]: Or do you know why?

19 LDC [MR. CONNELL]: Some of the redactions track with --
20 no, I -- there's been no explanation provided, not that
21 there's normally an explanation. That's not unusual. I have
22 guesses as to why some elements were redacted and no guesses
23 as to other elements.

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1 MJ [COL POHL]: Yeah. And it seems to me is we have to --
2 and the reason why I'm addressing this now is I think this may
3 come up again and again. Because previously most of these
4 documents have been submitted for this review process, we deal
5 with classification issues, and it comes back after a review
6 saying this is classified. Then, you know, it's kind of
7 the -- not necessarily the end of discussion, but at least
8 everybody understands why the redaction was there.

9 You know, we could just discuss back and forth of
10 whether or not something should be classified or not, but
11 that's not the issue.

12 But these aren't classifications of redactions, these
13 appear to be 506 redactions?

14 LDC [MR. CONNELL]: That's a good description, sir. They
15 are certainly not classification redactions.

16 MJ [COL POHL]: Okay.

17 LDC [MR. CONNELL]: What the basis for the redaction --
18 some of them, for example, were just images that I downloaded
19 from Google Images. Why some of them are redacted, I have no
20 idea.

21 MJ [COL POHL]: Okay. So I'm trying to figure out the way
22 ahead on this type of an issue. I don't want to get into the
23 position that the CIS0 talks to the redacting entity unless he

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1 goes back to you, because that's not their role and it's
2 certainly not your role to negotiate with them. But there is
3 somebody who should be responsible for this, and they're
4 sitting right over there.

5 So it strikes to me is the procedure ought to be is
6 that when you get these type of redactions back is that --
7 initially the government does not see these, correct?

8 LDC [MR. CONNELL]: Correct.

9 MJ [COL POHL]: Okay. But they're the only ones in a
10 position to defend the redactions or not defend the
11 redactions. That's kind of what I'm getting to.

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

13 MJ [COL POHL]: Go ahead.

14 LDC [MR. CONNELL]: I have -- my thinking is that in this
15 situation where we have unclassified redactions, that the --
16 in fact, the military commission has already governed this
17 with Protective Order #2. Protective Order #2 provides that,
18 for unclassified documents, additional handling restrictions
19 will not prohibit their use. The use of documents in court,
20 for example, FOUO documents can be used in court. You know,
21 some other types of handling restrictions that are less common
22 come up.

23 And I think our position is that the review by the

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1 OCAs should be only for inadvertent inclusion of classified
2 information or mosaic inclusion of classified information.
3 And as long as it's unclassified, they should be able to be
4 used in court; that there should not be additional security or
5 content restrictions placed by people who are not in a
6 position to come in and defend their actions once the material
7 has been determined to be unclassified.

8 MJ [COL POHL]: Okay. Hold that thought.

9 Trial Counsel, what's your view of this? Again,
10 we're not going to go to the merits of 530 or anything like
11 this. I'm simply talking about procedure to handle redactions
12 of unclassified material and what recourse the submitter has
13 to challenge said redactions when the submitter has no idea
14 why the redactions are -- or speculate why the redactions are
15 made.

16 MTC [MR. TRIVETT]: So if we take it back a step, sir,
17 there's two types of evidence that comes into this court for
18 whatever reason: There's the evidence that was generated from
19 the discovery that the prosecution gave the defense, and then
20 there's either defense presentations or some other evidence
21 that they may have independent of the government.

22 When the government provides something, we have an
23 affirmative duty to put it through a classification review

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1 process before it goes to the defense. So if there is a
2 marking on it, if it comes back unclassified, they can use it
3 in court however they want to use it. If it comes back FOUO,
4 they can use it in court however they want to use it because
5 the use in court is the official use.

6 It's only when we provide something that has a
7 specific NOT RELEASABLE TO THE DETAINEE or NOT RELEASABLE TO
8 THE PUBLIC, which is maybe not 100 percent of the time but the
9 overwhelming majority of the time, it is information dealing
10 with force protection and security of the camp and the
11 detainees. So that's the one section.

12 Everything that goes through that process, though,
13 once it has a Bates stamp and once we provide it to the
14 defense, we see no need for it to go through an additional
15 classification review before it's used in court. It's
16 extremely inefficient to do it that way. They've already
17 looked at it, we make sure that anyone ----

18 MJ [COL POHL]: I've got that. But I think in this
19 particular case, as I recall, it was a government pleading
20 marked FOUO//NOT RELEASABLE TO THE PUBLIC OR THE DETAINEE.

21 LDC [MR. CONNELL]: Sir, if I can have just a moment. I
22 can orient Mr. Trivett, and he won't be acting in a vacuum.

23 MJ [COL POHL]: Okay. Go ahead. Yeah. I don't know what

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1 they've seen or not. If other defense counsel want to be
2 oriented, too, help yourself.

3 [Pause.]

4 You know, I understand, I just kind of raised this
5 myself sua sponte. We don't need to address it right now if
6 people need time to digest the issue.

7 LDC [MR. CONNELL]: Your Honor, I am prepared, and I just
8 gave a copy of the example that you just gave to the
9 prosecution. We're distributing it to the defense. If I
10 could approach, I'll have it marked so we all know -- and then
11 you will be looking at the same thing.

12 MJ [COL POHL]: Okay. Again, just to be clear, we're
13 simply talking about a procedure for handling this situation.
14 I'm not talking the merits of 530 or anything else, so ----

15 LDC [MR. CONNELL]: I understand completely, sir.

16 MJ [COL POHL]: Okay.

17 [Pause.]

18 LDC [MR. CONNELL]: Sir, I'm sorry.

19 MJ [COL POHL]: Go ahead.

20 LDC [MR. CONNELL]: Sir, I have provided to the parties
21 and the military commission two documents. One of them is
22 marked AE 530Z (AAA). AE 530Z is two pages out of the
23 government filing 149C. Those -- in 149C, it has a lot of

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1 attachments, but it is the PDF page 33. It's not marked
2 page 33, but PDF page 33, and PDF page 102.

3 This is actually an example of what the military
4 commission brought up yesterday and asked me not to get
5 excited about, which was that when we submitted 149C for
6 review, the CISO asked us if we could particularize what pages
7 we wanted to use out of it, and so we told them page 33 and
8 page 102. And that's what these are. And so 530Z is actually
9 already in the record as part of 149C.

10 MJ [COL POHL]: Okay.

11 LDC [MR. CONNELL]: 530AA (AAA) is the version of these
12 two pages that we received back from the review process after
13 submitting them through the CISO for review.

14 The original document in 149C is UNCLASSIFIED//FOUO.
15 The two pages that we submitted in -- documented in 530Z are
16 UNCLASSIFIED//FOUO, and there's no classification issue here.

17 MJ [COL POHL]: Okay. You've paused now.

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

19 MJ [COL POHL]: And so the issue I see is -- and this is
20 what I want to just clarify for my own knowledge, is that you
21 have 530Z FOUO nonclassified. And these are documents from
22 2010, so -- and then the redacted version you come after
23 review has got all these redactions in the two pages, and it's

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1 not a classification redaction, so it's a redaction for
2 another reason.

3 LDC [MR. CONNELL]: Yes, sir. And I don't know what that
4 other reason is.

5 MJ [COL POHL]: You don't know what that other reason is,
6 and so you're not in a position to challenge it -- well,
7 you're in the position to challenge it ----

8 LDC [MR. CONNELL]: I'm in a position to challenge it but
9 perhaps not as intelligently as I should.

10 But more, you know, significantly from my point of
11 view and on this particular document, the parts that are
12 redacted are the parts that I want to present to the military
13 commission. They're the parts that I want to talk about. So
14 the redactions are not just -- you know, there's a redaction
15 in here for an e-mail address, and I suppose one could argue
16 back and forth whether e-mail addresses are PII. But the
17 significant part, the settings that are described, the laptop
18 BIOS settings that are described here are the substance of the
19 argument around 530F. So yes, it is important to us to be
20 able to display and argue those, that material.

21 MJ [COL POHL]: Okay. Okay. Trial Counsel, the question
22 is that -- and we're talking about documents here that are
23 submitted for display, correct?

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

2 MJ [COL POHL]: Mr. Connell submits a document for
3 display, and it comes back with redactions that are not -- not
4 505 redactions, they're not classification redactions, so
5 they're a redaction for another reason. We can infer it's for
6 the -- I think the PO 14 [sic], Protective Order ----

7 MTC [MR. TRIVETT]: Protective Order #2, sir.

8 MJ [COL POHL]: ---- #2 ----

9 LDC [MR. CONNELL]: 014H.

10 MJ [COL POHL]: Yeah. And/or 506. But this comes back to
11 an issue that came up before when Mr. Connell submitted a
12 whole stack of stuff, and I said I'm not going to go read all
13 of that to find out what's relevant. And he said no, here's
14 what we're talking about.

15 So the question becomes: If Mr. Connell or any
16 defense counsel get this response back, what's the way ahead
17 so we can -- if he wants to challenge it?

18 MTC [MR. TRIVETT]: Sure.

19 MJ [COL POHL]: I mean, obviously, it's not that -- I
20 don't want him negotiating through the CISOs to the OCAs.
21 That's why I said there is somebody here who should be in the
22 position to defend the redactions.

23 MTC [MR. TRIVETT]: Yes, sir.

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1 MJ [COL POHL]: And that would be you guys.

2 MTC [MR. TRIVETT]: Right. And we're currently not
3 because we're walled off from it. And this is the first I've
4 seen of it, so ----

5 MJ [COL POHL]: No, I understand that. And that's why I'm
6 raising the issue.

7 MTC [MR. TRIVETT]: Right. What I will say is that there
8 appears to be an inconsistency between how it was marked by
9 the OCAs when we provided it and then how it then came back to
10 Mr. Connell, in that the for public release caveat, where
11 there was no caveat put forth in ours that said no release to
12 the public, no release to the detainee. So it does seem
13 inconsistent. We have had the opportunity to go back.

14 What I can say is this issue is evolving, the laptop
15 issue specifically. And there might be more information
16 that's being learned by the government that they put together
17 and are concerned about from a security or force protection
18 standpoint, letting this information out to the public. I
19 don't know that for sure, but I do know that the issue with
20 the laptops is evolving. That may have caused the
21 inconsistency.

22 But at this point, I think the process is once he
23 goes through the walled-off review, if he comes back with

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1 something he believes is inconsistent with something that we
2 provided and marked, then we'll take it back and we'll
3 adjudicate it and figure out the way forward. Maybe we assert
4 506, maybe we don't. But until I speak to the people and
5 understand exactly what the concern was, it's very difficult
6 for me to do that.

7 MJ [COL POHL]: Okay. So let me -- let me back up because
8 I'm trying to make sure we get this straight.

9 The 530Z, Mr. Connell, was provided to you in
10 discovery?

11 LDC [MR. CONNELL]: Sir, it was a filing with the military
12 commission, 149C. So it ----

13 MJ [COL POHL]: Who filed it?

14 LDC [MR. CONNELL]: The government.

15 MJ [COL POHL]: Okay. So the government files a
16 document -- and, Mr. Trivett, we need to resolve this kind of
17 inconsistency ----

18 MTC [MR. TRIVETT]: Sure.

19 MJ [COL POHL]: ---- because all this will slow things
20 down.

21 The government files a document that says FOR
22 OFFICIAL USE ONLY. Mr. Connell, following the rules of court,
23 submits the same exact document for pre-publication review,

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1 for want of a better term, okay? And then it comes back, and
2 all of a sudden it has all these redactions, which strikes to
3 me is that -- now we're depending on who is looking at the
4 piece of paper. Okay.

5 LDC [MR. CONNELL]: I'm sorry.

6 MJ [COL POHL]: So we don't need to resolve it right now,
7 but what I'm simply saying is if the government provides a
8 piece of paper to the defense with a Bates stamp on it ----

9 MTC [MR. TRIVETT]: Right.

10 MJ [COL POHL]: ---- that doesn't say anything other than
11 FOR OFFICIAL USE ONLY, has no other limitations on it, why
12 does the government, when they look at it again, say oh, now
13 we've got a problem with it?

14 MTC [MR. TRIVETT]: I'm with you, sir.

15 MJ [COL POHL]: Okay. Good. Okay. So ----

16 MTC [MR. TRIVETT]: We'll take it back and figure it out.
17 But that's my understanding as well, is they get their one
18 opportunity. If they have concerns about it going to the
19 public or the detainee, it comes up at the beginning. Then we
20 don't run into this problem.

21 MJ [COL POHL]: Okay.

22 LDC [MR. CONNELL]: I have one more wrinkle on this, which
23 is something that the government raised at the beginning of

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1 its comments, which is that this document, for example, is
2 easy to do it this way, because this was a government
3 pleading. There's no chance -- there's no question of
4 privilege or attorney thought process or anything else.

5 The slides, on the other hand, which sometimes I
6 choose to use and sometimes I choose not to use ----

7 MJ [COL POHL]: Uh-huh.

8 LDC [MR. CONNELL]: ---- are a different situation
9 because, as I've said before, we should not have to provide an
10 outline of our argument to the government in advance.

11 The -- so I do agree. I appreciate the government's
12 willingness to go and look at this issue. And this is a good
13 example because there's no question of privilege. But the
14 slides are a different situation, in that they're privileged
15 until I choose to use them; or if I choose not to use them,
16 they remain privileged.

17 MJ [COL POHL]: Okay.

18 LDC [MR. CONNELL]: So I think we are in a different
19 situation on pure work product like slides. Now, it may be
20 that -- I completely understand what the military commission
21 is saying. It is not the CISO's role to carry offers of
22 compromise and who knows what back and forth between me and
23 the OCA. But perhaps the OCA could be -- an OCA could be a

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1 little more transparent.

2 What they do in the classification review situation
3 is -- is that the OSS operates as a contact person to the OCA.
4 We never meet with them directly, but they do sometimes send
5 us questions; what does this mean? You know, there is a
6 more -- there is a slightly -- ever so slightly more
7 transparent route that we can try to work out problems like
8 this.

9 I don't know that's a very good solution; I'm not
10 claiming that it is.

11 MJ [COL POHL]: Well, of course, understanding that the --
12 unlike the 505 process, I'm not sure I'm necessarily bound by
13 the OCA's determination on non-505 redactions.

14 LDC [MR. CONNELL]: I agree, sir. And that's where I
15 began with the Protective Order #2. I think Protective
16 Order #2 says that we can use FOUO information and general
17 discovery in court.

18 If there was as force protection -- like if there was
19 a true -- if this had been designated special discovery under
20 Protective Order #2, we would be in a different situation and
21 I would be much more willing to defer. But these sort of
22 redactions which seem to unconnected to any classification
23 concern I think simply do not bind us under Protective

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1 Order #2.

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

3 LDC [MR. CONNELL]: Thank you.

4 MJ [COL POHL]: And again, I'm just trying to address this
5 issue now to hopefully avoid a long discussion later so
6 there's no confusion.

7 That being said, we're ready for the witness?

8 MTC [MR. TRIVETT]: Yes, sir.

9 MJ [COL POHL]: Go ahead.

10 MTC [MR. TRIVETT]: The United States calls retired FBI
11 Special Agent Abigail Perkins to the stand.

12 CP [BG MARTINS]: Ma'am, can you please proceed to the
13 witness stand, remain standing, and raise your right hand for
14 the oath.

15 **ABIGAIL PERKINS, civilian, was called as a witness for the**
16 **prosecution, was sworn, and testified as follows:**

17 **DIRECT EXAMINATION**

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

19 Q. Can you please state your full name.

20 A. Abigail Lee Perkins.

21 **Questions by the Managing Trial Counsel [MR. TRIVETT]:**

22 Q. Good morning, Ms. Perkins.

23 A. Good morning.

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1 Q. Where are you currently employed?

2 A. I work as a contractor behavioral analyst at the
3 Department of Energy.

4 Q. What is your educational background?

5 A. I have a bachelor of science in political science, a
6 B.S. in political science and I have a law degree.

7 Q. Where did you get your law degree?

8 A. The College of William and Mary.

9 Q. Did you previously work for the FBI?

10 A. I did.

11 Q. And where was your last duty station?

12 A. In Boston, Massachusetts.

13 Q. When did you first join the FBI?

14 A. In 1995, July of 1995.

15 Q. What was the initial work that you did when you
16 worked as a special agent in the FBI?

17 A. I was originally assigned to the New York Office and
18 worked counterterrorism.

19 Q. Did you have a specialty in the counterterrorism that
20 you worked?

21 A. Initially I worked the Irish Republican Army for a
22 number of years. And when the attacks happened in August of
23 1998, I began working the al Qaeda terrorism and proceeded

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1 through 9/11 working al Qaeda counterterrorism.

2 Q. And you recently retired from the FBI?

3 A. I did.

4 Q. And how long was your career total at the FBI?

5 A. 22 years.

6 Q. So what were the different positions that you held
7 while you worked at the FBI?

8 A. Special agent, supervisory special agent, and I
9 retired as an assistant special agent in charge.

10 Q. What would you say your primary focus was as an FBI
11 agent during your over-20-year career?

12 A. Predominantly working counterterrorism.

13 Q. How long would you say that you worked in terrorism
14 matters related to those 20 -- over 20 years?

15 A. Probably 16.

16 Q. And of those 16 years, were the majority of the time
17 spent on focusing on al Qaeda?

18 A. They were.

19 Q. Now, Special Agent Perkins, do you speak any Arabic?

20 A. I do not.

21 Q. As part of your investigations while at the FBI, did
22 you have to become familiar with certain Arabic words and
23 phrases that commonly come up in terrorism investigations?

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1 A. I did.

2 Q. As part of your investigation and background, did you
3 come to learn the structure and organization of the al Qaeda
4 terrorist network?

5 A. I did.

6 Q. I want to bring you back to 7 August 1998 in your FBI
7 career. To what squad were you assigned on that day?

8 A. I was assigned to the Irish Terrorism Squad, it was
9 called I-48.

10 Q. And as part of your duties as an FBI agent, did you
11 become aware of two separate incidents that occurred on
12 August 7, 1998, at the United States embassies in Kenya and
13 Tanzania?

14 A. I did.

15 Q. And what occurred on those days?

16 A. There were two near-simultaneous truck bombings of
17 the embassies; one in Nairobi, Kenya, and one in
18 Dar es Salaam, Tanzania.

19 Q. Were you assigned to the investigation of these
20 bombings?

21 A. I was.

22 Q. Can you explain to the commission how -- strike that.
23 Did you go to Africa to investigate these bombings?

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1 A. I did.

2 Q. Can you explain to the commission how that occurred?

3 A. So after the bombings happened, a large number of
4 agents got together and were requested to get shots and be
5 ready to deploy to respond to the bombing from the New York
6 Office as well as the Washington Field Office. So as part of
7 the New York contingent, we took a military flight that
8 Saturday and arrived on Sunday, August 9, and went straight to
9 the embassy site in Nairobi.

10 Q. So how long after the point in time where the bomb
11 was detonated were you on the ground in Nairobi?

12 A. The military flight was about 15, 16 straight hours.
13 So we were on the ground, I want to say, that morning, early
14 afternoon.

15 Q. Now, approximately how many FBI personnel were sent
16 to Africa to investigate these attacks?

17 A. There were -- initially hundreds would have been
18 deployed to both sites. So you had evidence response teams,
19 you had investigators, you had SWAT personnel, you had
20 victim/witness personnel, so there were a large number of
21 people initially deployed to both embassy bombings.

22 Q. What was your initial role in the investigation when
23 you arrived?

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1 A. I was just one of the investigators.

2 Q. As just one of the investigators, what does that role
3 entail?

4 A. Still attempting to identify who, what, when, where,
5 how. So my job was to link up with -- we had -- we partnered
6 up with the Kenyan CID, and we would have gone out and
7 interviewed witnesses, collected evidence, followed up on
8 leads, contacted media, obtained videos; any number of things
9 to work to identify the culprits.

10 Q. And did you consider yourself part of the I-45 squad
11 when you were doing this?

12 A. Initially, yes.

13 Q. Was there an I-49 squad as well?

14 A. There was.

15 Q. And do you know what that squad was responsible for
16 investigating?

17 A. Predominantly investigating Usama bin Laden and
18 al Qaeda.

19 Q. And did the I-49 squad work on the ground in Africa
20 as well?

21 A. They did.

22 Q. Now, at some point did your role as a case
23 investigator change?

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1 A. It did.

2 Q. And what role did you take on?

3 A. I was asked to become one of the lead investigators,
4 so the case -- one of the case leads.

5 Q. Is that also sometimes called a case agent?

6 A. It is.

7 Q. And can you explain to the commission how a case
8 agent is different from your initial role as an investigator?

9 A. So as a case agent, you are leading and directing the
10 investigation. You're responsible for all aspects of the
11 investigation, anything that needs to be done. And so you are
12 directing those case investigators for what their job is.
13 You're responsible for everything to make the case.

14 Q. And how many case agents were assigned to the
15 bombings?

16 A. There were three case agents assigned to Nairobi and
17 three case agents assigned to Tanzania.

18 Q. How many days would you say you spent in Africa
19 investigating those attacks?

20 A. We would deploy for 30 to 45 days, come back for two
21 weeks, deploy again. So many months.

22 Q. Can you describe for the commission the scene at the
23 embassy in Kenya when you arrived the day after the attacks?

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1 A. So as I said, we landed at the airport, went directly
2 to the embassy grounds. And at the site, the embassy -- the
3 back of the embassy had sustained the bulk of the destruction.
4 There was a four-story secretarial college just behind the
5 embassy, between the embassy and a very tall high-rise. That
6 building in between those two buildings had suffered the most
7 damage. It was in rubble.

8 And so when we arrived, they were still continuing --
9 even up to a week later but certainly on that day, they were
10 attempting recovery efforts of individuals that they were
11 still recovering from that rubble.

12 Q. Did they recover any individuals who were still alive
13 well after the attacks?

14 A. They did.

15 Q. And did the FBI investigation reveal how much
16 explosive was used in the bombs in Kenya and Tanzania?

17 A. Between the two bombs, the investigation revealed
18 about five tons.

19 Q. That's approximately 10,000 pounds of TNT?

20 A. Yes.

21 Q. So how did you begin your investigation once you were
22 on the ground in Kenya?

23 A. After we reviewed the damage to the embassy, we all

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1 went into a command post, and they started defining the duties
2 for who was going to cover what leads. So information is
3 coming in. You set up a command post. Information comes in.

4 As you're developing the investigation, you would
5 then be directed to go out and cover any number of particular
6 leads related to, again, identifying the suspects. We were
7 certainly attempting to identify the vehicle, who purchased
8 the vehicle. The evidence would then lead us to the
9 individuals who had put together the bombing, the locations
10 where they would have put it together. We're looking to cover
11 and determine all of that information.

12 Q. And ultimately did you take any suspects into
13 custody?

14 A. We did.

15 Q. And how many were initially arrested?

16 A. So initially there were -- there were two. There was
17 an individual that was arrested in Pakistan by the name of
18 Mohammed Saddiq Odeh that was detained there and returned back
19 to Nairobi, Kenya. And within the first -- I think it was
20 within the first ten days, we had another lead on an
21 individual that had appeared suspicious to others. And
22 someone had called in to our command post, and we were able to
23 arrest that individual. The Kenyans were able to arrest that

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1 individual as well. His name was Mohamed Rashed Daoud
2 Al-Owhali.

3 Q. So did those suspects ultimately get extradited to
4 America for trial?

5 A. They both did.

6 Q. And where did that trial occur?

7 A. In the Southern District of New York.

8 Q. Now, as part of your investigation, did you keep
9 apprised of what the other agents who were working on the
10 investigation were uncovering?

11 A. I did.

12 Q. And are you aware of how many people were ultimately
13 killed in the attack on the U.S. Embassy in Kenya?

14 A. In Kenya, there were 213 individuals killed.

15 Q. Are you aware of how many people were killed in the
16 attack on the U.S. Embassy in Tanzania?

17 A. There were 11 individuals killed.

18 Q. So how many total between the two embassies were
19 killed on August 7th, 1998?

20 A. 224 people.

21 Q. Did the FBI investigation reveal how long the
22 planning had occurred for the embassy attacks?

23 A. There were indications from an individual who

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1 cooperated that the surveillance of the embassy in Nairobi had
2 been conducted in 1993, so as early as 1993.

3 Q. Now, as part of your personal investigation, did you
4 go to both of the crime scenes at the embassies in Kenya and
5 Tanzania?

6 A. I did.

7 Q. Now, as part of the investigation, would the FBI have
8 gathered all of the known videotapes of the aftermath of the
9 attacks as part of the investigation?

10 A. We would.

11 Q. Are you aware of whether anyone took video of the
12 immediate aftermath of the attacks?

13 A. I am.

14 MTC [MR. TRIVETT]: At this point, I would ask for the
15 feed from Table 3.

16 Q. Now, for Appellate Exhibit 502SS (Gov)
17 Attachment TTT, did you have an opportunity to review a video
18 of the Kenya -- the aftermath of the Kenya bombings before
19 coming into court today?

20 A. I did.

21 Q. Okay. And what does it depict?

22 A. It depicts the immediate aftermath of the bombings.
23 It depicts the rubble and the recovery efforts.

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1 Q. Okay. And was video played during the East Africa
2 Embassy Bombings trial?

3 A. It was.

4 Q. Does it fairly and accurately represent the United
5 States Embassy in Kenya shortly after it was attacked?

6 A. It does.

7 MTC [MR. TRIVETT]: Okay. Your Honor, I'd like to play
8 this video now. It's 2 minutes and 46 seconds.

9 MJ [COL POHL]: Go ahead.

10 MTC [MR. TRIVETT]: I'd ask that it be displayed to the
11 witness ----

12 MJ [COL POHL]: Go ahead.

13 MTC [MR. TRIVETT]: ---- and counsel table.

14 [Video from 502SS (Gov) Attachment TTT played.]

15 Q. Special Agent Perkins, did you have an opportunity to
16 review Appellate Exhibit 502SS (Gov) Attachment VVV, which is
17 a videotape of the other embassy attack before coming into
18 court today?

19 A. I did.

20 Q. And how was it obtained by the FBI?

21 A. It again would have been obtained -- any video of the
22 aftermath would have been obtained by the FBI for
23 investigative purposes.

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1 Q. Was this video also played in the East Africa embassy
2 trial in the Southern District of New York?

3 A. It was.

4 Q. And when did you get to Tanzania as part of your
5 investigation?

6 A. So I initially deployed to Nairobi, spent some time
7 in Mombasa, Kenya, which was a place where the two groups that
8 had carried out both attacks would meet; left there probably
9 the latter part of September, first part of October, and went
10 down to Tanzania.

11 Q. Now, was the destruction of the embassy in Tanzania
12 that is depicted in the video that you viewed before coming
13 into court today consistent with the destruction you saw when
14 you arrived at the embassy?

15 A. So by the time I had arrived at the embassy, a lot of
16 the debris had been cleaned up, certainly any of -- the body
17 and the recovery effort had already been completed. So it
18 would have been a cleaner version of the site, but the damage
19 to the embassy itself would have remained the same.

20 Q. So does that video that you reviewed fairly and
21 accurately represent the United States Embassy in Tanzania
22 shortly after it was attacked?

23 A. It does.

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1 MTC [MR. TRIVETT]: Your Honor, at this time I would ask
2 to play that video.

3 MJ [COL POHL]: Go ahead.

4 [Video from 502SS (Gov) Attachment VVV played.]

5 Q. Special Agent Perkins, can you explain what the FBI
6 investigation revealed about how the attack in Tanzania
7 occurred?

8 A. It was a refrigeration truck that had been -- a bomb
9 had been built on the inside of it, so it was a truck bomb
10 suicide, a single suicide driver.

11 Q. And was it also a single suicide driver for the
12 Nairobi attack?

13 A. It was not.

14 Q. And how did the Nairobi attack occur?

15 A. The Nairobi attack was similarly -- it was a truck.
16 It was an enclosed cargo truck. And there were two suicide --
17 two purported suicide drivers, one driving the truck and a
18 passenger in the truck, only one of whom actually died that
19 day.

20 Q. Switching gears for a second back to the Tanzania
21 bombing -- strike that.

22 You mentioned you spent some time in Mombasa, Africa,
23 as part of your investigation?

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1 A. I did.

2 Q. Why did the FBI investigation in Kenya lead to
3 follow-on investigation in Mombasa?

4 A. There were a number of individuals that had been
5 identified during the course of the investigation in Nairobi
6 that took us to Mombasa. These were individuals that lived
7 there, got married there. So that's what led us to the
8 Mombasa area, again, the place where they assisted in
9 coordinating the attacks between the two countries.

10 Q. Now, as part of the investigation, did any group
11 claim credit for the attacks on the United States Embassy in
12 Kenya?

13 A. They did.

14 Q. I'm now showing the military judge and the witness
15 what has been marked as Appellate Exhibit 502SS (Gov) UUU.
16 Let me know when that comes up on your screen, please.

17 A. Yes.

18 Q. Special Agent, do you recognize this document?

19 A. I do.

20 Q. And what do you recognize this document as?

21 A. This is the claim of responsibility for the Nairobi
22 bombing.

23 Q. Based on your investigation, do you believe that this

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1 was sent by individuals associated with al Qaeda?

2 A. I do.

3 Q. Okay. I'm going to call out a certain part of that.
4 Can you read the first and second sentence, please?

5 A. "The Islamic Army for Liberation of the Holy Places
6 claims responsibility for the bombing in Nairobi, under the
7 name of 'The Holy Ka'ba operation.' The operation was carried
8 out by two men from the blessed Mecca, who are members of the
9 Martyr Khalid Al-Saeed Company of the Second Battalion for the
10 Liberation of the Holy Kaaba."

11 Q. Now, did the FBI investigation reveal where the two
12 passengers in the truck bomb were actually from?

13 A. It did.

14 Q. And where were they from?

15 A. They were from Saudi Arabia.

16 Q. And where is Mecca located?

17 A. In Saudi Arabia.

18 MTC [MR. TRIVETT]: I'm just going to ask a little
19 guidance from the commission on this. We certainly have
20 exhibits where the witness is going to mark things, and we're
21 going to ask that those be created -- that sub-exhibits be
22 created for that. But for something like a call-out, do we
23 want to do a sub-exhibit or do we just want to ----

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1 MJ [COL POHL]: No. It's clear what it is. That's fine.

2 MTC [MR. TRIVETT]: Thank you, sir.

3 Q. I'm now showing the military judge and the witness
4 what has been marked as Appellate Exhibit ----

5 MJ [COL POHL]: Just a second.

6 Apparently there's a cell phone in the room.

7 MTC [MR. TRIVETT]: Okay, sir. It's not mine.

8 MJ [COL POHL]: Okay. We'll take a -- I'm only going to
9 do this once. We're going to take a 15-minute recess, an
10 early mid-morning recess.

11 Check your cell phones. This is not the first time
12 this has happened. I'm not asking who has it, but I want
13 everybody to check because if this comes up again, there's
14 another way of doing this, and I don't want to do it if I
15 don't have to.

16 Commission is in recess.

17 [The R.M.C. 803 session recessed at 0947, 6 December 2017.]

18 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1004,
2 6 December 2017.]

3 MJ [COL POHL]: Commission is called to order. Are there
4 any changes? Apparently not.

5 Mr. Trivett, please recall the witness.

6 MTC [MR. TRIVETT]: Government would recall retired
7 Special Agent Abigail Perkins to the stand.

8 [Abigail Perkins resumed her seat on the witness stand.]

9 MJ [COL POHL]: Ms. Perkins, I remind you you are still
10 under oath.

11 WIT: Yes, sir.

12 MJ [COL POHL]: Thank you. Mr. Trivett.

13 MTC [MR. TRIVETT]: Thank you, sir.

14 **DIRECT EXAMINATION CONTINUED**

15 **Questions by the Managing Trial Counsel [MR. TRIVETT]:**

16 Q. Special Agent Perkins, of the 224 people that were
17 killed, do you know the number that were American?

18 A. I do.

19 Q. What was that number?

20 A. 12.

21 Q. I'm now showing the witness and military judge what
22 has been marked as Appellate Exhibit 502SS (Gov) WWW.

23 Special Agent, do you recognize this document?

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1 A. I do.

2 Q. And what do you recognize this document as?

3 A. This is the claim of responsibility for the bombing
4 in Tanzania.

5 Q. I'm going to call out a certain section.

6 MJ [COL POHL]: You can put it on the big screen.

7 MTC [MR. TRIVETT]: Thank you.

8 MJ [COL POHL]: Go ahead.

9 Q. Can you read the first two sentences of this claim of
10 responsibility, please?

11 A. "The Islamic Army for the Liberation of the Holy
12 Places claims responsibility for the bombing in Tanzania,
13 under the name of 'Al-Aqsa Mosque operation.' The operation
14 was carried out by a man from the land of Kinana (Egypt), who
15 is a member of the Martyr Abdullah Azzam company, of the
16 Seventh Battalion for the Liberation of Al-Aqsa Mosque."

17 Q. Did the FBI investigation reveal that the driver of
18 the truck was, in fact, from Egypt?

19 A. It did.

20 Q. Do you see the term "The Islamic Army for the
21 Liberation of the Holy Places"?

22 A. I do.

23 Q. And are you aware of whether that name is listed by

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1 the State Department as an alias for al Qaeda and its foreign
2 terrorist organization ----

3 A. It is.

4 Q. ---- determination? Thanks.

5 How did the FBI obtain these documents?

6 A. So we would have gotten them from where they were
7 published.

8 Q. Were the individuals who sent these documents ever
9 prosecuted?

10 A. They were.

11 Q. And were they prosecuted under the same indictment as
12 Usama bin Laden and the others who attacked the embassies?

13 A. Yes.

14 Q. Is the name Islamic Army for the Liberation of the
15 Two Holy Places also listed in that indictment as being part
16 of Usama bin Laden's group?

17 A. It was.

18 Q. Did the indictment allege that the bombings were
19 conducted on behalf of Usama bin Laden's organization?

20 A. That's correct.

21 Q. Now, from your investigation, did it appear that the
22 civilians -- that civilians were specifically targeted in
23 these attacks?

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1 A. Yes.

2 Q. Did the investigation reveal if the bombers were
3 wearing military uniforms?

4 A. So the investigation revealed the passenger in the
5 bomb truck for the Nairobi bombing actually survived, and so
6 the clothing he was wearing was civilian clothing. The two
7 suicide bombers, nothing was recovered from their bodies,
8 so ----

9 Q. Did the investigation reveal how it was that that
10 individual was able to survive the attacks?

11 A. It did.

12 Q. And how was he able to survive the attacks?

13 A. So his role at the time of the Nairobi bombing was
14 to -- as the truck pulled up to the back of the embassy, he
15 was to get out of the truck. He was to have a gun as well as
16 some small explosives on a belt. He was to get out, approach
17 the guard, throw the explosives or threaten with the weapon so
18 that they could get the truck as close to the back of the
19 embassy as possible.

20 When he got out of the vehicle, he had taken his coat
21 off. The gun was in the coat. He threw a couple of -- I'll
22 call them flash bangs. The guard ran off. And he perceived
23 at that point that his job had been completed, so that if he

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1 died at that point, that he would not die as a martyr. So he
2 ran away, ran around the corner of the building, and the
3 driver of the truck initiated the bombing. So he survived.

4 Q. Now, were the bombs in either the Kenya operation or
5 the Tanzania operation visible to anybody who may have been
6 looking at the trucks?

7 A. They were not. Both trucks were completely enclosed.

8 Q. And can you describe how those trucks were created?

9 A. So the truck in Nairobi was a cargo truck, so -- it
10 was an enclosed cargo truck, nondescript.

11 The truck that was used in Tanzania was a converted
12 refrigeration truck. So again, a square box that was white or
13 beige, yellow, whitish in color. And there was nothing on it
14 to indicate from the outside observation that there was a bomb
15 contained within those -- either of those two trucks.

16 Q. Did the FBI investigation reveal whether the attack
17 went as planned in Tanzania?

18 A. Well, the attack itself -- when the truck came in, it
19 was met by a water truck that -- they use water at the embassy
20 to service the residences around the embassy. So as the water
21 truck was departing from the embassy with a full load of water
22 for delivery, it met the bomb truck. And so when the
23 explosion went off, it really contained the explosion to

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1 the -- to that one end of the embassy building that you can
2 see in the photographs in the video because the explosion was
3 pushed up.

4 So it did divert the degree of the damage from that
5 bombing because those two trucks met.

6 Q. So was the bomb that was used in Tanzania actually
7 capable of producing more destruction to the embassy than it
8 ultimately did?

9 A. It was.

10 Q. Now, are you aware of whether or not the U.S.
11 retaliated for those attacks?

12 A. They did.

13 Q. And do you know specifically who the U.S. retaliated
14 against?

15 A. It was a response with missiles that were sent into
16 the Al-Shifa pharmaceutical plant in the Sudan as well as
17 missiles that were targeting training camps in Afghanistan.

18 Q. Where were you at the time of those missile strikes?

19 A. I was in downtown Nairobi having dinner.

20 Q. And who were you with from the FBI?

21 A. There were other FBI agents having dinner with me.
22 And Director Freeh, our director at the time, had actually
23 come to visit the investigators on the ground and touch base

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1 with everyone. So he was also on the ground; not at dinner
2 with me, but he was there in Nairobi.

3 Q. Did anyone from the FBI know that those missile
4 strikes were about to occur?

5 A. Not that I'm aware of.

6 Q. What was the reaction of the FBI personnel on the
7 ground in Africa after those missile strikes?

8 A. We felt very vulnerable that we were in downtown
9 Nairobi so we immediately responded back to the embassy where
10 a decision was made to extricate most of the team out of the
11 country and leave a very small contingent behind.

12 Q. So are you aware of the total number of people who
13 were indicted and tried for the attacks on the U.S. embassies
14 in Africa?

15 A. There would have been more than 20.

16 Q. And Usama bin Laden was part of that indictment?

17 A. He was.

18 Q. He was a named co-conspirator in that indictment?

19 A. He was.

20 Q. Are you aware of the names of the individuals who
21 were indicted and then tried for their roles in the East
22 Africa embassy bombings attacks?

23 A. Yes.

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1 Q. What are their names?

2 A. An individual by the name of Mohammed Saddiq Odeh.
3 Walid al Hajj, Khalfan Khamis Mohamed, Mohamed Rashed Daoud
4 Al-Owhali that was in the trial in 2001. There was a
5 subsequent trial of an East Africa co-conspirator in 2010 in
6 the Southern District of New York and that was a trial of
7 Ahmed Khalfan Ghailani.

8 Q. And were you present for any of these trials?

9 A. For both of them.

10 Q. Were all of those individuals convicted for their
11 involvement in the attacks on the embassies in Kenya and
12 Tanzania?

13 A. They were.

14 Q. I'm now showing the witness what has been marked as
15 Appellate Exhibit 502SS (Gov) Attachment XXXX. Do you
16 recognize the individuals in this picture?

17 A. I do.

18 Q. And who are they?

19 A. The upper left-hand is Mohammed Saddiq Odeh. To his
20 right is Walid al Hajj. The bottom left-hand corner is
21 Khalfan Khamis Mohamed. And to the right is Mohamed Rashed
22 Daoud Al-Owhali.

23 Q. Are those the four individuals that you just

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1 described?

2 A. They are.

3 Q. And I believe you testified that the trial was held
4 in early 2001 for those four individuals?

5 A. Yes.

6 Q. Was there a later trial when individuals were
7 convicted of sending the faxes of responsibility?

8 A. There were.

9 Q. I want to shift gears a little bit. On your first
10 day working the embassy bombing investigations, were you
11 personally aware of who Usama bin Laden was?

12 A. I was not.

13 Q. On your first day working the embassy bombings
14 investigations, were you personally aware of what al Qaeda
15 was?

16 A. I was not.

17 Q. At what point in the investigation did Usama bin
18 Laden become a suspect?

19 A. So early on in the investigation, we were given
20 photographs. There were individuals that had worked Usama bin
21 Laden; and, in fact, he had been indicted in a sealed
22 indictment prior to the attacks happening. So there were
23 individuals that were aware of Usama bin Laden, it just wasn't

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1 me.

2 They had information about other individuals that
3 were associated with Usama bin Laden. Photographs were
4 provided to the investigators. I was one of the investigators
5 given those photographs of individuals associated with Usama
6 bin Laden, and we used those photographs to attempt to
7 identify whether these individuals were involved.

8 So early on in the investigation, I was given that
9 information and acted upon it and obtained information during
10 the course to identify those individuals in-country just prior
11 to the bombings, some of them.

12 Q. And was there a precipitating event that caused the
13 FBI to open the investigation of Usama bin Laden?

14 A. There was.

15 Q. Do you know what that event was?

16 A. It was the declaration of war by Usama bin Laden in
17 1996.

18 Q. Now, as part of your duties as an FBI agent
19 investigating the embassy attacks, did you then have to become
20 familiar with that declaration of war written by Usama bin
21 Laden?

22 A. I did.

23 Q. In 1996, who did the FBI believe Usama bin Laden was?

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1 A. At that time, I believe he was looked at as a
2 financier of terrorism.

3 Q. I'm now showing the witness what has been marked as
4 Appellate Exhibit 502SS (Gov) Attachment F. Special Agent
5 Perkins, do you recognize that document?

6 A. I do.

7 Q. And how do you recognize that document?

8 A. This is the declaration of war proffered by Usama bin
9 Laden in 1996, August.

10 Q. And you became familiar with this document as part of
11 your duties?

12 A. I did.

13 Q. And what's the general nature of the document?

14 A. It is basically Usama bin Laden's stated intention to
15 target Americans with a holy war.

16 Q. And do you know when it was written?

17 A. August of 1996.

18 Q. And was the '96 declaration of war released publicly
19 by Usama bin Laden?

20 A. It was.

21 Q. I'd like to call out a certain section of this first
22 page for you.

23 Can you read the call-out please, Special Agent?

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1 A. "Declaration of holy war against the Americans who
2 are occupying the land of the two holy places."

3 Q. Now, as part of your terrorism investigative
4 experience, do you know what the land of the two holy places
5 is referring to?

6 A. Yes, Mecca and Medina.

7 Q. And where is that?

8 A. In Saudi Arabia.

9 Q. Where are those places?

10 A. In Saudi Arabia.

11 Q. Thank you. Does this declaration of war reference
12 any American by name?

13 A. It does.

14 Q. And who does it reference?

15 A. Secretary of Defense.

16 Q. This is a fairly lengthy document?

17 A. It is.

18 Q. Over 20 pages?

19 A. It is.

20 Q. I'm not going to ask you too many more questions
21 about the document, but within that declaration of war, did
22 Usama bin Laden give his reasons for declaring war against the
23 United States?

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1 A. He did.

2 Q. What were those reasons?

3 A. He defined the American support of Israel in the
4 Palestinian-Israeli conflict. He indicated that the embargo
5 of Iraq was one of the reasons. He indicated that the
6 presence of American military in the holy places, Mecca and
7 Medina, Saudi Arabia, as one of the reasons. And I believe
8 support of Middle Eastern government by the American
9 government which are deemed oppressive to Muslims.

10 Q. As a terrorism investigator, what was the
11 significance of that document to your investigations?

12 A. It was a stated intention to target and kill
13 Americans.

14 Q. Are you aware of whether Usama bin Laden gave any
15 media interviews following his declaration of war in 1996?

16 A. He did.

17 Q. As a terrorism investigator for the FBI, did you
18 become aware of an interview that Usama bin Laden gave to CNN
19 journalists Peter Bergen and Peter Arnett in 1997?

20 A. I did.

21 Q. I'm now showing the witness what has been marked as
22 Appellate Exhibit 502SS (Gov) -- strike that.

23 Did you have an opportunity to review the video of

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1 Usama bin Laden's interview with Peter Arnett and Peter Bergen
2 prior to coming in to testify today?

3 A. I did.

4 Q. And does the video depict the interview?

5 A. It does.

6 Q. Does he discuss why -- does Usama bin Laden discuss
7 why he declared war on the United States in this interview?

8 A. He does.

9 MTC [MR. TRIVETT]: Your Honor, we'd like to play certain
10 segments of the video, about three and a half minutes.

11 MJ [COL POHL]: Go ahead.

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

13 Q. Special Agent Perkins, as part of your duties in the
14 FBI, did you become aware of another written statement by
15 Usama bin Laden in February of 1998?

16 A. I did.

17 Q. Okay. And are you familiar with the term fatwa?

18 A. Yes.

19 Q. And what do you understand that term to mean?

20 A. An Islamic ruling by an Islamic scholar.

21 Q. Are you familiar with the term jihad?

22 A. I am.

23 Q. What do you understand the term jihad to mean in the

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1 context that al Qaeda uses it?

2 A. Jihad is the external struggle, so I guess some would
3 refer to it as a holy war.

4 Q. Are you familiar with the term mujahideen?

5 A. I am.

6 Q. What do you understand that term to be?

7 A. A fighter, someone who is fighting on behalf of
8 jihad.

9 Q. Now, as part of your FBI duties, did you become
10 knowledgeable about the structure of al Qaeda from 1996 to
11 2001?

12 A. Yes.

13 Q. And how did you obtain that knowledge?

14 A. Through the course of the investigation identifying
15 the leadership and the roles and committees.

16 Q. As part of its structure from 1996 to 2001, did
17 al Qaeda have a religious committee?

18 A. They did.

19 Q. And do you recall who was the head of al Qaeda's
20 religious committee in 1998?

21 A. I believe that was Abu Hafs al-Mauritani.

22 Q. Did al Qaeda have a military committee?

23 A. They did.

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1 Q. Do you recall who was the head of the military
2 committee at that time?

3 A. Abu Hafs al Masri or Mohammed Atef.

4 Q. Are those the same? Is Mohammed Atef another name
5 for Abu Hafs al Masri, or is it two different people?

6 A. Another name for him.

7 Q. I'm now showing the witness what has been marked as
8 Appellate Exhibit 502SS (Gov) Attachment G. Special Agent
9 Perkins, are you familiar with the document?

10 A. I am.

11 Q. What do you -- what is the document?

12 A. This is the fatwa that was provided in February of
13 1998 by Usama bin Laden.

14 Q. And is this just the first page?

15 A. It is.

16 Q. Did this document take on any significance to the FBI
17 investigation of Usama bin Laden's activities in 1998?

18 A. It does.

19 Q. Is this document written only by Usama bin Laden?

20 A. It's signed off on by others as well, Zawahiri being
21 one, Ayman Zawahiri, and others.

22 Q. Did those individuals call themselves The
23 International Islamic Front for Jihad Against the Jews and the

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1 Crusaders?

2 A. They did.

3 Q. Do you know how many total terrorist leaders signed
4 off?

5 A. I believe there were maybe four or five.

6 Q. Is one of those individuals Dr. Ayman al Zawahiri?

7 A. It is.

8 Q. Now, at the time this document was signed in 1998,
9 who did you know Dr. Zawahiri to be?

10 A. The head of the Islamic Egyptian [sic] Jihad, or EIJ.

11 Q. At some point in 1998, did EIJ and al Qaeda merge
12 into one organization?

13 A. They did.

14 Q. I'm going to call out one of the parts of the
15 document right now and ask you some questions about it. So
16 did this document give the reasons why they were declaring --
17 they were issuing this fatwa?

18 A. Yes.

19 Q. Now, the first page states that "The United States
20 has been occupying the most sacred area of Islamic land, the
21 Arabian Peninsula, for about seven years." Do you know what
22 that's a reference to?

23 A. It's a reference to the presence of American troops

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1 after the Iraq war in Saudi Arabia.

2 Q. I'm going to now call out a second part of this
3 document. So the second fact that's mentioned says, "Despite
4 the major devastation inflicted on the Iraqi people at the
5 hands of the Crusader-Jewish Alliance."

6 Who do you understand to be the Crusader-Jewish
7 Alliance?

8 A. The American and Israeli alliance.

9 Q. I'm going to call out a separate section now. So are
10 those facts consistent with the reasons that were cited in
11 Usama bin Laden's 1996 declaration of war?

12 A. Yes.

13 MJ [COL POHL]: Mr. Trivett, make sure you refer to the
14 provision you're talking about.

15 MTC [MR. TRIVETT]: Sorry. Yes, sir.

16 MJ [COL POHL]: Just for the record.

17 MTC [MR. TRIVETT]: Yes, sir.

18 Q. Did the 1998 fatwa discuss how ----

19 MJ [COL POHL]: No, the one you just referred to, we need
20 to ----

21 MTC [MR. TRIVETT]: Oh, just what I referred to? I'm
22 sorry.

23 MJ [COL POHL]: Yeah. I mean, she answered a question

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1 about what that means, but we don't know what she's reading
2 from for the record.

3 MTC [MR. TRIVETT]: Yes, sir. I just asked a question
4 regarding the Crusader-Jewish Alliance, which was the second
5 call-out ----

6 MJ [COL POHL]: Yeah.

7 MTC [MR. TRIVETT]: ---- constitutes the second
8 reason ----

9 MJ [COL POHL]: But I'm talking about the one that's on
10 there now.

11 MTC [MR. TRIVETT]: I'm about to ask those questions, sir.

12 MJ [COL POHL]: Okay. Go ahead.

13 MTC [MR. TRIVETT]: Okay.

14 Q. Did the 1998 fatwa discuss how American civilians, as
15 opposed to American military members, should be treated under
16 the fatwa?

17 A. I'm sorry. Can you repeat that?

18 Q. Yep. Sure.

19 Did the 1998 fatwa discuss how American civilians, as
20 opposed to American military members, should be treated under
21 the fatwa?

22 A. They should be treated as targets.

23 Q. Can you read the first sentence of that call out?

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1 A. "The judgment to kill Americans and their allies,
2 both civilian and military, is the individual duty of every
3 Muslim able to do so and in any country where it is possible,
4 to liberate Al-Aqsa Mosque and The Holy Mosque from their grip
5 and to expel their armies from all Islamic territory, defeated
6 and incapable of threatening any Muslim."

7 Q. Are you aware, Special Agent, off where the Al-Aqsa
8 Mosque is located?

9 A. Yes.

10 Q. And where is that?

11 A. In Jerusalem.

12 Q. Within this fatwa, is there also a specific order
13 issued by the terrorist leaders?

14 A. Yes.

15 Q. Okay. I'm going to call out the last section of this
16 document. Can you please read the first sentence?

17 A. "We, in the name of God, call on every Muslim who
18 believes in God and desires to be rewarded to follow God's
19 order to kill Americans and plunder their wealth, wherever and
20 whenever they find it."

21 Q. Now, Special Agent, was this 1998 fatwa also released
22 publicly by al Qaeda?

23 A. It was.

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1 Q. Are you aware of any interviews Usama bin Laden gave
2 to the media following this 1998 fatwa?

3 A. I am.

4 Q. Specifically as a terrorism investigator for the FBI,
5 did you become aware of an interview that Usama bin Laden gave
6 to ABC News journalist John Miller in 1998?

7 A. I did.

8 Q. Did you have an opportunity to review the video found
9 at Appellate Exhibit 502SS (Gov) Attachment JJJJ?

10 A. I did.

11 Q. Does this video depict the interview with Usama bin
12 Laden and John Miller?

13 A. It does.

14 Q. Does Usama bin Laden discuss why he felt that
15 American civilians were legitimate targets in this war during
16 the interview?

17 A. He does.

18 MTC [MR. TRIVETT]: Your Honor, at this point, I would ask
19 to play that video, 35 seconds.

20 MJ [COL POHL]: Go ahead.

21 [Video from AE 502SS (Gov) Attachment JJJJ played.]

22 Q. Special Agent Perkins, how long after Usama bin
23 Laden's ----

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1 MJ [COL POHL]: Mr. Trivett.

2 LDC [MR. HARRINGTON]: Excuse me, Judge. Is it all right
3 if Ms. Wichner steps out?

4 MJ [COL POHL]: Yes. Go ahead.

5 Go ahead, Mr. Trivett.

6 MTC [MR. TRIVETT]: Thank you, sir.

7 Q. Special Agent Perkins, how long after Usama bin
8 Laden's 1998 fatwa calling for the death of civilians did the
9 embassy attacks occur?

10 A. So February '98 to August. So seven months -- six,
11 seven months.

12 Q. Are you familiar with another Usama bin Laden-written
13 statement in 1998 called the Islamic Nuclear Bomb?

14 A. Yes.

15 Q. And do you know when that was released?

16 A. I believe in May of '98.

17 Q. I'm now showing the witness what has been marked as
18 Appellate Exhibit 502SS (Gov) Attachment M.

19 Special Agent, do you recognize this document?

20 A. Yes.

21 Q. And are you aware of what -- the specific occasion
22 Usama bin Laden was writing about?

23 A. He was writing about the successful demonstration of

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1 nuclear power by Pakistan.

2 Q. I'm going to call out a section of this document as
3 well. And does this document discuss America in any context?

4 A. It does.

5 Q. And can you read the two sentences starting with "And
6 we praise God."

7 A. "And we praise God that the Pakistani people did not
8 give in to the heavy pressures of America, for it has been
9 known for some time now that the American government exerted
10 much pressure to keep Pakistan from acquiring nuclear
11 weapons."

12 Q. And the next sentence, please?

13 A. "We take advantage of this opportunity to remind
14 Pakistan that India is just her traditional and apparent
15 enemy."

16 Q. And the last sentence.

17 A. "In reality, her enemy is the Crusader-Israeli
18 Alliance headed by America that occupies the holy lands,"
19 referring here to Saudi Arabia and Israel, "which is occupying
20 by force the lands upon which we prayed in peace."

21 Q. Now, following your work as an investigator in the
22 East Africa Embassy attacks, did you continue to investigate
23 al Qaeda?

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1 A. I did.

2 Q. Where were you on the day of September 11th, 2001?

3 A. I was in New York City.

4 Q. And what were you doing on that day?

5 A. On that day, we would have finished the East Africa
6 Bombings trial and likely were preparing for the penalty phase
7 still.

8 Q. And was that a death penalty case?

9 A. It was.

10 Q. Now, on September 11th, 2001, did you come to learn
11 that a plane had flown into the World Trade Center?

12 A. Yes.

13 Q. What, if anything, did you do following becoming
14 aware of that attack?

15 A. So our office is located very close to the World
16 Trade Center. In fact, our building shook when the first
17 plane hit. CNN was on, and agents were watching that. The
18 second plane went in. We grabbed our radios and our raid
19 jackets and ran down to the Trade Center.

20 Q. Now, what agents from the FBI were involved initially
21 in the investigation?

22 A. Everyone.

23 Q. All 10,000 FBI agents?

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1 A. Everyone.

2 Q. At some point did you become an investigator on the
3 specific attack after everyone had initially responded to the
4 attacks?

5 A. Pretty much on the day of the attack moving forward.

6 Q. Were you assigned to a unit called the PENTTBOM team?

7 A. I was.

8 Q. What did PENTTBOM stand for?

9 A. It's basically a combination of the Pentagon and "TT"
10 for Twin Towers.

11 Q. And the "BOM" part? The B-O-M part?

12 A. To reflect the four planes that attacked the United
13 States that day.

14 Q. Now, what FBI office was the PENTTBOM case
15 investigated out of?

16 A. The New York office.

17 Q. And did that later change?

18 A. Basically, the New York contingent joined forces with
19 agents from Washington, D.C., and we moved our investigation
20 to the basement of our headquarters in Washington, D.C.

21 Q. In general, when the FBI begins an investigation
22 after an attack, what are some of the law enforcement methods
23 that you use to identify potential suspects in the case?

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1 A. Starting to conduct interviews of anyone who may have
2 information. We're going to collect documents, business
3 records, banking records, travel records, airline records,
4 passenger records. You're going to conduct searches. You're
5 going to look at the crime scene and attempt to find evidence
6 there that might lead you in any number of directions. So
7 anything that's going to help define the who, what, when,
8 where, and why.

9 Q. Is it safe to say that the first part of the
10 investigation after 9/11 was identifying who hijacked the
11 planes?

12 A. It was.

13 Q. What type of investigative techniques were used to
14 identify who hijacked the planes?

15 A. So basically we initially would get the manifest
16 itself and start circling back. There were phone calls that
17 were made from the planes to help identify passengers who were
18 involved in taking over the planes. There were transmissions
19 over the radio by individuals on the plane that went back to,
20 I guess, FAA, and they would have captured those. And then
21 any evidence that would have been recovered maybe at the scene
22 of the airports or hotels or luggage that might have been left
23 behind would have helped identify the individuals.

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1 Q. I'm getting a message from the interpreter to slow
2 down. I took that personally initially, but since you were
3 talking, I think that's for you as well.

4 A. Okay.

5 Q. Okay. So at any point do you get assigned to
6 investigate the financial aspects of the September 11th, 2001
7 attacks?

8 A. I did.

9 Q. I'd like to turn your attention now specifically to
10 the FBI investigation into Mustafa al Hawsawi. Using these
11 law enforcement techniques, did Mr. al Hawsawi quickly become
12 a person of interest in the case?

13 A. He did.

14 Q. And do you recall how that occurred?

15 A. I believe there were documents that were found pretty
16 quickly that would have led us to identifying him as someone
17 who was involved in some of the monies, money transfers or
18 returns of money.

19 Q. And did that happen at FBI Headquarters initially?

20 A. The Boston office of the FBI had conducted an
21 investigation surrounding what had happened there at Logan
22 Airport and around there, and had pretty quickly put enough
23 information together to -- they were ready to indict a man by

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1 the name of Mustafa al Hawsawi pretty quickly.

2 Q. And when was the first time you had heard the name
3 Mustafa al Hawsawi?

4 A. It probably would have been within the first month or
5 two of working the case.

6 Q. And ultimately, did Mr. Hawsawi's banking and travel
7 records become part of this investigation?

8 A. They did.

9 Q. Was there a ripped-up receipt in the name of Mohamed
10 Atta found at any point?

11 A. There was.

12 Q. And was it that receipt that led to other banking and
13 travel records?

14 A. It did.

15 Q. And did you go to the United Arab Emirates as part of
16 your investigation?

17 A. I did.

18 Q. And when was that?

19 A. It probably would have been in the first part of
20 2002.

21 Q. And what investigative work did you perform while in
22 the UAE?

23 A. So while there, we coordinated with security services

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1 and law enforcement, building relationships with the banking
2 industry to attempt to find out as much information as we
3 could about those individuals who were in the United Arab
4 Emirates at that time.

5 Q. Did the United Arab Emirates -- did the government of
6 the United Arab Emirates assist you in this investigation?

7 A. They did.

8 Q. Did you have an opportunity to review all of the
9 banking and travel documents we're going to discuss today
10 prior to your testimony?

11 A. I did.

12 Q. Were all of these documents gathered as part of the
13 FBI's investigation?

14 A. They were.

15 Q. Were the banking and travel documents all business
16 records of various different companies kept in the course of
17 their regular business?

18 A. They were.

19 Q. And how did the FBI come into receipt of these
20 documents?

21 A. So initially, probably just based on cooperation, a
22 request was made, but then we would have followed that back up
23 with an official request.

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1 Q. So did they initially come to you as certified
2 business records or were they later certified?

3 A. They were subsequently certified.

4 Q. And are you aware of the process by which the FBI had
5 records certified from the UAE?

6 A. We would have gathered the documents that we were
7 interested in getting certified, provided those to the United
8 Arab Emirates government, who would have then proceeded to
9 whatever business would have been needed to certify those
10 records.

11 Q. So I'm going to review many documents with you today.
12 And for the sake of brevity, if I ask you whether a document
13 indicates a certain fact, like a date that something was sent
14 or a phone number, I'm also going to ask you to
15 contemporaneously put a square around it on your screen.

16 A. Yes, sir.

17 Q. Do you understand?

18 MTC [MR. TRIVETT]: And at that point, Your Honor, once
19 we're done with that document that's been marked up, we're
20 going to ask that that be made a sub-exhibit and then move to
21 the next.

22 MJ [COL POHL]: Okay.

23 MTC [MR. TRIVETT]: Thanks.

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1 Q. I'm now showing the witness what has been marked as
2 Appellate Exhibit 502SS (Gov) Attachment S. Special Agent, do
3 you recognize this document?

4 A. I do.

5 Q. What do you recognize this document as?

6 A. This is the personal account opening form for
7 Standard Chartered Bank for Mustafa Ahmed al Hawsawi.

8 Q. Okay. I'm going to call out a specific part of that
9 document. You said it was from Standard Chartered Bank?

10 A. Yes.

11 Q. And where was that bank located?

12 A. In Sharjah, United Arab Emirates.

13 Q. So when he signed up to open this account, did he use
14 his true name?

15 A. He did.

16 Q. And can you please put a box around that.

17 A. [Complied.]

18 Q. And what was the date of that application?

19 A. June 24, 2001.

20 MJ [COL POHL]: Without being asked, the witness put a box
21 around the date.

22 MTC [MR. TRIVETT]: Did you want me to announce that every
23 time, sir, or ----

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1 MJ [COL POHL]: Yeah.

2 MTC [MR. TRIVETT]: Okay.

3 MJ [COL POHL]: Just so it's clear on the record.

4 MTC [MR. TRIVETT]: Roger. Then I'll just ask her up
5 front to do it.

6 MJ [COL POHL]: Okay.

7 Q. And did he provide an applicant address? If so,
8 please put a box around it.

9 A. He did. P.O. Box 19738, Sharjah.

10 Q. Do you know where Sharjah is located?

11 A. In the United Arab Emirates.

12 Q. Did he indicate his mobile phone number on the form?
13 And if so, please put a box around it.

14 A. He did. 520-9905.

15 Q. Did he provide his nationality? If so, please put a
16 box around it.

17 A. He did. Saudi.

18 Q. Did he give his date of birth?

19 A. He did.

20 Q. If so, please put a box around it.

21 A. August the 5th, 1968.

22 Q. Did he list his passport number?

23 A. He did.

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1 Q. If so, please put a box around it.

2 A. [Complied.]

3 MTC [MR. TRIVETT]: At this point, I would ask that this
4 be made a sub-exhibit to 502SS (Gov) Attachment S.

5 [Military judge conferred with courtroom personnel.]

6 Q. Okay. I'm now going to call out the bottom of this
7 document.

8 A. I can clear it? Can I clear this?

9 Q. At this part of the document did Mr. Hawsawi indicate
10 whether he had already had a Standard Chartered Bank account?

11 A. He did.

12 Q. If so can you please put a box around it. I would
13 ask that this become a sub-exhibit as well of the same
14 exhibit. Thank you.

15 I'm now showing the witness what has been marked as
16 Appellate Exhibit 502VV (Gov) Attachment N. Special Agent, do
17 you recognize this document?

18 A. I do. This is the Kingdom of Saudi Arabia passport
19 for Mustafa Ahmed al Hawsawi.

20 Q. Was this passport used to open his account?

21 A. It was.

22 Q. And was it part of the business records that were
23 provided to you ----

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1 A. It was.

2 Q. ---- by Standard Chartered Bank?

3 I'm going to call out the part with his picture on
4 it. And anywhere on this Kingdom of Saudi Arabia passport,
5 does he indicate his place of birth?

6 A. He does.

7 Q. And can you put a square around that, please.

8 A. Place of birth, Jeddah.

9 Q. And does that document also list his passport number?

10 A. It does.

11 Q. Can you please put a square around that as well?

12 A. [Complied.]

13 Q. Does that document indicate when the passport was
14 issued?

15 A. It does.

16 Q. Can you please put a square around it? And what date
17 was it issued?

18 A. February 24, 1999. [Complied.]

19 Q. Once again, does it give his birth date?

20 A. It does.

21 Q. And what is the birthday?

22 A. August 5, 1968.

23 MTC [MR. TRIVETT]: I would ask that this become a

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1 sub-exhibit ----

2 MJ [COL POHL]: Do you want a box around the birth date?

3 MTC [MR. TRIVETT]: Yes, sir. I'm sorry. Please put a
4 box around the birth date.

5 MJ [COL POHL]: Go ahead.

6 MTC [MR. TRIVETT]: I would ask that this become a
7 sub-exhibit to Attachment N.

8 [Military judge conferred with courtroom personnel.]

9 MJ [COL POHL]: Okay. Go ahead.

10 Q. I'm now showing to the witness what has been marked
11 as Appellate Exhibit 502SS (Gov) Attachment T. Special Agent
12 Perkins, do you recognize this document from your
13 investigation?

14 A. I do.

15 Q. How do you recognize this document?

16 A. This is the personal account opening form from
17 Standard Chartered Bank for an individual named Fayez Rashid
18 Ahmed Hassan al-Qadi.

19 Q. I'm going to call out a section of this form as well.
20 Does this document indicate the date that the account
21 was opened on?

22 A. It does.

23 Q. Can you please put a square around it?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

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1 A. June 25th, 2001.

2 Q. Does this individual list the same post office box of
3 19738 in Sharjah?

4 A. Yes.

5 Q. Can you also put a box around that?

6 A. [Complied.]

7 Q. Does Mr. Fayez al-Qadi list his birth date?

8 A. He does.

9 Q. What was his birth date?

10 A. March 19th, 1977.

11 Q. Can you please put a box around that?

12 A. [Complied.]

13 Q. Do you know this individual by any other name?

14 A. I do.

15 Q. What name do you know him by?

16 A. By the last name Banihammad.

17 MTC [MR. TRIVETT]: I ask that this document become a
18 sub-exhibit.

19 Q. I'm now showing the witness what has been marked as
20 Appellate Exhibit 502VV (Gov) Attachment 0. Special Agent, do
21 you recognize this document?

22 A. I do.

23 Q. And what do you recognize this document as being?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. This is the United Arab Emirates passport for Fayez
2 Banihammad.

3 Q. I'm going to call out a certain section of the
4 passport. Was this document used when Mr. Banihammad opened
5 up the Standard Chartered Bank account?

6 A. It was.

7 Q. Is this the same Fayez Banihammad that the FBI has
8 determined was one of the 19 hijackers on
9 September 11th, 2001?

10 A. It was.

11 Q. I'm now showing the witness what has been marked as
12 Appellate Exhibit 502SS (Gov) Attachment U, page 3 and 4,
13 which is a handwritten Arabic document. Special Agent
14 Perkins, do you recognize this document?

15 A. I do.

16 Q. How do you recognize this document?

17 A. This was a letter that was attached to the Fayez
18 Banihammad account. It was a delegation authority.

19 Q. And you don't speak Arabic, correct?

20 A. I do not.

21 Q. Did the FBI have this translated?

22 A. We did.

23 Q. I'm now showing the witness what has been marked as

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1 Appellate Exhibit 502SS (Gov) Attachment U, page 5.

2 Special Agent Perkins, do you recognize this
3 document?

4 A. I do.

5 Q. And how do you recognize this document?

6 A. This is the translation of the preceding Arabic
7 document, the document that was attached to the bank account.

8 Q. And can you read the first paragraph, please.

9 A. "I, Fayez Rashid Ahmed Hassan al-Qadi, Passport
10 Number A29256, account number 5774640/01, state that I have
11 delegated Mr. Mustafa Ahmed al Hawsawi, Saudi national,
12 Passport Number B686512, and bank account at your bank
13 number" -- I guess that's illegible -- "slash 01 to receive
14 ATM card, Visa card, PIN number, credit card, pin number for
15 credit card."

16 Q. And is that document, at least the Arabic part,
17 signed by both individuals?

18 A. It is.

19 Q. Okay. Can you put a square around the English
20 translation portion of both the signature blocks and the date.

21 And on what date was that delegation given?

22 A. June 25, 2001.

23 Q. I would ask that this become a sub-exhibit.

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UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 I'm now showing the witness what has been marked as
2 Appellate Exhibit 502SS (Gov) Attachment U, page 6.

3 Special Agent, are you familiar with this form?

4 A. I am.

5 Q. And how are you familiar with this form?

6 A. This was another letter that was attached to the
7 Fayez Banihammad Standard Chartered Bank account. It was a --
8 in essence a power of attorney delegating authorities.

9 Q. And for both this document and the document we just
10 spoke about, were they provided to you as part of the Standard
11 Chartered Bank business documents?

12 A. They were.

13 Q. They were kept in the course -- regular course of
14 business?

15 A. Yes.

16 Q. I'm now showing the witness what has been marked as
17 Appellate Exhibit 502SS (Gov) Attachment U, page 7.

18 Special Agent, are you familiar with this form?

19 A. I am.

20 Q. And what is it?

21 A. This is the FBI's translation of the preceding Arabic
22 document, the document attached to the Fayez Banihammad
23 Standard Chartered Bank account.

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1 Q. And what authority does the power of attorney grant
2 of Mr. Banihammad's account?

3 A. Basically all authority, complete authority over that
4 account.

5 Q. Does he list specifically what types of things are
6 authorized?

7 A. He does.

8 Q. Okay. Can you read that first paragraph, please.

9 A. "I, Fayez Rashid Ahmed Hassan al-Qadi, Passport
10 Number A" -- illegible -- "56, bank account at your bank,
11 number 5774640/01, state that I have authorized Mr. Mustafa
12 Ahmed al Hawsawi, Passport Number" -- IL -- "bank account at
13 your bank, number 5772125/01 to conduct all banking
14 transactions, dealings, receiving, and delivery."

15 Q. And does the Arabic version of this have signatures?

16 A. It does.

17 Q. Okay. And are those signatures indicated, as well as
18 the date on the English translation?

19 A. They are.

20 Q. Please put a box around them.

21 A. [Complied.]

22 MTC [MR. TRIVETT]: I ask at this time for this to become
23 a sub-exhibit, please.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

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1 Q. I'm now showing the witness what has been marked as
2 Appellate Exhibit 502SS (Gov) Attachment V. Special Agent,
3 are you familiar with this form?

4 A. I am.

5 Q. And how are you familiar with this form?

6 A. This is the personal account opening form for
7 Standard Chartered Bank for Mustafa Ahmed al Hawsawi.

8 Q. Is this a different opening form than the one we just
9 discussed about with regard to Mr. Hawsawi?

10 A. It is.

11 Q. Okay. I'd like to call out a section of this for
12 you. Does he provide the same date of birth and the same
13 passport number as the previous account opening form for
14 Standard Chartered Bank?

15 A. He does.

16 Q. I'm not going to ask you to put a square around this
17 one.

18 Does he provide the same telephone number?

19 A. He does.

20 Q. Okay. I will ask you to please put a square around
21 that.

22 A. [Complied.]

23 Q. At this time, does he list a different P.O. box?

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1 A. He does.

2 Q. And what P.O. box does he list?

3 A. 6048.

4 Q. And where is that located?

5 A. In Dubai.

6 Q. Is Dubai also in the United Arab Emirates?

7 A. It is.

8 Q. Please put a square around that.

9 A. [Complied.]

10 Q. And when is this account application dated?

11 A. June 25, 2001. The date is -- you can see the date
12 better on the original document, but it's June 25, 2001.

13 MTC [MR. TRIVETT]: I'll ask that this become a
14 sub-exhibit, please.

15 Q. Before I move on, though, does he indicate what his
16 employment is?

17 A. He does.

18 Q. And what does he say?

19 A. Businessman.

20 Q. Can you put a square -- well, I don't need you to put
21 a square if you already made a sub-exhibit, right? That's
22 fine.

23 I'm going to call out the bottom of that page, and

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1 I'll ask you to delete those boxes. Okay, is the date also
2 listed on the bottom part of the form?

3 A. It is, to the right, 6/25/2001.

4 Q. Please put a square around that.

5 A. [Complied.]

6 MTC [MR. TRIVETT]: I ask that that be a sub-exhibit as
7 well.

8 Q. I'm now showing the witness what has been marked as
9 Appellate Exhibit 502SS (Gov) Attachment N. Do you recognize
10 this document?

11 A. I do.

12 Q. And is this the same passport that was used for the
13 other personal account opening form?

14 A. It is.

15 Q. Was this also in the business records provided to the
16 FBI by Standard Chartered Bank?

17 A. It was.

18 Q. I was going to call out the large section. Same
19 exact one in every material way?

20 A. Yes.

21 Q. I'm now showing the witness what has been marked as
22 Appellate Exhibit 502SS (Gov) Attachment W, page 3.

23 Special Agent, do you recognize this document?

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1 A. I do.

2 Q. And how do you recognize this document?

3 A. It is a passenger name record for Saeed al Ghamdi.

4 Q. I'm going to call out a section so you can see it
5 better.

6 Now, as part of the investigation, did you become
7 familiar with different terminology listed on the passenger
8 name records?

9 A. Yes.

10 Q. Do you know what PAX CTC stands for?

11 A. Passenger contact number.

12 Q. As part of your investigation, did you become
13 familiar with certain airport abbreviation codes?

14 A. I did.

15 Q. What does the term PNR stand for?

16 A. Passenger name record.

17 Q. And can you please put a square around the individual
18 whose passenger name record this is.

19 A. [Complied.]

20 Q. And the flight that he takes listed on this passenger
21 name record.

22 A. [Complied.]

23 Q. Does Saeed al Ghamdi list the phone number as his

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1 primary contact number for his travel?

2 A. He does.

3 Q. Please put a square around that.

4 A. [Complied.]

5 Q. Is this the same number listed by Mr. Hawsawi on the
6 account forms that you just testified to?

7 A. It is.

8 Q. Is Saeed al Ghamdi the individual who has been
9 identified by the FBI as a hijacker on September 11th, 2001?

10 A. He was.

11 Q. And where did this flight originate?

12 A. In Dubai.

13 Q. And what was the first leg of the flight?

14 A. Dubai to London Gatwick.

15 Q. And the second leg?

16 A. London Gatwick to Orlando, Florida.

17 Q. So MCO is an airport abbreviation for Orlando?

18 A. It is.

19 MTC [MR. TRIVETT]: I would ask that this become a
20 sub-exhibit.

21 Q. I'm now showing the witness what has been marked as
22 Appellate Exhibit 502SS (Gov) Attachment W, page 4.

23 Special Agent, do you recognize this document?

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1 A. I do.

2 Q. How do you recognize the document?

3 A. This is a passenger name record for Fayez Banihammad.

4 Q. I'm going to blow up a certain section of this
5 document so you can see it better. Can you please put a
6 square around Mr. Fayez Banihammad's name.

7 A. [Complied.]

8 Q. And the flights that were taken, please.

9 A. [Complied.]

10 Q. Does Fayez Banihammad list a phone number as his
11 primary contact number?

12 A. He does.

13 Q. And please put a box around it.

14 A. [Complied.]

15 Q. And what number does he provide?

16 A. 050-520-9905.

17 Q. Is that the same phone number Mr. al Hawsawi listed
18 as his when he opened his Standard Chartered Bank account?

19 A. It is.

20 Q. Is Mr. Banihammad the same Fayez Banihammad who the
21 FBI later determined was one of the hijackers on
22 September 11th, 2001?

23 A. It is.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

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1 MTC [MR. TRIVETT]: I ask that this be a sub-exhibit.

2 Q. Is this the same Fayez Banihammad who opened the
3 personal account at Standard Chartered Bank on the same day as
4 Mr. Hawsawi?

5 A. It is.

6 MTC [MR. TRIVETT]: Did you make this a sub-exhibit?

7 Q. I'm now showing the witness what has been marked as
8 Appellate Exhibit 502SS (Gov) Attachment X. Special Agent, do
9 you recognize this document?

10 A. I do.

11 Q. And what do you recognize this document as being?

12 A. This is another passenger name record.

13 Q. And from what company is this a passenger name
14 record?

15 A. [No answer.]

16 Q. It may not be indicated on the document. If you
17 don't know, you don't know.

18 A. Yeah, I'm having a hard time locating. There were
19 two different companies, but I'm having a hard time locating
20 it on this document.

21 Q. All right. I'm going to call out a certain section,
22 specifically the names and the flights. This is a passenger
23 name record for whom?

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1 A. It's written Saleh al Hamzi.

2 Q. And can you testify as to the date of the flights and
3 the airports he traveled?

4 A. June the 29th from Dubai to Zurich, Zurich to JFK.

5 MTC [MR. TRIVETT]: I'm going to ask that the call-out be
6 removed.

7 Q. Does this individual list a passenger contact number?

8 A. Yes.

9 Q. And what does he list?

10 A. 050-520-9905.

11 Q. Can you please put a square around that?

12 A. [Complied.]

13 Q. And please put a square around this individual's name
14 and the flights as well.

15 A. [Complied.]

16 Q. Now, is there another individual listed on this
17 passenger name record?

18 A. Yes.

19 Q. And are you aware of why that may be, that there's
20 two individuals on the same passenger name record?

21 A. It would be listed together if they were booked
22 together and traveling together, so it would have been a
23 booking that was done at the same time.

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1 Q. Can you please put a square around that second
2 individual's name?

3 A. [Complied.]

4 Q. Does that square go around both individuals' names?

5 A. Yes.

6 Q. That's fine.

7 And can you state for the commission the first
8 individual's name?

9 A. Abdul Aziz al Omari.

10 Q. Was Abdul Aziz al Omari and Salem Saleh al Hazmi
11 determined by the FBI investigation to be hijackers on the
12 September 11th, 2001 flights?

13 A. Yes.

14 MTC [MR. TRIVETT]: I ask to make this a sub-exhibit,
15 please.

16 Q. Is that the same phone number that Mr. al Hawsawi
17 used on the form that he used to open his Standard Chartered
18 Bank accounts?

19 A. It is.

20 Q. I'm now showing the witness what has been marked as
21 Appellate Exhibit 502SS (Gov) Attachment Y, page 3.
22 Special Agent, do you recognize these documents?

23 A. I do.

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1 Q. What do you recognize this document to be?

2 A. These are, again, statement of accounts for Fayez
3 Banihammad from Standard Chartered Bank.

4 Q. Okay. I'm going to call out a certain section.
5 These were also documents provided to you by the Standard
6 Chartered Bank?

7 A. They were.

8 Q. Is the post office box listed for his statement of
9 account?

10 A. It is.

11 Q. Can you please put a square around that.

12 A. [Complied.]

13 Q. Does this document indicate that any transactions
14 occurred during the month of June 2001?

15 A. Yes.

16 Q. And can you describe those transactions?

17 A. It indicates on June 27 there was a cash deposit of
18 57 Arab Emirate dirhams.

19 Q. And are you aware of what the exchange rate was in
20 June of 2001 for UAE dirhams to U.S. dollars?

21 A. I'd say generally 3.67 to 1.

22 Q. So 3.67 dirhams to dollars?

23 A. Dirhams to dollars, yes.

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1 Q. So if there's something listed in dirhams, it's a
2 little more than a third in dollars?

3 A. Yes.

4 Q. Were there any withdrawals made on that day?

5 A. On that particular day, I don't see a withdrawal.

6 Q. Sorry. Were there any other withdrawals indicated on
7 this transaction?

8 A. There were.

9 Q. Okay. And can you please put a square around those.

10 A. [Complied.]

11 Q. Where does that indicate that transaction occurred?

12 A. July 23, an ATM withdrawal, Sharjah.

13 Q. Was Mr. Banihammad still in the United Arab Emirates
14 on 23 July 2001?

15 A. Mr. Banihammad took a flight to the United States on
16 June the 27th, so he was not there.

17 Q. There's no other records of him returning?

18 A. There are not.

19 Q. Did anyone else have access to Mr. Banihammad's ATM
20 card for his account?

21 A. Mustafa al Hawsawi.

22 Q. Did anyone else have access to the account, based on
23 the bank account opening form, other than Fayez Banihammad and

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1 Mr. Hawsawi?

2 A. No one else.

3 Q. Was Mr. Hawsawi in the United Arab Emirates at the
4 time?

5 A. He was.

6 MTC [MR. TRIVETT]: I ask that this become a sub-exhibit.

7 Q. I'm now showing the witness what has been marked as
8 Appellate Exhibit 502SS (Gov) Attachment Z, page 3. Special
9 Agent, do you recognize this document?

10 A. I do.

11 Q. How do you recognize this document?

12 A. This is a receipt from a business by the name of
13 Skycom Express.

14 Q. Who is that addressed to?

15 A. It was addressed to -- this was something that was
16 being sent to -- it's written Banihammad by a Rashid al-Qadi,
17 the recipient.

18 Q. The recipient was whom?

19 A. The recipient was Banihammad.

20 Q. At what address was he staying?

21 A. At 14545-J Military Trail, Number 120, Delray Beach,
22 Florida.

23 Q. And is there a date listed on this document?

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1 A. July the 23rd, 2001.

2 Q. Can you please put a box around that.

3 A. [Complied.]

4 Q. Who was this sent from?

5 A. An individual by the name of Hashim.

6 Q. Does this Hashim list a post office box for an
7 address?

8 A. Yes.

9 Q. Can you please circle that and inform the commission
10 what that post office box was?

11 A. P.O. Box 19738.

12 Q. Where is that located?

13 A. In Sharjah, UAE.

14 Q. Can you also put a box around that.

15 A. [Complied.]

16 Q. Does this individual list a phone number where he can
17 be reached?

18 A. He does.

19 Q. Can you please put a box around that and inform the
20 commission what that phone number was.

21 A. Mobile number 520-9905.

22 Q. Is this the same post box office and phone number
23 listed by Mr. al Hawsawi when he opens his two accounts with

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1 Standard Chartered Bank?

2 A. It is.

3 Q. And is that on the same day that 500 dirhams were
4 withdrawn from Mr. Banihammad's account in Sharjah?

5 A. It is.

6 MTC [MR. TRIVETT]: Ask that this be made a sub-exhibit,
7 please.

8 Q. I'm now showing the witness what has been marked as
9 Appellate Exhibit 502SS (Gov) Attachment AA, pages 3 and 4.
10 Special Agent, do you recognize this document?

11 A. I do.

12 Q. How do you recognize this document?

13 A. This is a supplementary card application that was
14 attached to the account of Mustafa Ahmed al Hawsawi.

15 Q. Okay. I'm going to call out page 4. What name was
16 used for this supplementary card?

17 A. Abdul Rahman Abdullah al Ghamdi.

18 Q. Okay. And can you please put a square around that?

19 A. [Complied.]

20 Q. Is there a notation on the form that indicates what
21 the primary cardholder's card number is?

22 A. It does.

23 Q. Can you please circle that -- or put a square around

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1 it, rather. Sorry.

2 A. [Complied.]

3 Q. Is this the same account number associated with
4 Mr. Hawsawi's credit card from the Standard Chartered Bank?

5 A. Yes.

6 Q. I'm going to call out page 3.

7 MTC [MR. TRIVETT]: Hold on. Before we do that, please
8 make this a sub-exhibit.

9 Q. Now I'm going to call out AA, page 3.

10 Is there a notation on this form that indicates what
11 the primary cardholder's card number is?

12 A. It does.

13 Q. Okay. And can you please put a square around that.

14 A. [Complied.]

15 Q. Is that the same account number associated with
16 Mr. Hawsawi's credit card?

17 A. It is.

18 Q. Is there a photo of the supplementary card applicant?

19 A. There is.

20 Q. Do you recognize the individual in the photograph?

21 A. I do.

22 Q. And how do you recognize the individual in the
23 photograph?

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1 A. Khalid Shaikh Mohammad.

2 Q. When is this application dated?

3 A. August 25th, 2001.

4 Q. Can you please put a box around that.

5 A. [Complied.]

6 Q. Did the primary cardholder give a place where he
7 applied for the supplementary card?

8 A. Yes.

9 Q. And where did he apply?

10 A. Sharjah.

11 MTC [MR. TRIVETT]: Ask that this be made a sub-exhibit,
12 please.

13 Q. Okay. I'm now showing the witness what has been
14 marked as Appellate Exhibit 502SS (Gov) Attachment BB.
15 Special Agent Perkins, do you recognize that document?

16 A. Yes.

17 Q. What is that document?

18 A. It's a document reflecting a money transfer from
19 Hashim Abdollahi to Ahad Abdollahi Sabet.

20 Q. And for how much is that money transfer?

21 A. 1500.

22 Q. What is the date of the money transfer?

23 A. I believe September the 3rd, 2001.

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1 Q. And what phone number is listed?

2 A. 050-769-2590.

3 Q. Okay. Can you put a square around that phone number,
4 please.

5 A. [Complied.]

6 Q. And a square around the date, please.

7 A. [Complied.]

8 Q. Is the 769-2590 number a phone number that the FBI
9 can associate with Mr. Hawsawi?

10 A. It is.

11 Q. How can they so do that?

12 A. From some of the banking transactions that were
13 conducted on the Standard Chartered Bank account associated
14 with his account.

15 MTC [MR. TRIVETT]: I ask that that be made a sub-exhibit,
16 please.

17 Q. And actually, before we move on from this, can you --
18 I'll make a separate sub-exhibit. Can you also put a square
19 around the sender?

20 A. [Complied.]

21 MTC [MR. TRIVETT]: Please make this a separate
22 sub-exhibit. Okay.

23 Q. I'm now showing the witness what has been marked as

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1 Appellate Exhibit 502SS (Gov) Attachment CC, page 3. Special
2 Agent Perkins, do you recognize this document?

3 A. I do.

4 Q. What do you recognize this document as?

5 A. This is a FedEx receipt for a package that was sent.

6 Q. And who is this FedEx package signed by?

7 A. It's from Mohamed Atta.

8 Q. And can you please circle where it indicates -- put a
9 square around where that is indicated.

10 A. **[Complied.]**

11 Q. And does it list a recipient's name?

12 A. It does.

13 Q. What name does it list?

14 A. Al Mohtaram.

15 Q. Does it list a post office box?

16 A. Yes.

17 Q. And what does it list?

18 A. P.O. Box 19738.

19 Q. Can you put a square both around the recipient's name
20 and the post office box?

21 A. **[Complied.]**

22 Q. Does this indicate where Mohamed Atta was sending
23 this from?

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1 A. It does.

2 Q. Where does it say?

3 A. An address in Hollywood, Florida.

4 Q. Does the package indicate what was in it?

5 A. Yes.

6 Q. What does it say?

7 A. Personal documents -- or "personal document."

8 Q. And is this package label dated? It may be obscured
9 by the box.

10 A. It is. On the required signature, there's a --
11 there's a date.

12 Q. Is there a date on the "From"? I call your attention
13 to ----

14 A. Yeah, I wrote the box over, over the top of it. I
15 see the date at the top is September 4th, 2001.

16 Q. Okay. Is there a tracking number on this package?

17 A. Yes.

18 Q. And can you please put a square around the tracking
19 number?

20 A. [Complied.]

21 Q. Is this the same Mohamed Atta that the FBI has
22 identified as the pilot hijacker on American Airlines
23 Flight 11?

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1 A. It is.

2 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit,
3 please.

4 Q. I'm now showing the witness what has been marked as
5 Appellate Exhibit 502SS (Gov) Attachment DD, page 3.

6 Special Agent, do you recognize this document?

7 A. I do.

8 Q. What do you recognize this document as being?

9 A. This is the FedEx delivery record containing the
10 information for delivery on the package we were just talking
11 about.

12 Q. All right. I'm going to call out a certain section
13 so you can see it easier.

14 [Video played.]

15 MTC [MR. TRIVETT]: That was not the intended document.

16 MJ [COL POHL]: Uh-huh.

17 MTC [MR. TRIVETT]: We should be at 502SS (Gov)
18 Attachment DD, page 3. Can you call out from the table?
19 Okay. Thank you.

20 Q. Does this document indicate someone signing for the
21 document with the package tracking number ending in 699?

22 A. It does.

23 Q. And can you please put a square around that?

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1 A. [Complied.]

2 Q. What is the name that is indicated?

3 A. Ahmed Ahmed.

4 Q. And is this, in fact, confirmation that the package
5 was picked up by an individual in the United Arab Emirates?

6 A. Yes.

7 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit.

8 Q. I'm now showing to the witness what has been marked
9 as Appellate Exhibit 502SS (Gov) Attachment EE, pages 4 and 5.
10 Special Agent, do you recognize this document?

11 A. I do.

12 Q. How do you recognize this document?

13 A. This is a SunTrust banking document for the account
14 Fayeze Banihammad reflecting transfer.

15 Q. I'm going to call out a certain section so you can
16 see it better. When is that document dated?

17 A. September the 5th, 2001.

18 Q. Where was Mr. Banihammad when the \$8,000 was being
19 transferred?

20 A. In the United States.

21 Q. And can you please put a circle around the client
22 information?

23 A. [Complied.]

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1 Q. And the date.

2 A. [Complied.]

3 Q. And so is this a transfer from one bank to another in
4 the same person's name?

5 A. It is.

6 Q. Okay. And who -- where was it going from, and where
7 was it going to?

8 A. A transfer from the SunTrust bank account of Fayez
9 Banihammad to the Standard Chartered Bank account in Sharjah
10 of Fayez Banihammad.

11 Q. And is there an account number listed for the
12 Standard Chartered Bank account?

13 A. There is.

14 Q. Can you please put a square around that.

15 A. [Complied.]

16 Q. Was Mr. Hawsawi delegated authority over that very
17 account in the United Arab Emirates?

18 A. Yes.

19 Q. Was that the same account that Mr. Hawsawi held power
20 of attorney over in the United Arab Emirates?

21 A. It is.

22 MTC [MR. TRIVETT]: I would ask that this become a
23 sub-exhibit.

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1 Q. I'm now showing the witness what has been marked as
2 Appellate Exhibit 502SS (Gov) Attachment FF, page 3.

3 Special Agent, do you recognize this document?

4 A. I do.

5 Q. And how do you recognize it as?

6 A. This is a Wall Street Exchange Centre transfer of
7 money to Mustafa Ahmed from Mohamed Atta.

8 Q. I see it says Wall Street Exchange Centre and Western
9 Union. Can you explain how it has both of those names?

10 A. It would be considered the same. It would be a part
11 of -- or considered a part of Western Union, the Wall Street
12 Exchange; they would collaborate.

13 Q. How much money was sent in this money transfer?

14 A. \$2,860.

15 Q. Can you please put a square around that.

16 A. **[Complied.]**

17 Q. Is that in U.S. dollars or in UAE dirham?

18 A. U.S. dollars.

19 Q. And who was it sent from?

20 A. Mohamed Atta.

21 Q. Can you please put a square around his name?

22 A. **[Complied.]**

23 Q. And who was it sent to?

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1 A. Mustafa Ahmed.

2 Q. Please put a square around that.

3 A. [Complied.]

4 Q. And on what date was it sent?

5 A. September the 9th, 2001 -- or I'm sorry, sent on
6 September the 8th of 2001, received September the 9th, 2001.

7 Q. Does the money transfer indicate where Mustafa Ahmed
8 was going to be available to pick up the money?

9 A. United Arab Emirates.

10 Q. And can you please put a square around that?

11 A. [Complied.]

12 Q. Are the names Mustafa and Ahmed the first and middle
13 names for Mr. Mustafa al Hawsawi?

14 A. Yes.

15 Q. Is that the same Mohamed Atta that the FBI
16 investigation identified as the pilot hijacker on American
17 Airlines Flight 11?

18 A. It is.

19 Q. How can you be certain of that?

20 A. Through the investigation, we determined -- and I
21 think there's another document, a banking document in here
22 where he had utilized a phone to book a flight that he took on
23 9/11, and that information will then connect to Mohamed Atta.

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1 I believe it's a different document.

2 MTC [MR. TRIVETT]: I ask that this become a sub-exhibit
3 as well.

4 Q. I'm now showing the witness what has been marked as
5 Appellate Exhibit 502SS (Gov) Attachment GG, page 4.

6 Special Agent, do you recognize this document?

7 A. I do.

8 Q. What do you recognize it as?

9 A. Once translated, it is the Saudi driver's license for
10 Mustafa Ahmed al Hawsawi.

11 Q. And was this driver's license part of the business
12 records provided by Western Union, the Wall Street Exchange
13 Centre?

14 A. Yes.

15 Q. And was this document used to pick up the money?

16 A. He would have been required to use identification to
17 retrieve the monies, yes, so he would have -- he used this to
18 retrieve that money.

19 Q. I'm now showing the witness what has been marked as
20 Appellate Exhibit 502SS (Gov) Attachment JJ.

21 MTC [MR. TRIVETT]: Court's indulgence, sir?

22 MJ [COL POHL]: Sure.

23 [Pause.]

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1 MTC [MR. TRIVETT]: I apologize, Your Honor. I
2 misidentified that last appellate exhibit. I identified it as
3 GG. It should be Attachment FF, page 5 and page 7 ----

4 MJ [COL POHL]: Okay.

5 MTC [MR. TRIVETT]: ---- for the record.

6 Q. I'm now showing the witness what has been marked as
7 Appellate Exhibit 502SS (Gov) Attachment GG, page 4. Do you
8 recognize this document?

9 A. I do.

10 Q. What is it?

11 A. This is a banking document reflecting the money
12 transfer from Mohamed Atta to Mustafa Ahmed.

13 Q. And can you please put a box around the payee and the
14 sender and the amount?

15 A. **[Complied.]**

16 Q. Okay. Does this document indicate the date the money
17 was picked up?

18 A. September the 9th, 2001.

19 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit
20 as well.

21 Q. I'm now showing the witness what has been marked as
22 Appellate Exhibit 502SS (Gov) Attachment JJ. Special Agent,
23 do you recognize this document?

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1 A. I do.

2 Q. What do you recognize it as?

3 A. Wall Street Exchange Centre transfer of monies from
4 Mohamed Atta to Mustafa Ahmed.

5 Q. And the Wall Street Exchange Centre is located where?

6 A. In Sharjah, UAE, United Arab Emirates.

7 Q. Now, this looks similar to the document that we just
8 saw. Is it the identical document?

9 A. This is a different transfer.

10 Q. Does it indicate who was sending money?

11 A. It does.

12 Q. And who was that?

13 A. Mohamed Atta.

14 Q. Can you please put a box around that.

15 A. [Complied.]

16 Q. Does it indicate who was going to receive the money?

17 A. It does.

18 Q. Can you please put a circle around that and inform
19 the commission who was to receive the money on this transfer.

20 A. [Complied.] Mustafa Ahmed.

21 Q. Is there an amount of money for the transfer?

22 A. Five thousand U.S. dollars.

23 Q. Can you please put a box around that.

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1 A. [Complied.]

2 Q. Does this document list the date of the transfer?

3 A. It does.

4 Q. And what is that date?

5 A. This was received on 9/10/2001.

6 Q. Is that September 10, 2001?

7 A. I'm sorry, yes, September 10, 2001.

8 Q. Can you put a box around that, please.

9 A. [Complied.]

10 Q. Is that also the same Mohamed Atta that you
11 previously identified?

12 A. Yes.

13 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit,
14 please.

15 Q. I'm now showing the witness what has been marked as
16 Appellate Exhibit 502SS (Gov) Attachment JJ, page 5.

17 Special Agent, do you recognize this document?

18 A. I do.

19 Q. What do you recognize it as?

20 A. This is the United Arab Emirates Ministry of Health
21 card for Mustafa al Hawsawi that would have been utilized by
22 him to retrieve those monies.

23 Q. And was this copy provided by the Wall Street

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1 Exchange Centre along with the actual money transfer as
2 business records kept in the regular course of business?

3 A. Yes.

4 Q. Do you recognize the individual on the
5 identification?

6 A. I do.

7 Q. Who do you recognize him as?

8 A. Mustafa Ahmed al Hawsawi.

9 Q. What type of an identification card is that?

10 A. United Arab Emirates Ministry of Health card.

11 Q. And does it list the birth date?

12 A. Yes.

13 Q. Okay. When it says 05/08/1968, does that mean May 8
14 or does this that mean August 5?

15 A. It's day, month, year. So it would be August 5,
16 1968.

17 Q. And was there a translation provided with that
18 document?

19 A. There was.

20 Q. I will call out the -- I'm going to call out the
21 translation, please. Okay.

22 So is the profession section of the identification
23 the only part that was in Arabic that didn't otherwise have an

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1 English translation already on the card?

2 A. Yes.

3 Q. And does Mr. Hawsawi indicate his profession?

4 A. Merchant.

5 Q. And this was also the same Mohamed Atta that the FBI
6 has determined was a pilot hijacker on American Airlines
7 Flight 11?

8 A. Yes.

9 Q. And how many days before the attacks was this sent?

10 A. I believe reflected sent on maybe the 8th and
11 received on the 10th for this one, I believe.

12 Q. I'm now showing the witness what has been marked as
13 Appellate Exhibit 502SS (Gov) Attachment KK, page 3.

14 Ms. Perkins, do you recognize this document?

15 A. I do.

16 Q. What do you recognize it as?

17 A. This is an Al-Ansari Exchange receipt for the receipt
18 of money.

19 Q. Do you know where the Al-Ansari Exchange was?

20 A. In Sharjah, United Arab Emirates.

21 Q. Okay. Does it indicate who the sender of this money
22 is?

23 A. It does.

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1 Q. Who is the sender?

2 A. Waleed al Shehri.

3 Q. Can you please put a box around that.

4 A. [Complied.]

5 Q. Do the documents indicate the sender's address.

6 A. It indicates the United States of America, U.S.A.

7 Q. Can you please put a box around that.

8 A. [Complied.]

9 Q. How much money was this wire transfer for?

10 A. Five thousand U.S. dollars.

11 Q. Please put a box around that.

12 A. Sorry.

13 Q. It's okay. You can leave the box there. It's over
14 the money side.

15 For the record, there's a second box that's over the
16 money side.

17 So 5,000, is that in dollars or dirhams?

18 A. U.S. dollars.

19 Q. And what's the date of that transfer?

20 A. September 11, 2001.

21 Q. Can you please put a box around that. Does the
22 document indicate who going to receive this money?

23 A. It does.

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1 Q. And what is the name listed?

2 A. Ahanad Mustafa.

3 Q. Can you please put a box around that.

4 A. [Complied.]

5 Q. Is Mustafa Mr. Hawsawi's first name?

6 A. It is.

7 Q. Is there an address listed for Ahanad Mustafa?

8 A. Sharjah.

9 Q. How is that indicated?

10 A. SHJ.

11 Q. Please put a square around that.

12 A. [Complied.]

13 Q. And is there a money transfer control number listed
14 on that document?

15 A. There is.

16 Q. And what is that number?

17 A. It's like 9101801232.

18 Q. Please put a box around that.

19 A. [Complied.]

20 MTC [MR. TRIVETT]: And I would ask that this become a
21 sub-exhibit as well.

22 Q. I'm now showing the witness what has been marked as
23 Appellate Exhibit 502SS (Gov) Attachment KK, page 4.

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1 Special Agent, do you recognize this document?

2 A. I do.

3 Q. And what is this document?

4 A. This is the receipt for the transfer just discussed
5 from Mustafa, Ahanad, to Waleed al Shehri.

6 Q. And is this type of screen typically generated when
7 an individual transfers money via Western Union?

8 A. It is.

9 Q. And was this also provided to you from the center
10 where the money was sent?

11 A. It was.

12 Q. Does it list the same money transfer control number?

13 A. As I recall, yes.

14 Q. Does it indicate the city where the money is being
15 sent from?

16 A. It does.

17 Q. And what does it indicate it's being sent from?

18 A. Boston ARPT, Massachusetts, so Boston airport,
19 Massachusetts.

20 Q. Can you please put a box around that document, that
21 part of the document.

22 A. [Complied.]

23 Q. Does the document indicate when it was sent?

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1 A. When it was filed on 9/9/2001. September 9, 2001.

2 Q. And this payment screen is the same -- it deals with
3 the same transaction we just discussed, correct?

4 A. It does.

5 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit,
6 please.

7 Q. I'm now showing the witness what has been marked as
8 Appellate Exhibit 502SS (Gov) Attachment KK, page 5. Special
9 Agent Perkins, do you recognize this document?

10 A. I do.

11 Q. What do you recognize this document as?

12 A. This is the same United Arab Emirates Ministry of
13 Health card for Mustafa Ahmed al Hawsawi.

14 Q. Is it the same in every way as the one we just
15 discussed?

16 A. It is.

17 Q. Was this health card also part of the business
18 records provided to you by the Wall Street Exchange regarding
19 this transaction?

20 A. It was.

21 Q. Mr. Hawsawi used this card to receive that money?

22 A. He did.

23 Q. I'm now showing the witness what has been marked as

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1 502SS (Gov) Attachment LL, page 4. Special Agent, do you
2 recognize this document?

3 A. I do.

4 Q. What is it?

5 A. Western Union receipt to send monies to Mustafa
6 Ahamad from Waleed al Shehri.

7 Q. I'm going to call out a document -- part of the
8 document so you can see it better. Now, is that the same
9 transaction?

10 A. It is.

11 Q. Is this the send form as opposed to the receive form?

12 A. It is.

13 Q. So was this generated from Western Union in
14 Massachusetts?

15 A. Yes.

16 Q. Okay. Does that document indicate the expected
17 payout location?

18 A. Sharjah, United Arab Emirates.

19 Q. Can you please put a square around that?

20 A. [Complied.]

21 Q. And this is also from Waleed al Shehri to Ahamad
22 Mustafa, correct?

23 A. Yes.

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1 Q. Can you please put boxes around those names?

2 A. [Complied.]

3 Q. Does it list the date of birth of the sender?

4 A. It does.

5 Q. And what does it indicate?

6 A. I believe it's 12/20/78, 1978.

7 Q. Please put a square around that.

8 A. [Complied.]

9 Q. Do you know if that date of birth matches the date of
10 birth for the Waleed al Shehri that the FBI concluded was a
11 hijacker on American Airlines Flight 11?

12 A. It does.

13 Q. Would you have the birth dates of those individuals
14 on passenger name records?

15 A. It's unlikely.

16 Q. Are you aware of what airport American Airlines
17 Flight 11 took off from on September 11th, 2001?

18 A. Logan in Boston, Massachusetts.

19 MTC [MR. TRIVETT]: I would ask that this be made a
20 sub-exhibit, please.

21 Q. I'm now showing the witness the next document, which
22 is marked as Attachment MM to the same 502SS (Gov). Do you
23 recognize this document?

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1 A. I do.

2 Q. Okay. It looks similar to the other ones we
3 discussed. Is it identical?

4 A. It is not.

5 Q. Okay. What is this document?

6 A. This is a business record from the Al Ansari
7 Exchange, associated with Western Union, reflecting a transfer
8 of monies from Marwan al Shehhi to Mustafa "Ahmad."

9 Q. So if it was from -- if it says "Al Ansari Exchange"
10 on the top, is this the receive form as opposed to the send
11 form?

12 A. It is.

13 Q. Who did you indicate the sender of the money was?

14 A. The sender was Marwan al Shehhi.

15 Q. And where his address was?

16 A. United States, U.S.A.

17 Q. Can you please put a box around that?

18 A. [Complied.]

19 Q. What's the amount of the money transfer?

20 A. 5,400 U.S. dollars.

21 Q. Can you please put a square around that?

22 A. [Complied.]

23 Q. Is there a money transfer control number on the

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1 document?

2 A. Yes.

3 Q. Okay. Please put a square around that. I won't make
4 you read the number.

5 A. [Complied.]

6 Q. And who was to be the receiver of this money
7 transfer?

8 A. Mustafa Ahmed.

9 Q. Was there an address left for the receiver of that
10 money?

11 A. SHJ, meaning Sharjah.

12 Q. Please put a box around both of those things. One
13 box is fine.

14 A. [Complied.]

15 Q. Where is the Al Ansari Exchange located?

16 A. In Sharjah, United Arab Emirates.

17 Q. So were both of the money orders we just discussed
18 received in the same Al Ansari Exchange?

19 A. Yes.

20 MTC [MR. TRIVETT]: Ask to make this a sub-exhibit,
21 please.

22 Q. I'm now showing the witness what has been marked as
23 Appellate Exhibit 502VV (Gov) Attachment Q. Special Agent, do

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1 you recognize this document?

2 A. I do.

3 Q. And what do you recognize this document as?

4 A. The receipt for the payment of the monies reflected
5 in the prior receipt.

6 Q. Does it address the city where it was sent from?

7 A. It does.

8 Q. And what does it indicate?

9 A. Hollywood, Florida. I'm sorry, correct that. The
10 city is -- that it was sent from is Boston, Massachusetts.

11 Q. Please put a box around that.

12 A. [Complied.]

13 Q. Does it indicate the date it was sent?

14 A. Filing date of September the 10th, 2001.

15 Q. Does it show the amount?

16 A. The amount of 5,400 U.S. dollars.

17 Q. So this is the same payment screen reflecting the
18 transaction that we just -- that you just testified about?

19 A. It is.

20 MTC [MR. TRIVETT]: Asking that this be made a
21 sub-exhibit, please.

22 Q. I'm now showing the witness Attachment MM of the same
23 exhibit, page 4. Do you recognize this document?

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1 A. Yes.

2 Q. How do you recognize the document?

3 A. This is United Arab Emirates Ministry of Health card
4 for Mustafa Ahmed Adam al Hawsawi.

5 Q. Same health card?

6 A. It is.

7 Q. Provided in the business records of the exchange
8 center where this was received?

9 A. Yes.

10 Q. Do you recognize the individual in that
11 identification?

12 A. I do.

13 Q. That identification was provided to you by the Wall
14 Street Exchange Centre as part of its regularly conducted
15 business records?

16 A. Yes.

17 Q. Is Marwan al Shehhi the individual that the FBI
18 investigation concluded was the pilot hijacker of United
19 Airlines Flight 175 on September 11th, 2001?

20 A. Yes, that's what the investigation concluded.

21 Q. Do you know where United Airlines Flight 175
22 originated from on September 11th, 2001?

23 A. I believe Logan in Boston.

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1 Q. I'm now showing the witness what has been marked ----

2 MJ [COL POHL]: No, leave that on for a second.

3 MTC [MR. TRIVETT]: Yes, sir.

4 MJ [COL POHL]: Ms. Perkins, I've got a question for you.

5 The transfers do not have his full name on it.

6 WIT: No, sir.

7 MJ [COL POHL]: And again, I'm not familiar with the
8 culture that well. They have his first two names on the
9 transfer item, and so that's sufficient identification to
10 permit him to receive the money?

11 WIT: I believe sufficient in that those names do appear
12 at least in close relevance to the documents he provided to
13 pick up those in his true name.

14 MJ [COL POHL]: Okay. But I'm saying it's -- for want of
15 a better term, it's the first and middle name, but not the
16 last name.

17 WIT: In this case, it was sufficient. He did retrieve
18 those monies.

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

20 We're going to go ahead and take our lunch recess
21 now. The commission's in recess until 1300 hours.

22 [The R.M.C. 803 session recessed at 1149, 6 December 2017.]

23 [The R.M.C. 803 session was called to order at 1302,

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1 6 December 2017.]

2 [Abigail Perkins resumed her seat on the witness stand.]

3 MJ [COL POHL]: Commission is called to order. Any
4 changes, General Martins?

5 CP [BG MARTINS]: No, Your Honor.

6 MJ [COL POHL]: Mr. Nevin?

7 LDC [MR. NEVIN]: No, Your Honor.

8 MJ [COL POHL]: Ms. Bormann?

9 LDC [MS. BORMANN]: No, Judge.

10 MJ [COL POHL]: Mr. Harrington?

11 LDC [MR. HARRINGTON]: No, sir.

12 MJ [COL POHL]: Mr. Connell?

13 LDC [MR. CONNELL]: Ms. Pradhan is absent, Your Honor.

14 MJ [COL POHL]: Mr. Ruiz?

15 LDC [MR. RUIZ]: Ms. Lachelier is absent.

16 MJ [COL POHL]: Okay. Mr. Ruiz, before we go to the
17 witness, you have filed an additional 505 notice on AE 502?

18 LDC [MR. RUIZ]: Correct, Judge. We did that based on the
19 receipt of notes ----

20 MJ [COL POHL]: Okay.

21 LDC [MR. RUIZ]: ---- the agents' notes yesterday while we
22 were in court. But at some point we need to address that,
23 obviously.

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1 MJ [COL POHL]: In due course. Does it deal with
2 cross-examination like the other one did?

3 LDC [MR. RUIZ]: It might. We're still making our way
4 through those notes, so perhaps if we could address it at the
5 end of the direct?

6 MJ [COL POHL]: Okay. And the other thing is on the other
7 issue we talked about at the 505(h), would that be
8 cross-examining both agents or just -- it strikes to me as the
9 other agent didn't discuss any statements from the accused.

10 LDC [MR. RUIZ]: In my perspective, it would be both.

11 MJ [COL POHL]: Okay. Mr. Trivett. Ms. Perkins is still
12 on the stand, and I remind you that you are still under oath.

13 WIT: Yes, Your Honor.

14 MJ [COL POHL]: You're no longer a special agent, right?

15 WIT: I'm not.

16 MJ [COL POHL]: Okay. Go ahead.

17 MTC [MR. TRIVETT]: Sir, I ask that the feed be given to
18 Table 3 again.

19 [END OF PAGE]

20

21

22

23

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1 **DIRECT EXAMINATION CONTINUED**

2 **Questions by the Managing Trial Counsel [MR. TRIVETT]:**

3 Q. I'm now showing the witness what has been marked as
4 Appellate Exhibit 502VV (Gov) Attachment U. Ms. Perkins, do
5 you recognize that document?

6 A. I do.

7 Q. What is it?

8 A. This is a receipt from Western Union to send monies.

9 Q. And how much is that in the amount of?

10 A. 5,400 U.S. dollars.

11 Q. Does this document give the date of the birth of the
12 sender?

13 A. I'm sorry. Could you repeat that?

14 Q. Sure. And also, an administrative note, the court
15 interpreters ask that there be a little bit of a delay between
16 my question and your answer, Ms. Perkins, just so they can
17 keep up with the translations.

18 Does this document give the date of birth of the
19 sender? I would orient the witness to the right side of the
20 page, about a quarter ----

21 A. Sorry. Yes, I see it. Date of birth.

22 Q. Can you please put a square over it.

23 A. [Complied.]

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1 Q. And who is this document being sent from?

2 A. The sender's name is Marwan al Shehhi.

3 Q. Can you put a box around that, please?

4 A. [Complied.]

5 Q. Who is it being sent to?

6 A. Mustafa "Ahmad."

7 Q. Is there an expected payout location that's indicated
8 on the document?

9 A. Sharjah, United Arab Emirates.

10 Q. Can you please put a box around that?

11 A. [Complied.]

12 Q. And what date was this sent on?

13 A. September the 10th, 2001.

14 Q. Can you please put a box around that?

15 A. [Complied.]

16 Q. Now, does the date of birth match the date of birth
17 of the Marwan al Shehhi who was a hijacker pilot on United
18 Airlines Flight 175?

19 A. The investigation indicated it did.

20 MTC [MR. TRIVETT]: Ask to make this a sub-exhibit,
21 please.

22 ADC [MS. LACHELIER]: Judge, I just wanted to note I'm
23 back in the courtroom.

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1 MJ [COL POHL]: Okay, thank you. For the record, that was
2 Ms. Lachelier.

3 MTC [MR. TRIVETT]: Now showing the witness what has been
4 marked as Appellate Exhibit 502SS (Gov) Attachment NN.

5 Q. Ms. Perkins, do you recognize this document?

6 A. I do.

7 Q. What do you recognize this document to be?

8 A. This is an Express Mail -- front cover of an Express
9 Mail package.

10 Q. Does the envelope indicate who was sending the
11 document?

12 A. It indicates Rawf Al-Dog.

13 Q. Okay. Does the FBI investigation believe that that's
14 a real name of a real person?

15 A. Not a real name.

16 Q. And who is it addressed to?

17 A. There's not a name. It just indicates United Arab
18 Emirates, P.O. Box 19738, Al Sharjah, UAE. There's no name
19 referenced.

20 Q. Can you put a box around the sender and the intended
21 recipient.

22 A. [Complied.]

23 Q. Does this document indicate the date it was sent?

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1 A. September 10, 2001.

2 Q. As part of your investigation, did you become aware
3 of where this Express Mail package was found?

4 A. I believe it was found in the airport.

5 Q. And what airport would that be?

6 A. I believe ----

7 MJ [COL POHL]: If you don't know, Ms. Perkins, just say
8 you don't know.

9 A. Yeah. I'm not sure.

10 Q. Okay.

11 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit.

12 Q. Is that post office box the same post office box
13 Mr. Hawsawi used on his Standard Chartered Bank account
14 opening forms?

15 A. It is.

16 Q. I'm now showing the witness what has been marked as
17 Appellate Exhibit 502SS (Gov) Attachment 00. Special Agent,
18 do you recognize this document?

19 A. This is a First Union check card that was found
20 inside that package.

21 Q. Does that check card refresh your recollection as to
22 where the box was found?

23 A. I believe it was found in a mailbox at one of the

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1 airports where the -- where the hijackers departed from.

2 Q. As part of your investigation, did you become aware
3 of where this check card was found?

4 A. I don't recall.

5 Q. Okay. Was this check card in that package?

6 A. Yes, it was in the package with the Rawf Al-Dog.

7 Q. Is there an individual by the name of
8 Khalid al Mihdhar that the FBI investigation concluded was a
9 hijacker on American Airlines Flight 77 that struck the
10 Pentagon on September 11th, 2001?

11 A. Yes.

12 Q. Are you aware of where American Airlines Flight 77
13 originated on September 11th, 2001?

14 A. I can't recall.

15 Q. I'm now showing the witness what has been marked as
16 Appellate Exhibit 502SS (Gov) Attachment PP, page 2. Agent
17 Perkins, do you recognize this document?

18 A. I do.

19 Q. What do you recognize this document to be?

20 A. This was a letter that was contained with that First
21 Union Bank card in the package from Rawf Al-Dog.

22 Q. Did the FBI do a translation of this document?

23 A. We did.

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1 Q. I'm now showing the witness what has been marked as
2 Appellate Exhibit 502SS (Gov) Attachment PP, page 4. Can you
3 please read that letter.

4 A. "Hello, my darling, my heart, the apple of my eye, he
5 whose love is huge in my heart. This is a gift to you from
6 your sweetheart. I hope you accept it and take all that is in
7 it. It's number is cheking [sic] 0360. And this, of course,
8 is a down payment from me to you, my dear love. And sorry for
9 this bad handwriting. Bye, Your sweetheart."

10 Q. Was this letter also found in the Rawf Al-Dog package
11 along with the Khalid al Mihdhar ATM card?

12 A. It was.

13 Q. I'm now showing the witness what has been marked as
14 Appellate Exhibit 502SS (Gov) Attachment R [sic].

15 Ms. Perkins, do you recognize this document?

16 A. I do.

17 Q. And what is it?

18 A. This is a Standard Chartered Bank receipt for the
19 check in the amount of 24,000 Arab Emirate dirhams for the
20 account Fayez Rashid Ahmed Hassan al Qadi Banihammad.

21 Q. Is this the same account Mr. Hawsawi held power of
22 attorney over?

23 A. It is.

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1 Q. Does the check indicate what date it was written?

2 A. The date of September 10, 2001.

3 Q. Can you put a box around that, please.

4 A. [Complied.]

5 Q. Does the check indicate when the money was paid out?

6 A. September 11th, 2001.

7 Q. Can you please put a red box around that.

8 A. [Complied.]

9 MTC [MR. TRIVETT]: I ask to make that a sub-exhibit,
10 please.

11 Q. I'm now showing the witness what has been marked as
12 502SS (Gov) Attachment SS. Ms. Perkins, do you recognize this
13 document?

14 A. This is a statement of account for the bank account
15 of Fayez Banihammad from Standard Chartered Bank.

16 Q. I'm going to do a call-out so you can see certain
17 portions of this document better. Does it indicate the
18 account number?

19 A. It does.

20 Q. Can you put a box around it, please.

21 A. Let me try that again.

22 Q. Does this document indicate any deposits that were
23 made?

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1 A. It does.

2 Q. Can you please put a box around that?

3 A. [Complied.]

4 Q. And what was the date of that deposit?

5 A. September 6, 2001.

6 Q. Is that the same date that Fayez Banihammad
7 transferred money from his SunTrust account to his Standard
8 Chartered Bank account?

9 A. I believe that's correct.

10 Q. How much was the deposit for?

11 A. 29,225 United Arab Emirates dirhams.

12 Q. Does the document indicate any withdrawals made?

13 A. It does.

14 Q. On what date?

15 A. ATM withdrawal on September 11th, 2001, from Sharjah.

16 Q. And the amount?

17 A. 5,000 United Arab Emirate dirham.

18 Q. And was there a second check withdrawal from that
19 account on that same day?

20 A. There was a check drawn on that account for
21 24,000 United Arab Emirate dirham.

22 Q. And can you put a box around that, please.

23 A. [Complied.]

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1 Q. Does the document indicate where the ATM withdrawal
2 occurred?

3 A. Sharjah.

4 Q. After those two withdrawals, was there any money left
5 in the account?

6 A. There was a balance.

7 Q. How much was the balance?

8 A. 205.10 United Arab Emirate dirham.

9 Q. Do you have an approximate amount of American dollars
10 that that is left in the account?

11 A. At a rate of 3.67, maybe around 70. And that would
12 be 70 U.S. dollars.

13 Q. Did the FBI investigation conclude that Fayez
14 Banihammad was a hijacker on United Airlines Flight 175 that
15 took off from Boston's Logan Airport on September 11th, 2001?

16 A. Yes.

17 Q. Was there anyone else authorized to access
18 Banihammad's account other than himself and Mr. al Hawsawi?

19 A. Only those two.

20 Q. Was Mr. Banihammad in the UAE on September 11th,
21 2001?

22 A. He was not.

23 MTC [MR. TRIVETT]: I ask to make this a sub-exhibit,

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1 please.

2 I'm now showing the witness what has been marked as
3 Appellate Exhibit 502SS (Gov) Attachment TT, page 3. I ask
4 that it be cleared. Thank you.

5 Q. Special Agent Perkins, do you recognize this
6 document?

7 A. I do.

8 Q. What is it?

9 A. This is a bank document, a credit from Standard
10 Chartered Bank for a check deposit.

11 Q. Does it give an account name?

12 A. The account name is Mustafa Ahmed al Hawsawi.

13 Q. Can you please put a box around that?

14 A. **[Complied.]**

15 Q. Does it give a phone number?

16 A. It does.

17 Q. Please put a box around that.

18 A. **[Complied.]**

19 Q. Is that phone number ending in 2590 a phone number
20 that the FBI investigation can associate with Mr. al Hawsawi?

21 A. It does.

22 Q. Does it give a date?

23 A. September the 11th, 2001.

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1 Q. Can you put a box around that, please?

2 A. [Complied.]

3 Q. Does it give an account number?

4 A. Yes.

5 Q. What is that number?

6 A. 01577212501.

7 Q. Finally, please put a box around that.

8 A. [Complied.]

9 Q. So what kind of banking transaction does this
10 document reveal?

11 A. This is a check deposit.

12 Q. How much was deposited?

13 A. 24,000 United Arab Emirate dirham.

14 Q. Was that the same amount that the check was written
15 to draw from Fayez Banihammad's account?

16 A. It is.

17 Q. Was that transaction done on the same day that Fayez
18 Banihammad's account was written?

19 A. It was.

20 MTC [MR. TRIVETT]: I'd ask to make that a sub-exhibit.

21 I'm now showing the witness what has been marked as
22 Appellate Exhibit 502SS (Gov) Attachment UU, page 3. I'd ask
23 that it be cleared. Thank you.

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1 Q. Ms. Perkins, do you recognize this document?

2 A. I do.

3 Q. And what do you recognize it as?

4 A. Statement of account from Mustafa Ahmed al Hawsawi
5 for Standard Chartered Bank.

6 Q. I'm going to ask that it be called out so we can see
7 it better. Does this document indicate the account number
8 that it's being transferred from?

9 A. It indicates the account number on there.

10 Q. I'm sorry. Does -- yeah, does it indicate the
11 account number on the document?

12 A. It does.

13 Q. And can you put a square around that, please?

14 A. **[Complied.]**

15 Q. Is that the same account number that the money was
16 just deposited in in the name of Mustafa al Hawsawi?

17 A. It is.

18 Q. Does the document list the date the money was
19 transferred?

20 A. Which transfer?

21 Q. The check deposit transfer. Sorry.

22 A. September 11th, 2001.

23 Q. Can you put a box around that?

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1 A. [Complied.]

2 Q. Is there any other deposits made on September 11th?

3 A. There was a cash deposit of 60,000 United Arab
4 Emirate dirhams.

5 Q. Can you please put a box around that?

6 A. I sort of missed it, but -- I sort of missed that
7 one.

8 Q. All right. Just for the record, it's halfway through
9 the \$60,000 deposit mark.

10 And at some point is there also a withdrawal of an
11 amount on that same day?

12 A. There is.

13 Q. Okay. In what amount is that withdrawal?

14 A. It reflects a card payment or Visa payment for
15 150,000 United Arab Emirate dirhams.

16 Q. Please put a box around that.

17 A. [Complied.]

18 Q. Does this document list a telephone number? Strike
19 that.

20 And the statement of the account is in whose name?

21 A. Mustafa Ahmed al Hawsawi.

22 Q. Okay. And the address?

23 A. P.O. Box 19738, Sharjah, UAE.

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1 Q. And are you aware of what purpose is served when you
2 transfer money from a bank account to a credit card?

3 A. It's generally to make that cash available to you to
4 use via the credit card so you don't have to go to the bank.
5 It's available to you as you carry the credit card around and
6 can be used immediately.

7 Q. Similar to the use of a debit card now?

8 A. Yes.

9 MTC [MR. TRIVETT]: I would ask that this be made a
10 sub-exhibit, please.

11 Q. I'm now showing the witness what has been marked as
12 Appellate Exhibit 502SS (Gov) Attachment VV, page 3.

13 Ms. Perkins, do you recognize this document?

14 A. Yes.

15 Q. What do you recognize it as?

16 A. This is a bank document for Standard Chartered Bank
17 for Mustafa al Hawsawi.

18 Q. I'm going to call out a section of it so you can see
19 it better. What is the date of the credit card statement?

20 A. The statement date is September the 26th, 2001.

21 Q. Does this statement indicate any payments that were
22 received?

23 A. It indicates payments received on September the 6th,

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1 the 11th, and a debit on the 15th.

2 Q. Okay. And how much is the amount on the 11th of
3 September?

4 A. The 11th of September is 150,000.

5 Q. And can you please put a box around that.

6 A. [Complied.]

7 Q. And 150,000, is that in dirhams or dollars?

8 A. That would be dirham.

9 Q. Does this reflect the prepayments made to the credit
10 card from Mr. al Hawsawi?

11 A. It is in that amount, the same amount.

12 Q. Is that approximately \$40,000 in U.S. dollars?

13 A. If you did the math by 3.67 to 1, it is.

14 Q. There's also a series of cash advances made on
15 September the 13th, 2001. Do you see those on the document?

16 A. I do.

17 Q. Under whose name are those withdrawals assigned?

18 A. Abdulrahman AA.

19 Q. And can you put a box around that, please?

20 A. [Complied.]

21 Q. Is that the name of the supplementary Visa cardholder
22 that had Khalid Shaikh Mohammad's picture on it?

23 A. It is.

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1 Q. How much were those withdrawals made for?

2 A. There were six withdrawals on September the 13th for
3 1,000 Pakistani rupees.

4 Q. And where were these withdrawals made?

5 A. Karachi, Pakistan.

6 Q. And on what date?

7 A. September 13.

8 MTC [MR. TRIVETT]: I ask to make this a sub-exhibit,
9 please.

10 Q. I'm now showing the witness what has been marked as
11 Appellate Exhibit 502SS (Gov) Attachment WW, page 3. Special
12 Agent Perkins, do you recognize this document?

13 A. I do.

14 Q. What is it?

15 A. Passenger name record for Mustafa Ahmed.

16 Q. Do we know what airline it's for?

17 A. I believe it's PIA, Pakistani International Airlines.

18 Q. Is that indicated on the document, or is that just
19 something you know from ----

20 A. It is. At the top it says PK, which would be
21 Pakistan, Pakistani International Airlines.

22 Q. Okay. And can you please put a box around the name
23 of the passenger.

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1 A. [Complied.]

2 Q. What date is this for a flight on?

3 A. September 11th, 2001.

4 Q. Please put -- and where is the -- where does this
5 flight originate?

6 A. Dubai.

7 Q. And where is its ultimate destination?

8 A. Karachi, Pakistan.

9 Q. And what does DXB stand for?

10 A. Dubai.

11 Q. What does KHI stand for?

12 A. Karachi.

13 Q. So can you please put a box around the flight
14 information.

15 A. [Complied.]

16 Q. All right. Now, one more box around the date,
17 please.

18 A. [Complied.]

19 MTC [MR. TRIVETT]: I'd ask to make this a sub-exhibit,
20 please.

21 Q. Sorry. I'm going to have you mark one additional
22 document and we'll make this an additional sub-exhibit. Does
23 this give the passenger contact number that was provided when

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1 the -- when the passenger made his reservation?

2 A. It does.

3 Q. Okay. And what does it indicate the passenger number
4 is?

5 A. 7692590.

6 Q. Can you please put a box around that.

7 A. [Complied.]

8 MTC [MR. TRIVETT]: I would ask to make this an additional
9 sub-exhibit, please.

10 Q. Now, is Karachi, Pakistan, and the east coast of the
11 United States on the same time zone?

12 A. It's not.

13 Q. Okay. Do you know approximately how many hours'
14 difference there is in September?

15 A. I think approximately ten.

16 Q. Did you ever have an opportunity to interview
17 Mr. Hawsawi?

18 A. I did.

19 Q. When did you interview him?

20 A. January of 2007.

21 Q. Okay. On how many different dates in January did you
22 interview him?

23 A. January the 11th, 12th, 13th, and 16th.

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1 Q. Before you came in court today, have you had an
2 opportunity to review Appellate Exhibit 502SS (Gov) Attachment
3 P?

4 A. Yes.

5 Q. And does that document memorialize your interview
6 with Mr. Hawsawi?

7 A. It does.

8 Q. Without getting into the substance of what was said
9 in that interview by Mr. Hawsawi, does that document clearly
10 and accurately represent what Mr. Hawsawi said to you during
11 that interview?

12 A. It does.

13 Q. And how long is that document?

14 A. It's approximately 50 pages.

15 Q. Does it have any attachments to it?

16 A. Approximately 79 attachments.

17 Q. So it's approximately only -- almost 140 pages long?

18 A. Yes.

19 Q. Is it accurate to say that all of the documents that
20 you just testified about were shown to Mr. Hawsawi during your
21 interview?

22 A. Yes.

23 Q. Now, when did you prepare the -- is it accurate to

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1 call it a letterhead memoranda?

2 A. It is.

3 Q. Is that also sometimes abbreviated to LHM?

4 A. It is.

5 Q. So if I use the term LHM, you will understand what
6 I'm saying?

7 A. I will.

8 Q. When did you prepare that LHM?

9 A. So after each day's interview, I would have
10 started -- started documenting that day, so after each day;
11 and then at the end, worked to put the finishing touches on
12 it.

13 Q. And was he the only individual you interviewed in
14 January and February of 2007?

15 A. He's not.

16 Q. Did you then -- were you able to finalize the LHM
17 while you were still on island?

18 A. I was not.

19 Q. So can you describe that process?

20 A. So the bulk of the interview would have been
21 completed on island, and then I would have returned back to
22 the United States, back to my office in Virginia, to finish
23 it, finalize it.

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1 Q. And did you take notes?

2 A. Yes.

3 Q. And what ----

4 A. Notes were taken.

5 Q. Were those notes utilized in your drafting of the
6 LHM?

7 A. They were.

8 Q. Is it common for the FBI to document interviews on
9 LHMs?

10 A. That's not typical.

11 Q. Okay. Why was it done in this instance?

12 A. Because normally we would do -- we would write what
13 is called an FD-302 to document an interview of that type.
14 Because we were working with other agencies, we used
15 letterhead memorandum to provide information outside of the
16 FBI. So that's why that document would have been used.

17 Q. Did you yourself actually type it up?

18 A. I did.

19 Q. Was anyone else with you when the LHM was typed up?

20 A. The other individuals who participated in that
21 interview.

22 Q. Okay. And what role, if any, did those individuals
23 play while you were drafting the LHM?

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1 A. They would have assisted in reviewing the notes and
2 writing -- I was doing the typing and writing, but they would
3 have assisted in that process.

4 Q. How clear was your memory of the interview when you
5 drafted the LHM?

6 A. It was contemporaneous, so each evening. So it was
7 very clear.

8 Q. As the interview was almost 11 years ago, can you
9 fully and accurately recall all of the facts of the interview
10 as you testify today?

11 A. I cannot.

12 Q. I'm now showing the witness what has been marked as
13 Appellate Exhibit 502SS (Gov) Attachment P, page 2.
14 Special Agent, do you recognize this document?

15 A. I do.

16 Q. What is it?

17 A. This is the letterhead memorandum of the interview of
18 Mustafa Ahmed al Hawsawi.

19 Q. Okay. Now, this is just the first page?

20 A. The first page.

21 Q. But this is a document that you indicated is over 140
22 pages long?

23 A. With attachments, it's probably about that.

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1 MTC [MR. TRIVETT]: I'll ask that that get taken down,
2 please.

3 Q. Special Agent, let's discuss how you prepared for the
4 interview of Mr. Hawsawi. What did you do to prepare for the
5 interview?

6 A. So I would have reviewed the 9/11 investigation for
7 any information that related to him, documents that would have
8 related to him, or associated him. I would have looked at
9 business records, airline records, telephone records,
10 interviews, search results, any information we may have
11 obtained from cooperation of overseas law enforcement.

12 Q. Is it fair to say that you were familiar with the
13 entire 9/11 investigation prior to your interview with
14 Mr. Hawsawi?

15 A. I would say as it relates to Mr. al Hawsawi, yes.

16 Q. And were there documentary materials collected by the
17 FBI that led you to believe Mr. Hawsawi may have been involved
18 in the attacks?

19 A. Yes.

20 Q. Were these materials all gathered before 1 March 2003
21 when Mr. Hawsawi was captured in Pakistan?

22 A. They were.

23 Q. Did you have access to any CIA cables documenting any

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1 statements he may have made in his former custody with the
2 CIA?

3 A. I may have had access to those materials at some
4 point.

5 Q. Did you use those materials in any way in preparing
6 for your interview?

7 A. My interest really wasn't to review what had been
8 told to other people, it was really to -- separate and apart
9 from anything that had been done previously, to get my own
10 information from him regarding a number of documents that I
11 intended to show him and have him provide information to me
12 about.

13 MJ [COL POHL]: Ms. Perkins, I don't think that was
14 responsive to the question. Ask the question again, please.

15 MTC [MR. TRIVETT]: Okay.

16 Q. Did you use any of the CIA statements specifically in
17 preparing for your interview?

18 A. I would say I wouldn't have relied on them to prepare
19 my interview, no.

20 MJ [COL POHL]: Did you use any of them?

21 WIT: Review them, sir?

22 MJ [COL POHL]: No, the question is: Did you use any of
23 them? You said you didn't rely on them. The question is:

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1 Did you use any of the CIA statements in preparing your
2 interview of Mr. Hawsawi?

3 WIT: Review and use, I guess, it would be hard for me to
4 distinguish. I've reviewed lots of things in preparation for
5 that interview. But relying on it, my intention was to
6 utilize documents that I had obtained during the course of the
7 investigation to focus his -- my questions with regard to
8 those things. So review -- having them in my mind, sir, may
9 have influenced me, so I can't disassociate completely.

10 MJ [COL POHL]: Got it. Thank you. Go ahead.

11 Q. What was the purpose of your interview when you
12 interviewed Mr. Hawsawi?

13 A. It was to get his statement with regard to, again,
14 the investigation that -- the law enforcement investigation
15 that had been conducted regarding him.

16 Q. Where did you interview him?

17 A. I interviewed him at Guantanamo Bay, here on the
18 military base.

19 Q. Can you please describe the room you interviewed him
20 in?

21 A. So it was a small, square building, had a ramp that
22 you enter, open a door. It opens into a square room where
23 there was a table, chairs for us to sit on one side, a chair

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1 for Mr. al Hawsawi to sit directly across from us at the
2 table. And there was a detention cell on the left that, as I
3 recall, had bars on it, as well as, I believe, a cot and a
4 restroom.

5 Q. What was the approximate temperature in the room?

6 A. It was air-conditioned, as I recall. Normal
7 temperature, comfortable temperature.

8 Q. How many chairs were present in the interview room?

9 A. So I believe there would have been one for
10 Mr. al Hawsawi across the table. And on this side of the
11 table would have been one for both FBI agents. And we had a
12 Criminal Investigative Task Force agent in the room with us as
13 well that I believe was situated a little bit behind where we
14 were sitting.

15 Q. So how far would you say you were from Mr. Hawsawi
16 during the interview?

17 A. Across the table.

18 Q. And so who all was present during the interviews?

19 A. So on the first day of interviews on January the
20 11th, myself, FBI Agent Jim Fitzgerald, and a
21 Criminal Investigative Task Force, or CITF, agent by the name
22 of Elmer Mason.

23 On the subsequent days, on the 12th -- 12th, 13th,

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1 and 16th, Elmer Mason was replaced with Steve McClain who was
2 also a CITF agent.

3 Q. Were there any guards present for the interview?

4 A. Not that I recall.

5 Q. Was Mr. Hawsawi restrained during the interview?

6 A. I believe he may have been restrained at his ankle
7 with a chain. I believe his hands were free.

8 Q. And how did you introduce yourself when you first
9 started the interview?

10 A. I introduced myself as an FBI special agent.

11 Q. In true name?

12 A. Yes.

13 Q. What language did you speak with Mr. Hawsawi?

14 A. English.

15 Q. What, if anything, did Mr. Hawsawi say about his
16 ability to speak English?

17 A. So I asked him questions regarding his language
18 ability to ensure that he was capable of speaking in English.
19 He indicated he had learned ----

20 LDC [MR. RUIZ]: Your Honor, I'm going to object. As we
21 have gone down this road towards statements Mr. al Hawsawi has
22 made, I'm going to renew my objections. And I'm doing this
23 now. I don't want to do it necessarily for every question, if

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1 the court treats this as a standing objection, but I think
2 we're now going to get into what Mr. al Hawsawi actually said
3 or is alleged to have said, so ----

4 MJ [COL POHL]: Is your objection the one that you made in
5 your motion that has already been ruled upon?

6 LDC [MR. RUIZ]: Yes, Judge. It's AE 502N (MAH). It
7 raises a number of constitutional objections as well as
8 Detainee Treatment Act, Convention Against Torture, AE 304 --
9 and M.C.R.E. 304, excuse me.

10 MJ [COL POHL]: Based on the evidence that I had at the
11 time, I adhere the previous ruling. Given how the testimony
12 plays out, there may be facts that come out that would require
13 to revisit it. So your objection is noted, but I'd adhere to
14 the previous ruling. But you understand what I'm saying?
15 Depending how the testimony comes out, there could be new
16 facts that were not available at the time.

17 Go ahead, Mr. Trivett.

18 MTC [MR. TRIVETT]: Thank you, sir.

19 Q. What did Mr. Hawsawi say about his ability to speak
20 English?

21 A. He indicated that he had learned English in primary
22 school and secondary school; that he had used it in college.
23 In fact, he stated that he had taken a class and said he

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1 hadn't attended the class -- it was an English class -- and he
2 passed. He said that he conducted -- he used English some
3 when he conducted business as well as during his time spent in
4 the United Arab Emirates.

5 Q. Did you offer him the services of a translator for
6 the interview?

7 A. We did. We told him that at any point that if he had
8 any concerns regarding his ability to understand or express to
9 us in English during the course of the interview at any time,
10 he could stop us and we would make one available who would
11 stay available during the entire time of the interview with
12 him.

13 Q. And did he state whether he would like one?

14 A. He said he was fine speaking English, which we would
15 reaffirm during the interview that he was okay speaking
16 English, to continue in English. He did not -- he didn't at
17 any point request a translator.

18 Q. And ultimately he agreed to conduct the interview
19 with you in English?

20 A. He did.

21 Q. Did you ask him if he was taking any medications at
22 the time of the interview?

23 A. I did.

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1 Q. And what was his response?

2 A. He said he was taking no medications.

3 Q. Did you ask Mr. Hawsawi if he was able to read the
4 documents without the aid of reading glasses?

5 A. Yes.

6 Q. What did he say to you?

7 A. He said he was able to do so.

8 Q. Before the night of the -- before the day of the
9 first interview, did you ask him if he had slept well the
10 night before?

11 A. Yes.

12 Q. What did he say?

13 A. He said he had slept okay.

14 Q. Did all of the special agents who introduced
15 themselves to Mr. Hawsawi do so in their true name?

16 A. Yes.

17 Q. Now, at some point, you said Special Agent Mason
18 switched out for Special Agent McClain?

19 A. Yes.

20 Q. And that was after the very first day of the
21 interview?

22 A. Correct.

23 Q. Did you explain to Mr. Hawsawi what the Department of

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1 Defense was?

2 A. I did.

3 Q. And how did you describe it to him?

4 A. I said it was like the -- it was the military, the
5 same thing.

6 Q. Did you describe for him whose custody he was in?

7 A. I did.

8 Q. And what did you tell him?

9 A. I told him he was in the custody of the Department of
10 Defense, in whose custody he would remain; he would not be
11 returned to the custody of any other group he may have been
12 with previously.

13 Q. Did you ask him if he understood this difference in
14 his DoD custody from his former CIA custody?

15 A. I had him affirm his understanding of that.

16 Q. How much time had passed since September 2006, when
17 Mr. Hawsawi was sent to Guantanamo to be detained at Camp VII,
18 before you spoke with him in January?

19 A. About four months.

20 Q. Did you ask him if he was visited by any other groups
21 since his arrival in Guantanamo on September 11th -- in
22 September 2006?

23 A. I did.

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1 Q. And what did he say?

2 A. He said that he had been visited by the International
3 Red Cross on approximately two occasions.

4 Q. During the interview, did you ask him if he knew
5 about or was familiar with the Federal Bureau of
6 Investigation?

7 A. I did.

8 Q. And what did he say?

9 A. He said he was not.

10 Q. And how did you describe what role the FBI plays in
11 investigations?

12 A. I told him that we were law enforcement and that,
13 when certain things happen, we would conduct investigations to
14 determine who was involved, a who, what, when, where, how,
15 that sort of thing.

16 Q. And did you describe for him what your specific role
17 was in regard to the September 11th, 2001 investigation?

18 A. I told him that it was my job to specifically
19 investigate what activities he may have undertaken in support
20 of 9/11.

21 Q. Did you describe for him what type of information and
22 documents you had gathered?

23 A. When I came in the interview, I brought two notebooks

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1 with me. So I told him there were a large number of documents
2 that I had gathered either in the United States or overseas
3 that I had wanted to show him that included business documents
4 and other documents that were associated with him.

5 Q. And were all of those documents that you previously
6 testified part of those binders?

7 A. Yes, they were.

8 Q. Did you discuss with him specifically any previous
9 statements he may have made while he was in the custody of the
10 CIA?

11 A. I did.

12 Q. And what did you tell him in regard to other
13 statements he made while he was in the custody of the CIA?

14 A. I told him that I was not concerned with any
15 statements he may have made to any other groups; that I was
16 going to ask him questions and wanted him to respond to me his
17 direct knowledge regarding the information, not anything he
18 may have said to anyone else, that that was not a concern to
19 me.

20 Q. Did you ask him if he understood?

21 A. I did.

22 Q. Had any of the agents that were at the interview
23 spoken with him before that day?

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1 A. Not to my knowledge.

2 Q. Had any of the agents in the interview ever worked
3 for the CIA before?

4 A. Not to my knowledge.

5 Q. After you discussed those things with Mr. Hawsawi,
6 did you then ask him whether he was willing to speak to you
7 about the documents and information that you had gathered?

8 A. I did.

9 Q. And was the interview done over four separate days?

10 A. Yes.

11 Q. And approximately how long each day would you speak
12 with him?

13 A. Probably seven hours or so including -- we would
14 typically share lunch or -- and then he may take some breaks.
15 At any point that he wanted a break, he was permitted to have
16 a break to pray or have a restroom break or anything else, but
17 probably, I would say, seven or so hours a day.

18 Q. Okay. So over 28 hours, you would say, total ----

19 A. Approximately.

20 Q. ---- the interview lasted. Okay.

21 Did you inform him of his -- did you inform him of
22 his right to end the interview at any time?

23 A. We would remind him that he was informed that in the

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1 beginning, and then he would be reminded typically at breaks.
2 At the end of the day we would ask him if he would be willing
3 to return to speak with us the next day. And in the morning,
4 affirming that he was willing, again, to continue speaking
5 with us.

6 Q. And, in fact, did he at any point say he was not
7 willing to come speak to you again when you asked him?

8 A. He did not.

9 Q. And were you done on the last day, the fourth day, or
10 was that a day where he decided to not come back for a fifth
11 day?

12 A. No, that was the time that we were -- we had
13 completed asking him all of the questions that we were
14 intending to ask.

15 Q. Are you aware of whether or not any of the other
16 accused had refused to come back at some point for their
17 interview?

18 A. Yes.

19 Q. Did that occur?

20 A. It did.

21 Q. Okay. And were they forced to come to the interview?

22 A. They were not.

23 Q. And he had an opportunity to eat and drink during the

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1 interview?

2 A. He had an opportunity to eat, drink, take breaks,
3 prayer breaks, stop at any time that he wanted for whatever
4 reason.

5 Q. Would you generally eat lunch with him?

6 A. We did.

7 Q. Okay. And what types of -- what types of things
8 would you eat?

9 A. I think it was just fast food that would be brought
10 in. We might probably ask him what he wanted. And whatever
11 was brought in from the outside, I can't specifically
12 remember, maybe pizza, or -- you know, I can't remember the
13 specifics. It's been too long.

14 Q. At any point during the interviews, did you ask him
15 if he had difficulty understanding anything you were saying to
16 him in English?

17 A. I did.

18 Q. Okay. Did he ever indicate that he had a problem?

19 A. He did not. He did indicate that he was concerned
20 that we might have a problem understanding him. And we told
21 him that we were not having any difficulty understanding him
22 speaking to us in English.

23 Q. So over the period of the 28 to 30 hours that you

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1 spoke with him, did you or any of the other agents indicate
2 that you didn't understand what he was saying to you?

3 A. No.

4 Q. Was anyone other than the special agents you
5 referenced earlier present for any part of the interview?

6 A. No.

7 Q. How would you describe your rapport with Mr. Hawsawi
8 during the interview?

9 A. I would describe it as good, professional,
10 respectful, cordial.

11 Q. Did anyone ever raise their voice at Mr. Hawsawi
12 during the interview?

13 A. No.

14 Q. Anyone put their hands on Mr. Hawsawi during the
15 interview?

16 A. No.

17 Q. Any of the agents threaten to do any harm to
18 Mr. Hawsawi during the interview?

19 A. No.

20 Q. Did you give him a rights advisement?

21 A. Not a typical rights advisement like I would as an
22 FBI agent in a law enforcement interview, but I would call it
23 an admonishment.

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1 Q. And did you use any type of checklist or guidance
2 when determining how to advise Mr. Hawsawi -- how to admonish
3 Mr. Hawsawi?

4 A. I did.

5 Q. I'm now showing the witness what has been marked as
6 Appellate Exhibit 502VV (Gov) Attachment T. Special Agent, do
7 you recognize this document?

8 A. I do.

9 Q. What is it?

10 A. This is the checklist that was utilized to ensure
11 that the admonishments that we were advised needed to be
12 provided were, in fact, provided.

13 MJ [COL POHL]: Ms. Perkins, you said you didn't give him
14 the normal rights advisement you would give in a law
15 enforcement interview?

16 WIT: Yes, sir.

17 MJ [COL POHL]: Okay, so if it wasn't a law enforcement
18 interview, what was it?

19 WIT: It was on behalf of the military commissions. I was
20 supporting the Department of Defense.

21 MJ [COL POHL]: You didn't see -- you saw a difference
22 between that and your normal FBI law enforcement interview?

23 WIT: Correct.

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1 MJ [COL POHL]: Okay. Go ahead.

2 Questions by the Managing Trial Counsel [MR. TRIVETT]:

3 Q. Specifically, what difference in the rights you
4 admonished Mr. Hawsawi for the DoD interview, what difference
5 is there from that interview to what you would normally do in
6 a federal district court case?

7 A. So in a custodial interview, I would provide Miranda
8 rights to the defendant or to the interviewee.

9 Q. And specifically, would that include a right to an
10 attorney?

11 A. Yes, it would.

12 Q. At the point where you interviewed Mr. Hawsawi, did
13 he have a right to an attorney under the Military Commissions
14 Act?

15 A. My understanding, he did not.

16 Q. Were any of the rights that you normally give under
17 Miranda different, excepting the right to the attorney aspect?

18 A. The right to the attorney was the one exclusion from
19 what I would normally have informed.

20 Q. Okay. And I apologize if I already asked you this.
21 Do you recognize this document?

22 A. I do.

23 Q. What do you recognize this document as?

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1 A. This is the checklist to ensure that we were covering
2 the admonishments during our interview with Mr. Hawsawi.

3 Q. Okay. I'm going to ask that Parts 1 through 6 get
4 blown up from the table, please. Can you read paragraph 1,
5 please?

6 A. "Assure the detainee that the agents do not work for
7 and are independent of any organization that previously held
8 the detainee."

9 Q. And now, just so the commission is clear on how you
10 gave this admonishment, did you stand up and read it and check
11 it off or was this done conversationally?

12 A. It was done conversationally.

13 Q. If there's a check indicating next to one of the
14 paragraphs, what does that check signify?

15 A. So I was providing the admonishments and
16 Special Agent Jim Fitzgerald was taking the notes as well as
17 ensuring that, as these admonishments were provided, he
18 checked them off to indicate that Mr. al Hawsawi had been
19 given that admonishment.

20 Q. And please read paragraph 2.

21 A. "Ascertain the detainee's belief or knowledge
22 regarding his changed circumstances and/or remind the detainee
23 that he is in the 'custody' of the Department of Defense and

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1 tell the detainee that he will not be returning to the custody
2 of any of his previous custodians."

3 Q. Okay. And at some point -- you had already testified
4 about your discussions with Mr. Hawsawi initially. Is that
5 what would have indicated the checkmark on paragraph 2?

6 A. Yes.

7 Q. Paragraph 3, please.

8 A. "Tell the detainee that the agent is aware that the
9 detainee may have made statements in the past and that the
10 agent is not interested in any of the previous questioning or
11 any of the answers the detainee may have given. For those
12 detainees who may have been questioned by FBI agents in the
13 past, the interviewing agent will reiterate that even though
14 the detainee may have already spoken with the FBI, this
15 interviewing agent is not interested in that questioning or
16 any answers the detainee may have given."

17 Q. And you provided that admonishment as well?

18 A. I did, the first part. My understanding was he was
19 not interviewed previously by the FBI. I don't believe I
20 would have mentioned that.

21 Q. And paragraph 5, please?

22 A. "Determine whether the detainee is willing to answer
23 questions."

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1 Q. And did you give him that admonishment?

2 A. I asked him if he was willing to speak with us, and
3 he said he was.

4 Q. Did you do that on more than one occasion or only on
5 one occasion?

6 A. In the continuing days, I would again reaffirm his
7 willingness to continue to talk to us; again at the end of the
8 day; at the beginning of the day reaffirm that he was
9 voluntarily there and willing to speak with us.

10 Q. And paragraph 6?

11 A. "Tell the detainee that the detainee may or may not
12 have seen these documents [sic] before, that the agent does
13 not care what the detainee may have said in the past about the
14 document, and that the agent is interested in the detainee's
15 current answers or words to that effect."

16 Q. And without talking about anything under that
17 redaction, is it safe to say that you had to give a classified
18 admonishment?

19 A. It is.

20 Q. And that that's reflected under that redaction?

21 A. It is.

22 MTC [MR. TRIVETT]: I would ask that that be taken down,
23 please.

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1 Q. Was there one special agent that led the interview?

2 A. I did.

3 Q. Did any of the other special agents ask questions
4 during the interview?

5 A. There may have been follow-up questions asked by
6 Special Agent Fitzgerald.

7 Q. Would that happen often or just on occasion?

8 A. Infrequent.

9 Q. And how many sets of notes of the interviews were
10 created?

11 A. So on the first day of interviews, we only take one
12 set of notes. CITF Agent Mason had started taking notes,
13 although Special Agent Fitzgerald had been designated as the
14 person to take notes. So he took some initial notes and then
15 stopped.

16 Q. So other than the first day of the interview, how did
17 you begin each new day of the interview for the three other
18 days?

19 A. So we would again affirm his willingness to be there
20 with us and answer questions each day.

21 Q. All right. Turning your attention now to questions
22 that you asked him during the interview, did he give you his
23 true name and his date and place of birth at the beginning of

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1 the interview?

2 A. I would have affirmed his true name and date of
3 birth.

4 Q. Now, what was the very first topic you decided to
5 discuss with him?

6 A. I believe the first topic I wanted to show him, there
7 were some documents in the notebooks that I had brought with
8 me, and so one of the first documents I showed him was his
9 P.O. box application.

10 Q. Did we actually go over his P.O. box application in
11 your testimony earlier?

12 A. We did. Well, not his application, I'm sorry. Just
13 his -- the P.O. box that he had utilized.

14 Q. So why did you decide to ask him about that question,
15 first?

16 A. Because it tied him by true name and to a P.O. box
17 that I knew would be found on additional documents which would
18 link him to various individuals involved, hijackers involved
19 in the 9/11 attack.

20 Q. What, if anything, did he say about the post office
21 box application?

22 A. He admitted that the post office box was his post
23 office box, his real one.

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1 Q. Specifically, Post Box 19738 in Sharjah, UAE?

2 A. That's correct.

3 Q. Now, does the LHM actually go in the order you asked
4 him questions?

5 A. It does not.

6 Q. And why is that?

7 A. Because, as I said, I wanted to begin the
8 conversation with some documents that I knew would link him.
9 Maybe they would seem innocuous, but they would ultimately
10 link him to significant individuals and places and events. So
11 I started with showing him documents and then would proceed
12 with other questions.

13 Q. Now, during the interview, did he admit that he
14 personally knew Usama bin Laden?

15 A. He did.

16 Q. And how did Mr. Hawsawi describe Usama bin Laden to
17 you?

18 A. He said he was in charge of a group in Afghanistan.

19 Q. Okay. Did Mr. Hawsawi call that group al Qaeda?

20 A. He was hesitant to call it al Qaeda.

21 Q. How would he refer to the organization?

22 A. Sheikh Usama's group.

23 Q. What, if anything, did Mr. Hawsawi say about any

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1 attacks that he knew Usama bin Laden's group had conducted?

2 A. He indicated that Sheikh Usama's group had conducted
3 the East Africa bombings in 1998, the COLE attack in 2000, and
4 the 9/11 attack in 2001.

5 Q. And did Mr. Hawsawi describe the leadership structure
6 of Usama bin Laden's group for you?

7 A. He indicated that Mohammed Atef, who was also known
8 as Abu Muhammad al-Masri, was at the top of the leadership of
9 al Qaeda; as well as Ayman Zawahiri, who was the leader of
10 another Egyptian group that had joined with al Qaeda prior to
11 the 9/11 attacks.

12 Q. Did Mr. Hawsawi describe for you why bin Laden's
13 group had attacked America?

14 A. He did.

15 Q. What did he say?

16 A. He indicated that there were three reasons, three
17 primary reasons for it: American support to the
18 Palestinian-Israeli conflict -- to Israel in the Palestinian
19 conflict; he indicated that the presence of American troops in
20 the Holy Land was another issue; and third, that
21 U.S. Government support of Middle Eastern governments that
22 were deemed oppressive to Muslims was another reason.

23 Q. Were those reasons consistent with the '96

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1 declaration of war?

2 A. They were.

3 Q. And did Mr. Hawsawi describe for you what he thought
4 the Holy Land was?

5 A. He did. He distinguished the Holy Land. In his
6 mind, Holy Land meant the entire country of Saudi Arabia, and
7 he referred to "Holy Places" as Quds, Mecca, Medina, and
8 Al-Aqsa in Jerusalem. He said Al-Aqsa he would only include
9 in Holy Places if there was conflict going on; otherwise,
10 Muslims, Christians, Jews could all live together, cohabitate,
11 engage.

12 Q. What, if anything, did Mr. Hawsawi say about whether
13 he worked for Usama bin Laden?

14 A. He said he did not work for Usama bin Laden.

15 Q. Who did he say he worked for?

16 A. He said he was a mujahideen for Allah.

17 Q. Another word for Allah?

18 A. God.

19 Q. So he believed he worked for God?

20 A. He did.

21 Q. And how would he describe his own specific role in
22 working for God?

23 A. He said he was a mujahideen for God or for Allah.

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1 Q. Did he describe for you what he believed the
2 significance was of working for God and not Usama bin Laden?

3 A. He indicated that if something happened to Usama bin
4 Laden, he was killed or could no longer run his group, that
5 Mr. al Hawsawi would continue fighting.

6 Q. Is it accurate to say that, during the course of the
7 interview, you showed Mr. Hawsawi a large number of banking
8 and travel documents?

9 A. Yes.

10 Q. What was the process you used to show him these
11 documents?

12 A. So I had these documents in a notebook and would pull
13 them out of the notebook and slide them over to him for him to
14 view.

15 Q. Okay. Were his hands shackled at the time of the
16 interview?

17 A. Not as I recall.

18 Q. Did ask you him to sign any of the documents or write
19 on any of the documents in any way?

20 A. There were times that I asked him if he -- if it was
21 a photograph, he may have known the individual by name, would
22 he write the name. And if he identified some of the
23 documents, he would say what it was, and I would ask him to

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1 write whatever he was saying it was on the document.

2 Q. Did he ever refuse any of your requests to write on
3 any of the documents you showed him?

4 A. He did not.

5 Q. I'm now showing the witness what has been marked as
6 Appellate Exhibit 502SS (Gov) Attachment P, which are LHM
7 pages 52 and 53. Do you recognize this document,
8 Special Agent?

9 A. I do.

10 Q. Is this one of the documents that you showed him?

11 A. It is.

12 Q. Is this, in fact, attached to the letterhead
13 memoranda that you prepared?

14 A. It would have been.

15 Q. What do you recognize this document as being?

16 A. This is a Pakistani International Airlines flight
17 from Dubai to Karachi with a return to Dubai.

18 Q. And I'm going to call out the bottom so you can see
19 it better. And where does this flight ticket indicate where
20 the flight was from and where it was to?

21 A. It originated in Dubai to Karachi.

22 Q. And is there a date on this document?

23 A. January 26, 2000.

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1 Q. And does the flight indicate it's on 21 January? The
2 flight itself.

3 A. January -- looks like January 21.

4 Q. And can you please put a box around that?

5 A. [Complied.]

6 Q. As well as the origination of the flight,
7 destination.

8 A. [Complied.]

9 Q. And you showed him this document during the
10 interview?

11 A. I did.

12 Q. And what did he say he believed it to be?

13 A. He believed that this was a trip that he had taken
14 from Dubai into Karachi and on to Afghanistan for training.

15 Q. And was that ultimately the purpose of the trip,
16 training?

17 A. It was.

18 Q. And did he indicate -- and where did the training
19 occur?

20 A. In Afghanistan, Kabul.

21 Q. Okay. And did he describe for you the way in which
22 he got to train? How did he get to Kabul?

23 A. So he would -- he would have landed in Karachi, and

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1 then he indicated that he went to a guesthouse for about a
2 month, and then from there would have transited into
3 Afghanistan, Kabul, to al Farouq camp for training.

4 Q. Did he describe for you the training camp and whether
5 he received -- and what specific training he received there?

6 A. He did. At al Farouq, he said he received fitness
7 training, weapons training, topography and survival training.

8 Q. And did he indicate how long that training was?

9 A. He said it was between 30 and 45 days.

10 Q. At any point during your investigation prior to
11 speaking with Mr. Hawsawi, did you become aware of a training
12 camp named al Farouq?

13 A. I did.

14 Q. What did the FBI investigation reveal about who ran
15 that camp?

16 A. It was an al Qaeda-sponsored training camp.

17 Q. Did he indicate whether he received any advanced
18 training after the basic training that he took?

19 A. He indicated that he had wanted to obtain advanced
20 training but he was not able to do so.

21 Q. Why was that?

22 A. He didn't say why. He just wasn't able to do it.

23 Q. Did he indicate what, if anything, he did for that

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1 group after he completed his training?

2 A. After he completed the training, he returned to the
3 guesthouse for a period of time and then would have, in around
4 May of 2000, began supporting the media committee.

5 Q. Did he indicate whether the media committee was for
6 al Qaeda?

7 A. He indicated the media committee supported a number
8 of groups, one of which was al Qaeda.

9 Q. Did he indicate who funded the media committee?

10 A. He said al Qaeda funded the media -- provided the
11 monies for the media committee.

12 Q. And did Mr. Hawsawi state what his job was in the
13 media committee?

14 A. He did. He said that he would provide books and
15 notes and pamphlets and speeches, information to the brothers
16 in Afghanistan who would otherwise not have that information
17 available to them.

18 Q. Did he, himself, write any articles that he hoped to
19 get submitted?

20 A. He stated that he did.

21 Q. And where was he hoping to get them submitted?

22 A. He submitted to various publications. I don't know
23 that I -- we asked the specifics or we could -- he could

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1 recall the specifics of where.

2 Q. Did you ever ask him whether he traveled for his work
3 while he was on the al Qaeda-funded media committee?

4 A. Yes.

5 Q. And what did he say?

6 A. He indicated that in September of 2000, he traveled
7 to the United Arab Emirates to obtain computer parts on behalf
8 of the Media Committee.

9 Q. And did he indicate whether he remained in the UAE at
10 that time?

11 A. He did not. He just traveled there to get those
12 computer parts and return with them to Afghanistan.

13 Q. As an FBI agent, did you become aware of the attack
14 on the USS COLE?

15 A. I did.

16 Q. And were you aware of that attack before talking to
17 Mr. Hawsawi in 2007?

18 A. Yes.

19 Q. And are you aware of when that attack occurred?

20 A. October of 2000.

21 Q. What, if anything, did Mr. Hawsawi say happened after
22 the attack on the USS COLE?

23 A. He said subsequent to that attack that the brothers

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1 who were at the training camps closed the camps and returned
2 to the cities fearing retaliation from the United States in
3 response to the COLE attack.

4 Q. Did he indicate that he was one of the people who
5 also had to move?

6 A. He didn't specify that to me.

7 Q. And at any point did you ask him whether he traveled
8 to the UAE a second time on behalf of the media committee in
9 the spring of 2001?

10 A. Yes.

11 Q. And when did -- and what did he say?

12 A. He indicated in the spring of 2001 he returned to the
13 United Arab Emirates again to obtain computer parts on their
14 behalf.

15 Q. And did he explain to you how he received funds to be
16 able to travel and stay in the UAE?

17 A. He did.

18 Q. And what did he say?

19 A. He identified an individual by the name of Hamza
20 al-Qatari as a -- he said the top money guy, you could say,
21 for al Qaeda. That individual is the one who provided him the
22 funding that he needed to conduct business in the UAE as well
23 as fund operations, brothers, camps. He was their money guy.

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1 Q. Okay. And did he say it was for al Qaeda, or was
2 that something that you just mentioned?

3 A. When I asked him who Hamza al-Qatari was working for,
4 he indicated that -- he said, you could say he was the top
5 money guy for, you could say, al Qaeda. That's how he said
6 it.

7 Q. And did Mr. Hawsawi indicate to you the state of his
8 personal finances at the time?

9 A. He indicated that he had very little money with him
10 of his own.

11 Q. At some point did Mr. Hawsawi admit that he had
12 another job in the UAE that wasn't simply obtaining computer
13 parts for al Qaeda's media committee?

14 A. He was given another job.

15 Q. And did he say what that other job was?

16 A. It was to support the brothers that would be sent to
17 him by another al Qaeda member.

18 Q. And did he draw any analogies about how he viewed his
19 role in those operations?

20 A. He did.

21 Q. And what did he say?

22 A. He indicated that he was a link in the chain, and
23 oftentimes at the end of the chain would be an operation or an

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1 attack.

2 Q. And did you ask him what he described by operation?

3 A. An operation or an attack. Oh, he indicated it would
4 be an attack like the COLE; that would be an example of an
5 attack.

6 Q. Did Mr. Hawsawi -- did ask you him specifically
7 whether he helped support the brothers who hijacked the four
8 planes, the September 11th, 2001 Plane Operation?

9 A. Yes.

10 Q. What did he say?

11 A. He did.

12 Q. And specifically, did he give any detail as to who he
13 assisted?

14 A. He did.

15 Q. And who were those people?

16 A. He identified the hijackers that he supported as
17 Fayez Banihammad; an individual by the name of -- or an alias
18 Mu'ataz, who was also known by the name Saeed al Ghamdi; an
19 individual by the name of Bilal as an alias, who was also
20 known as Salem al Hazmi; and an individual who went by the
21 name of Abbas as an alias, and his true name was Abdul Aziz
22 al Omari.

23 Q. Did he identify them by their true names or by their

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1 kunyas?

2 A. So it would depend. There were -- for example,
3 Fayez, he may have known him by another name, but then he
4 would have identified his true name when he assisted him in
5 opening a bank account. So between the two, some of the
6 others he also assisted in getting flights for, so he would
7 have learned true names at that time. So he may have known an
8 alias or a kunya and then learned their true name as he was
9 supporting them.

10 Q. And do you understand the term kunya to just be the
11 same thing as alias?

12 A. Yes.

13 MJ [COL POHL]: Mr. Trivett, do we need the exhibit still
14 up?

15 MTC [MR. TRIVETT]: Sir, no. We can take it down, sir.

16 MJ [COL POHL]: Wait a minute.

17 MTC [MR. TRIVETT]: My outstanding paralegal has told me
18 that I haven't asked that this be made as a sub-exhibit, so
19 please make it a sub-exhibit and then it can be taken down.

20 MJ [COL POHL]: Thank you.

21 MTC [MR. TRIVETT]: Thank you, sir.

22 Q. Did Mr. Hawsawi talk about why it was that kunyas
23 were used during this operation?

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1 A. Basically for operational security so that if an
2 individual that was supporting an operation was picked up by
3 law enforcement, they would not be in a position to identify
4 the other individuals involved in that operation or give
5 information to law enforcement or others.

6 Q. And did the FBI's 9/11 investigation reveal that the
7 people identified by Mr. Hawsawi were, in fact, hijackers on
8 the September 11th, 2001 flights?

9 A. Yes.

10 Q. And did you show Mr. Hawsawi photographs known to
11 investigators as the hijackers on the flight?

12 A. I did.

13 Q. And did he correctly identify these photos?

14 A. He did.

15 Q. I'm now showing the witness what has previously been
16 marked as Appellate Exhibit 502SS (Gov) Attachment P, page 65.
17 Do you recognize the individual in this picture?

18 A. I do.

19 Q. Who do you recognize this individual to be?

20 A. Fayez Banihammad.

21 Q. What, if any, assistance did Mr. Hawsawi say he gave
22 this man?

23 A. He indicated that Fayez had come to him with a large

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1 sum of money and that he needed to open a bank account.

2 Q. And did he provide any other assistance other than
3 the bank account to this man?

4 A. He did.

5 Q. And what did he say?

6 A. He was -- he knew this individual was coming to him
7 because another person involved in the planning of the
8 operation had called and indicated this individual would come.
9 He indicated he needed to open a bank account to put this
10 money in, and, as well, another -- Mohamed Atta ultimately
11 called and told Mr. al Hawsawi to purchase a ticket for Fayez
12 Banihammad to the United States. So he also assisted in
13 purchasing that ticket.

14 Q. And what, if anything, did Mr. Hawsawi say about why
15 he believed Fayez Banihammad was going to America?

16 A. He indicated that he was -- he knew he was going
17 there for an operation or believed he was going there for an
18 operation.

19 Q. Did he explain why he did not know specifics -- did
20 he claim why he did not know specifics about the operation?

21 A. Basically for operational security, he didn't know
22 what the specific operation was.

23 Q. Did you ask Mr. Hawsawi if he considered himself a

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1 mujahideen?

2 A. I did.

3 Q. Did you ask Mr. Hawsawi if he considered Faye
4z Banihammad to be a mujahideen?

5 A. He indicated he was a mujahideen as well as Faye
6z.

7 Q. And specifically, did you ask who requested
8 Mr. Hawsawi buy that ticket for Faye
9z Banihammad to the United States?

10 A. He indicated that Mohamed Atta had called to inform
11 him where to send Faye
12z Banihammad in the United States.

13 Q. Is that the same Mohamed Atta who was identified as
14 the pilot hijacker on Flight 11?

15 A. It is.

16 Q. And did Mr. Hawsawi refer to Mohamed Atta in his true
17 name or in his kunya?

18 A. I believe he originally knew him by the name of
19 Abdulrahman; and then as the operation played out, he learned
20 his name, Mohamed Atta.

21 Q. And did Mr. Hawsawi describe how that conversation
22 occurred with Mohamed Atta?

23 A. He indicated that there was -- that Mohamed Atta had
called him referencing family, and that Mr. al Hawsawi had
noted that Mohamed Atta didn't know his family, so it was --

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1 he was speaking in code. And he said something to the effect
2 of your sister -- or my sister is there with you, send her to
3 the United States.

4 Q. And what, if anything, did Mr. Hawsawi said he did
5 after he received those phone calls?

6 A. He indicated that he purchased the ticket and then
7 would have called Mohamed Atta back to confirm the information
8 regarding the flight.

9 Q. And did you ask Mr. Hawsawi about the account opening
10 forms that you earlier testified about?

11 A. I did.

12 Q. The ones that were in his name specifically?

13 A. I did.

14 Q. And how many of those were there from Standard
15 Chartered Bank?

16 A. There were two different bank accounts that he had
17 opened in his own name.

18 Q. And did you ask Mr. Hawsawi about the power of
19 attorney between he and Fayez Banihammad?

20 A. I did.

21 Q. And what, if anything, did he say about that?

22 A. I showed him that document. He indicated that that
23 document had been filled out in order to give him power of

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1 attorney over the account by Fayez.

2 Q. Did Mr. Hawsawi discuss with you who wrote that power
3 of attorney?

4 A. I think he indicated that it may have been written
5 partially by both of them. But we pointed out the date on
6 that power of attorney was July the 18th of 2001; and at that
7 time Fayez was in the United States and Mr. al Hawsawi was in
8 the UAE. He indicated that it was possible that part of it
9 could have been sent to him from the United States and he
10 finished it, filled it out, filed it with the bank.

11 Q. Did you ask Mr. Hawsawi if he had sent Mr. Banihammad
12 anything in the mail when Mr. Banihammad was in the United
13 States?

14 A. He did.

15 Q. And what did he say he sent him?

16 A. We showed him a Skycom receipt, and he indicated that
17 that was the receipt reflecting the ATM card, credit card, the
18 information that he had picked up with regard to Fayez's
19 account under that power of attorney and sent to Fayez in the
20 United States.

21 Q. I'm now showing the witness what has been marked as
22 Appellate Exhibit SS (Gov) Attachment Z, page 3. Is this the
23 document that you showed Mr. Hawsawi regarding sending

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1 something to Mr. Banihammad?

2 A. It is.

3 Q. Did ask you him about the name Hashim on the top left
4 corner?

5 A. I ----

6 Q. What did he say about that name?

7 A. He indicated that he would use the alias Hashim if he
8 was not required to utilize personal identification. Such as
9 an instance here where he's mailing a package, he wouldn't
10 have to use his true name or identification to mail the
11 package, and he would use the name Hashim.

12 Q. And did he explain why he would use the name Hashim?

13 A. So that he wouldn't -- he wouldn't reveal his
14 identity.

15 Q. But he had to use his real identity when he picked up
16 money?

17 A. He did.

18 Q. Did Mr. Hawsawi acknowledge that this was the receipt
19 for a package where he sent the ATM card to Fayez Banihammad?

20 A. That's correct.

21 Q. What, if anything, did Mr. Hawsawi say about the
22 number 520-9905?

23 A. Someone asked about that number. He didn't have a

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1 specific recollection to tell me what his telephone number
2 was, but he indicated that he would have utilized a number
3 that was a good working number to reach him in a circumstance
4 like this. In case there was an issue with the package, he
5 provided a legitimate number, not one that he could
6 necessarily recall from the top of his head, but it would be a
7 legitimate -- a legitimate number that he could be reached on.

8 Q. Is this 520-9905 number consistent with the other
9 telephone numbers that he listed when he opened his personal
10 bank accounts?

11 A. It is.

12 Q. Did you ask him to sign the Skycom receipt
13 acknowledging it was his receipt?

14 A. I did.

15 Q. I don't have that document up in front of me right
16 now, but is it safe to say that if there is Arabic signatures
17 or Arabic writing on any of the LHM attachments, that those
18 were writings acknowledging that he knew people that were
19 depicted in those photographs?

20 A. That's correct.

21 Q. Now sometimes in the evidence that we've seen, there
22 will be a 050 before the number. Here there's just "Mobile"
23 in parenthesis. Do you know what 050 depicts?

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1 A. So my understanding is 050 would be a country code
2 for a cell phone for a region.

3 Q. For a ----

4 A. So it would reflect a region for a cell phone.

5 Q. Okay. So would you have to dial 050 before reaching
6 the number?

7 A. Depending on where you were, I think that's how it
8 worked, yeah.

9 Q. Did you discuss with Mr. Hawsawi what, if any,
10 support he gave to an individual named Mu'ataz?

11 A. I did.

12 Q. And what other name do you know that individual by?

13 A. Saeed al Ghamdi.

14 Q. Is that the same individual known to the FBI to have
15 been a hijacker on American Airlines Flight 77?

16 A. It is.

17 Q. What, if anything, did Mr. Mr. Hawsawi have to say
18 about the support he provided this individual?

19 A. He indicated that he also received a call from
20 Mohamed Atta indicating that he was to purchase a ticket for
21 Mu'ataz for the same flight that he had for Fayez Banihammad
22 and that they would travel together.

23 Q. Now, when these individuals would come into the

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1 United Arab Emirates, would they have any other point of
2 contact other than Mr. Hawsawi?

3 A. Not that I'm aware of.

4 Q. Mr. Hawsawi ever mention anyone else that they may
5 have been in touch with in the United Arab Emirates?

6 A. Not during the time that he was handing them.

7 Q. Were any of these individuals from the United Arab
8 Emirates?

9 A. Some of them.

10 Q. Any of the hijackers specifically that he assisted in
11 sending to the United States?

12 A. Fayez Banihammad and Marwan al Shehhi, I believe.

13 Q. And what, if anything, did he say that he would do
14 after he purchased this ticket for the individual?

15 A. That he would again confirm with Mohamed Atta after
16 the purchase of the ticket that the ticket had been purchased
17 and the information regarding it.

18 Q. Did Mr. Hawsawi indicate that all of those
19 conversations with Mohamed Atta were in code?

20 A. I don't know that -- maybe he was asked about that
21 specific conversation. I know the coded conversation he
22 referenced was the one with regard to Fayez.

23 Q. Did you ask if these individuals were also considered

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1 mujahideen?

2 A. Yes, I asked him that question, if he was a
3 mujahideen. He said he was.

4 Q. At any point did you ask him about what, if any,
5 support he provided to an individual named Bilal?

6 A. I did.

7 Q. And do you also know this individual by another name?

8 A. I do.

9 Q. And what name do you know him by?

10 A. Salem al Hazmi.

11 Q. Is this the same individual that the FBI identified
12 as a hijacker on September 11th, 2001?

13 A. It is.

14 Q. Did you ask him what support, if any, he provided to
15 an individual named Abbas?

16 A. I did.

17 Q. Do you know this individual by another name?

18 A. Abdul Aziz al Omari.

19 Q. And is this the same individual who was identified by
20 the FBI as a hijacker on September 11th, 2001?

21 A. It is.

22 Q. What, if any, support did Mr. Hawsawi admit providing
23 to these two individuals?

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1 A. He indicated similarly that they had -- he had been
2 informed that they would be coming to see him in the United
3 Arab Emirates by another person involved in the operation.
4 And they arrived, and Mohamed Atta called to inform him of the
5 location where to send these two individuals as well in the
6 United States.

7 Q. And did he indicate where they stayed when they were
8 in the UAE?

9 A. He indicated that they did not stay with him.

10 Q. Did he indicate where they did stay?

11 A. I don't know that specifically -- I don't know
12 specifically that he indicated that. I know that he -- he did
13 say that they did not stay with him.

14 Q. Did he indicate why they did not stay with him?

15 A. He indicated that these individuals had traveled to
16 Afghanistan, and any person or brother who had traveled to
17 Afghanistan would be seen as a mujahideen and, therefore,
18 subject to arrest. And so he wanted to keep his place private
19 and secret from them in case they were to be arrested.

20 Q. Did you show him airline passenger name records for
21 those two individuals from the flight on June 29th, 2001?

22 A. I did.

23 Q. I'm now showing the witness what has -- I'm once

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1 again showing the witness -- we had already pulled this up
2 once -- AE 502SS Attachment X. And did you show this --
3 Special Agent, what is this document?

4 A. This is the passenger name record for Saleh al Hazmi
5 with Abdul Aziz al Omari also indicated there.

6 Q. Did that document list the passenger contact number?

7 A. It did.

8 Q. Can you please put a square around that?

9 A. **[Complied.]**

10 Q. Does this document also indicate the individuals who
11 were on the passenger name record?

12 A. It does.

13 Q. Can you please put a circle -- a square around that?

14 A. **[Complied.]**

15 Q. And ultimately, where was this -- where did this
16 flight originate?

17 A. Dubai.

18 Q. And where -- did it make any stops?

19 A. Dubai through Zurich, Zurich to JFK.

20 Q. Okay. So is ZRH an airport abbreviation for Zurich?

21 A. Yes.

22 Q. JFK, do you know where that's located?

23 A. In New York City.

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1 Q. And on what date did they travel?

2 A. June the 29th.

3 Q. When you showed Mr. Hawsawi that phone number, did he
4 admit that it was his?

5 A. He admitted that it would have been a good number for
6 him to be reached in case there was an issue with this flight.

7 Q. Okay.

8 MTC [MR. TRIVETT]: I ask that this be made a sub-exhibit.
9 And I'll ask that it be taken down, please, and that it be
10 cleared. Thank you.

11 Q. Did you ask him specifically about that money
12 transfer receipt dated September 9, 2001, in the amount of
13 \$2,860 sent from Mohamed Atta reflecting telephone number
14 050-520-9905?

15 A. I did.

16 Q. Did Mr. Hawsawi acknowledge that the signature on
17 that document was his?

18 A. He did.

19 Q. Did he acknowledge that that was his phone number?

20 A. He did. A good number that he could be reached at.

21 Q. And did he describe to you his feelings when he
22 started receiving money back from the brothers in the United
23 States?

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1 A. I think he said he was surprised to be receiving the
2 money back. But at that point, I think he started
3 understanding that there would be an operation soon.

4 Q. And that receipt for the \$2,860 back was from Mohamed
5 Atta?

6 A. It was.

7 Q. Did you ask him the same questions about a
8 September 10, 2001 receipt in the amount of \$5,000 from
9 Mohamed Atta?

10 A. I did.

11 Q. What, if anything, did he say about that receipt?

12 A. He indicated that that was another receipt of monies
13 that Mohamed Atta had called him to let him know that he would
14 be returning monies to him, that he should expect it, and it
15 was money that was ultimately returned to him and he picked
16 up.

17 Q. Did you ask him any questions about a September 11,
18 2001 receipt in the amount of \$5,000 sent from Waleed
19 al Shehri to Ahanad Mustafa in Sharjah, UAE?

20 A. I did.

21 Q. Did he acknowledge receiving this money from this
22 individual?

23 A. He did.

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1 Q. Is that the same individual who's identified by the
2 FBI as one of the 19 hijackers on September 11th?

3 A. It is.

4 Q. Did he acknowledge receiving that money back?

5 A. He did.

6 Q. And what, if anything, did Mr. Hawsawi say he did
7 with this money?

8 A. He said on September 11th, he took the moneys that
9 were returned to him and placed them in his bank account at
10 Standard Chartered Bank.

11 Q. Did you ask him about a money transfer dated
12 September 11th, 2001 in the amount of \$5,400 sent from
13 Marwan al Shehhi to Mustafa Ahmed?

14 A. I did.

15 Q. What, if anything, did he say about this money
16 transfer?

17 A. He indicated that Marwan al Shehhi had called him to
18 indicate he was returning monies, and those were monies that
19 he ultimately did pick up.

20 Q. And did he offer any opinions regarding the
21 significance of the September 9 through September 11
22 transactions?

23 A. Again, I think it was an indication to him -- he had

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1 stated that, with regard to the timing of the operation, the
2 attack, that there were one of three reasons why -- why these
3 individuals would be in the United States: One would be for
4 an operation, one would be to facilitate an operation, and
5 another would be to train for an operation.

6 So the return of the monies began to open his eyes to
7 the fact that there would be an operation and that it would be
8 in the United States.

9 Q. How did you -- specifically how did you ask him those
10 questions?

11 A. So given the three options, when he left it
12 open-ended, that they could have gone there for one of three
13 options, I asked him that with the return of the monies, that
14 for training for an operation it required money, correct? And
15 he agreed that it would. I said so it wasn't for training for
16 an operation; and also for facilitating an operation, money
17 would be required, and he agreed that it would.

18 And so he agreed that the return of the monies meant
19 that there was only one option left, and that would be that an
20 operation would take place in the United States.

21 Q. Was there any significance -- did Mr. Hawsawi
22 recognize any significance to the law enforcement
23 investigation regarding those specific transactions between

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1 September 9 and September 11 that he mentioned to you?

2 A. He stated that the return of those monies and the
3 receipts where he had to go into the exchanges and utilize a
4 true name identification for himself in order to obtain the
5 money is what caused the authorities' scrutiny of him, his
6 identification, because it was in true name.

7 Q. Did you ask him about a Federal Express receipt sent
8 from Mohamed Atta in the United States to an Al Mohtaram at
9 Post Office Box 19738 Sharjah, UAE?

10 A. I did.

11 Q. Did you ask him about the name Al Mohtaram?

12 A. I did.

13 Q. And what did he say?

14 A. He said that it was not an alias name, it was a term
15 of respect.

16 Q. What, if anything, did Mr. Hawsawi indicate was in
17 the package that Mohamed Atta sent him?

18 A. He indicated that in that package was Fayeze
19 Banihammad's checkbook, there was a check in there signed by
20 Fayeze, and I believe the ATM card for the Fayeze Banihammad
21 account.

22 Q. So he admitted receiving it on the -- under the name
23 of Al Mohtaram?

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1 A. He did.

2 Q. And did you ask Mr. Hawsawi where he was and what he
3 was doing on September 11th, 2001?

4 A. On September 11th, he said that he had taken the
5 monies that had been returned to him, placed them in his bank
6 account. He had taken the ATM card on the Fayez Banihammad
7 account, he had withdrawn the max that he could with the ATM
8 card from the Fayez account; then he had executed a check on
9 Fayez Banihammad's account and placed those monies into his
10 Standard Chartered Bank account.

11 Q. And did you ask him why he took all of the money out
12 of Fayez Banihammad's account on that day?

13 A. At that point indicating that an operation was close,
14 he decided on his own to remove those monies and place in his
15 account under his control.

16 Q. Was he told specifically of the date of the
17 operation?

18 A. He indicated that on September 10, another person
19 involved in the operational planning had come to him and
20 indicated that the attack would be tomorrow, meaning
21 September 11th. So that's how he came to know the timing, not
22 more specific than that, but that it was going to occur on the
23 11th of September.

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1 Q. So after he was informed that the operation was about
2 to occur, what did he say that he did?

3 A. So after handling the banking business that he had
4 with regard to those accounts, he indicated that he booked a
5 flight to Karachi, Pakistan.

6 Q. Did you ask him whether he called anyone to warn of
7 the impending attack once he knew that an operation was about
8 to occur on September 11th?

9 A. I did.

10 Q. What did he say?

11 A. He indicated that he did not call anyone because he
12 did not want the operation to fail.

13 Q. And did you ask Mr. Hawsawi how he learned of the
14 attack?

15 A. I did.

16 Q. And where was he at the time?

17 A. He had arrived in Karachi, Pakistan. He indicated
18 that he had turned the television on because he knew that the
19 operation would be such that it would be something large
20 enough covered by the media, and he was curious to see what
21 the operation would be. And he watched that on TV.

22 Q. Did he express any surprise at the nature of the
23 operation?

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1 A. He did. Originally he said -- I think when he
2 landed, maybe one plane had already gone into the Towers, and
3 then when the second plane went into the Towers, he then came
4 to believe that this was the operation he had supported.

5 Q. Did you ask him what his thoughts were after watching
6 the attacks play out on television?

7 A. I did.

8 Q. What did he say?

9 A. He said his first thoughts were with regard to the
10 brothers who had carried out the attack, but specifically
11 those brothers he was worried about that he had helped send to
12 the United States for the attack. He indicated that he was
13 very happy, and he was worried about them.

14 Q. Did Mr. Hawsawi say how long he stayed in Karachi?

15 A. He said there were two flights out to Quetta,
16 Pakistan, and his intention was to take that flight out. So
17 he -- after he saw the nature of the attacks, he decided that
18 he should get the first flight to Quetta, Pakistan, out.

19 Q. Did he indicate why he took the flight so soon?

20 A. For fear of being detected by police or law
21 enforcement authorities.

22 Q. Did he state where he went once he landed in Quetta?

23 A. After Quetta, he landed -- he went to Kabul.

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1 Q. Quetta is in Pakistan?

2 A. It is.

3 Q. Kabul is?

4 A. Afghanistan.

5 Q. Did you ask Mr. Hawsawi regarding what his motive was
6 for assisting the brothers in the September 11th attack?

7 A. He indicated that he -- that the primary reason was
8 the Jewish problem. And he said, you know, that he felt that
9 it was, I guess, justified to kill Jewish people because they
10 kill Muslims.

11 He also indicated that the American support to Israel
12 in the Israeli-Palestinian conflict allowed Israel to have
13 greater success than they would otherwise be able to have.
14 And he indicated that the presence of American troops in the
15 Holy Places, as he noted, Quds, Mecca, Medina, Al-Aqsa in
16 Jerusalem, were the reason why he thought the operation was
17 correct.

18 Q. Did he explain to you what he saw was the main
19 problem with the Jewish people?

20 A. He did.

21 Q. What did he say?

22 A. He said that the Jewish people killed Muslims.

23 Q. At any point did Mr. Hawsawi describe for you the

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1 process for someone in al Qaeda to be selected to conduct an
2 operation before 9/11?

3 A. I'm sorry, repeat the question, please.

4 Q. Sure. I'll slow down.

5 At any point did Mr. Hawsawi describe for you the
6 process for someone to be selected to conduct an operation for
7 al Qaeda before 9/11?

8 A. He said prior to 9/11 happening, that Usama bin
9 Laden, or Sheikh Usama, would be the person who would have to
10 authorize an operation or an attack.

11 Q. When you said Sheikh Usama, is that the same person
12 as Usama bin Laden?

13 A. It is.

14 Q. Was there anyone else that he indicated could approve
15 an operation?

16 A. He did. He said he felt like Mohammed Atef or Abu
17 Muhammad al-Masri.

18 Q. Was that person also known as Abu Hafs?

19 A. Abu Hafs.

20 Q. Did you ask him about his thoughts on the legitimacy
21 of the targets selected for the September 11th, 2001 attacks?

22 A. I did.

23 Q. What, if anything, did he say about the targets?

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1 A. He said generally targets -- military targets are
2 something that no one questions and that military targets are
3 better than economic targets. He indicated that the Pentagon
4 would have been seen as a military target and, thereby, a
5 legitimate target. The Twin Towers were -- would be seen as
6 an economic target and the seat of the economy for the United
7 States and, thereby, also a legitimate target in his mind.

8 Q. Did he say anything about the USS COLE?

9 A. He did. He said that the USS COLE was a legitimate
10 military target.

11 Q. Did he say anything about the embassy attacks as far
12 as the targeting was concerned?

13 A. He indicated that was a legitimate attack because
14 there were FBI, CIA, and military who worked in the embassy.

15 Q. Had he earlier claimed to not know what the FBI was?

16 A. He had.

17 Q. Did you ask Mr. Hawsawi whether he agreed with the
18 attacks on the U.S. Embassies in Africa?

19 A. I did.

20 Q. What did he say?

21 A. He said they were legitimate, again, because FBI,
22 CIA, military worked in the embassies.

23 Q. Did ask you him what his understanding of the term

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1 fatwa was?

2 A. I did.

3 Q. What did he say?

4 A. He interpreted it to be reason.

5 Q. Did you ask Mr. Hawsawi about how he felt regarding
6 his own role in the September 11th, 2001 operation?

7 A. He indicated that he was very happy to have been able
8 to support the brothers who carried out the attack.

9 Q. And did he rank martyrs as opposed to facilitators?

10 A. He said martyrs were higher regarded than
11 facilitators, and even mujahideen, but martyrs were highly --
12 the highest regarded.

13 Q. Did you ask him specifically how he felt about the
14 deaths of the 2,976 people that occurred on September 11th,
15 2001?

16 A. I did.

17 Q. What did he say?

18 A. He said that he didn't think about the deaths of the
19 individuals there, that he only thought about the legitimacy
20 of the target.

21 Q. Did you ask him what he believed were the objectives
22 of the September 11th, 2001 attacks?

23 A. He indicated that there are times that you have to

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1 conduct an operation to send a message.

2 Q. Did you ask him if he had any contact with Usama bin
3 Laden after the September 11th, 2001 attacks?

4 A. I did.

5 Q. And what did he say?

6 A. He indicated that after the attacks in Kabul,
7 Afghanistan, he saw Usama bin Laden. He was there with 30 to
8 40 other brothers, with them there.

9 Q. Had Mr. Hawsawi admitted meeting with Usama bin Laden
10 before the September 11th attacks?

11 A. He indicated that he had met him before in the
12 airport camp in, say, circa May of 2000 or spring of 2000.

13 Q. Did you ask Mr. Hawsawi how Usama bin Laden reacted
14 during the meeting where Mr. Hawsawi saw him after
15 September 11th?

16 A. He indicated that he was happy.

17 Q. Did Mr. Hawsawi have the opportunity to meet with
18 Usama bin Laden individually?

19 A. He did. He said following the meeting with the 30 to
20 40 brothers, he had the opportunity along with another
21 individual to meet separately with Usama bin Laden.

22 Q. Did he say what he spoke to Usama bin Laden about
23 when he got to meet with him separately?

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1 A. He said that he congratulated Usama bin Laden on the
2 9/11 attacks.

3 Q. Did Usama bin Laden say anything to him in return?

4 A. He indicated that Usama bin Laden said this is for or
5 on behalf of all of us.

6 Q. Did you ask Mr. Hawsawi whether he continued to work
7 for Usama bin Laden's group after the meeting with Usama bin
8 Laden?

9 A. I did.

10 Q. And after the 9/11 attacks?

11 A. Yes.

12 Q. Okay. And what did he say he did?

13 A. He indicated that after that meeting, he returned to
14 help defend the media committee for about a month and a half.

15 Q. Did you believe that Mr. Hawsawi's statements to you
16 were voluntary?

17 A. Yes.

18 Q. Did he appear to be frightened in any way?

19 A. No.

20 Q. How would you describe his demeanor over the four
21 days?

22 A. Respectful, cordial, very normal.

23 Q. Did his demeanor ever change over those three days?

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1 A. They did not.

2 Q. Did he ever appear to be under duress?

3 A. Did he not.

4 Q. Did he ever appear to be frightened of the guards who
5 took him to and from Camp VII before and after the interviews?

6 A. No indication of that.

7 Q. Did he mention the guards to you at all during the
8 30 hours you spoke with him?

9 A. He did not.

10 Q. Did he mention any previous treatment he may have
11 received while he was in CIA custody?

12 A. He did not.

13 Q. Did you specifically ask him about that?

14 A. I didn't. The first day of the interview I was
15 concerned that he had slept, was on all medications, he was of
16 cognizant mind to sit and have that conversation with me. I
17 did not pursue other questions about prior treatment.

18 Q. Had he brought that up, would you have documented
19 that information in the interview?

20 A. Yes.

21 Q. I want to switch gears just a little bit. Did you
22 show Mr. Hawsawi any videos during the interview?

23 A. I did.

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1 Q. As part of your investigation, did you become
2 familiar with an organization called As-Sahab Productions?

3 A. I did.

4 Q. What does As-Sahab produce?

5 A. Propaganda on behalf of al Qaeda.

6 Q. As part of your investigation, did you become
7 familiar with an October 2006 release by As-Sahab called
8 "Knowledge is for Acting Upon: The Manhattan Raids"?

9 A. I did.

10 Q. And did you have an opportunity to review a video
11 that you showed to Mr. Hawsawi, which is Appellate
12 Exhibit 502SS (Gov) Attachment LLL, before coming in to court
13 today?

14 A. I did.

15 Q. Okay. Is this the exhibit, in fact, called
16 "Knowledge is for Acting Upon: The Manhattan Raids"?

17 A. It is.

18 Q. Is that the same video you showed Mr. Hawsawi during
19 the interview?

20 A. It is.

21 Q. Does that video depict Usama bin Laden meeting with
22 people after September 11th, 2001?

23 A. It does.

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1 Q. Does the video indicate one of those individuals
2 meeting with Usama bin Laden is Mustafa al Hawsawi?

3 A. Yes.

4 MTC [MR. TRIVETT]: At this point, Your Honor, I'd like to
5 play the video clip. It's one minute and one second.

6 MJ [COL POHL]: Go ahead.

7 [Video from 502SS (Gov) Attachment LLL played.]

8 Q. Did the video we just watched identify Mr. Hawsawi by
9 the kunya Zahir?

10 A. It did.

11 Q. And did you ask Mr. Hawsawi whether Zahir was a kunya
12 he sometimes used?

13 A. I did.

14 Q. What did he say?

15 A. He indicated that he used different names depending
16 on the country he was in, and that would have been an alias
17 that he used when he was in Afghanistan.

18 Q. Slowing down for the interpreter.

19 A. Sorry.

20 Q. And did you speak to Mr. Hawsawi specifically about
21 that meeting?

22 A. I did.

23 Q. Was that the meeting that he got to meet with Usama

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1 bin Laden individually after September 11th?

2 A. He acknowledged that it was.

3 Q. Did he admit that it was him on that video?

4 A. He did.

5 Q. And did he indicate what the purpose of the meeting
6 was?

7 A. He indicated that this was, in fact, the meeting that
8 he had had with Usama bin Laden just after the 9/11 attacks
9 that he had previously told us about where he had
10 congratulated Usama bin Laden; that, in fact, this was a video
11 he was not aware had been taken.

12 Q. Did you ask him whether the -- whether the meeting
13 happened before or after September 11th?

14 A. This was after September 11th. He said it was the
15 time that he congratulated Usama bin Laden after the attacks.

16 Q. Did he give you his opinion as to why they might have
17 called him Zakariya?

18 A. He indicated that he felt like the individuals who
19 had put the video together did not know his real name and got
20 it wrong.

21 Q. How many times did you watch the video with him?

22 A. Five times.

23 Q. Why did you watch it five different times?

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1 A. So when we were watching the video, I think -- he had
2 indicated that he has trouble seeing the television, it can be
3 a little fuzzy. So we tried to procure some magnifying
4 glasses to see if that might assist him and just played it as
5 many times as he wanted to see it to review in his effort, I
6 think, to identify the individuals in it.

7 Q. Okay. Other than anybody who's an accused in this
8 case, did he identify people ----

9 A. He did.

10 Q. ---- in that video?

11 And who did he identify?

12 A. Sheikh Usama bin Laden and one other person.

13 Q. How would you describe his demeanor while he was
14 watching the video?

15 A. He seemed to enjoy looking at it. Again, I think he
16 was -- he had been surprised that it had been taken.

17 Q. And I know you mentioned that he had a hard time
18 seeing the fuzzy screen. Did he ever say he had any
19 difficulty seeing any of the other documents that you had
20 shown him over the course of the 28 hours you met with him?

21 A. When he indicated the difficulty in seeing the
22 screen, he differentiated between seeing the screen of a
23 television and documents that he had been shown. So he

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1 indicated that he had not had any difficulty reviewing or
2 seeing the documents that we had covered over the course of
3 the interview.

4 Q. Does that video also depict other al Qaeda members
5 that were going for training with al Qaeda? The "Knowledge is
6 for Acting Upon" video specifically.

7 A. In that clip?

8 Q. Not in that clip specifically. Let me back up, we'll
9 get there.

10 So the clip you just showed, is that from, "Knowledge
11 is for Acting Upon"?

12 A. It is.

13 Q. And "Knowledge is for Acting Upon" is a much longer
14 video?

15 A. It is.

16 Q. Almost two hours long?

17 A. Yes.

18 Q. Were you able to review substantial portions of that?

19 A. Yes.

20 Q. And in one of those portions, does that video depict
21 other al Qaeda members that were going for training with
22 al Qaeda?

23 A. It does.

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1 MTC [MR. TRIVETT]: Your Honor, I'd like to play what's
2 502VV (Gov) Attachment IIII, which is the exhibit that
3 contains the entire video, not just the snippet. I'm not
4 going to play the two hours, I'm not asking for that. We are
5 going to ask that you review in chambers the remainder of the
6 two hours. Because I think it's all relevant to the
7 hostilities aspect. We're asking to play about a three-minute
8 portion now.

9 MJ [COL POHL]: Has a copy of the full video been given to
10 the defense?

11 MTC [MR. TRIVETT]: It has, sir, in discovery and it was
12 attached to the electronic exhibits.

13 MJ [COL POHL]: Got it, okay. Go ahead.

14 [Video from 502VV (Gov) Attachment IIII played.]

15 Q. Special Agent Perkins, does this video also discuss
16 the training of the hijackers and how the September 11, 2001
17 attack plans were formulated?

18 A. It does.

19 MTC [MR. TRIVETT]: I would ask to play one more video,
20 Your Honor. It's two and a half minutes.

21 MJ [COL POHL]: Go ahead.

22 [Video played.]

23 Q. So in total, Special Agent Perkins, how many of the

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1 19 hijackers did Mr. Hawsawi admit to assisting in the summer
2 of 2001?

3 A. At least seven.

4 Q. Okay. I'm now showing the witness what has been
5 marked as Appellate Exhibit 502ZZ, which depicts the 19
6 hijackers identified by the FBI separated by flight.

7 Do you recognize the names of any individuals
8 Mr. Hawsawi admitted in the spring of 2001?

9 A. I do.

10 Q. And can you please put a red box around them.

11 A. [Complied.] Mohamed Atta.

12 Q. And can you describe what support he provided these
13 individuals?

14 A. So for Mohamed Atta, he indicated that he had
15 received monies back on his behalf and as well had received
16 phone calls with regard to the locations where a number of the
17 other hijackers that he supported were to be sent. And that
18 was the support he provided.

19 Waleed al Shehri, Flight 11. He also received monies
20 back from Waleed al Shehri just prior to the attacks
21 occurring.

22 Abdul Aziz al Omari was one of the hijackers that he
23 supported in the UAE to purchase tickets when requested to do

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1 so by Mohamed Atta and sent him to the United States.

2 Salem al Hazmi, also known as Bilal, Flight 77, was
3 also an individual sent to him and for which Mohamed Atta
4 informed Mustafa al Hawsawi where to send him in the United
5 States. And he ultimately became a hijacker.

6 Saeed al Ghamdi, Flight 93, similarly was sent to
7 Mustafa al Hawsawi. He also knew him as Mu'ataz. He was
8 another individual that he purchased a ticket to the United
9 States on his behalf at the direction of Mohamed Atta.

10 Fayez Banihammad was an individual that he helped
11 open a bank account to put money in as well as purchased a
12 ticket on his behalf to the United States at the direction of
13 Mohamed Atta and received access to his accounts to ensure
14 that he could remove those monies to his own account at
15 Standard Chartered Bank prior to the attacks occurring.

16 Marwan al Shehhi was another individual who returned
17 monies to Mustafa al Hawsawi on September the 11th, 2001, and
18 Mustafa al Hawsawi was able to place that money into his
19 account at the Standard Chartered Bank.

20 MTC [MR. TRIVETT]: One moment, please. Court's
21 indulgence, sir?

22 [Pause.]

23 MJ [COL POHL]: Mr. Trivett, we're about to take the

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1 afternoon break anyway, so we want to capture that exhibit,
2 and then we'll ----

3 MTC [MR. TRIVETT]: Please capture that exhibit
4 and then ----

5 MJ [COL POHL]: We'll recess for a half hour, to 1530.
6 Commission is in recess.

7 [The R.M.C. 803 session recessed at 1459, 6 December 2017.]

8 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1533,
2 6 December 2017.]

3 [Abigail Perkins resumed her seat on the witness stand.]

4 MJ [COL POHL]: Commission is called to order. Any
5 changes? Apparently not. Ms. Perkins is still on the stand.

6 Mr. Trivett.

7 MTC [MR. TRIVETT]: Thank you, sir. Before we tender the
8 witness, we would ask that the military judge also consider
9 the statement by the Department of Defense regarding the
10 strikes against Usama bin Laden's training camps and his
11 pharmaceutical factory, which is found at AE 502VV
12 Attachment H, as well as the 9/11 Commission Staff Statement
13 Number 6.

14 MJ [COL POHL]: Just a second. What was the first one,
15 please?

16 MTC [MR. TRIVETT]: AE 502VV Attachment H.

17 MJ [COL POHL]: One moment. Is that a DoD news briefing?

18 MTC [MR. TRIVETT]: Correct.

19 MJ [COL POHL]: Any objection?

20 LDC [MR. RUIZ]: Can I get the exhibit one more time,
21 please?

22 MJ [COL POHL]: Mr. Trivett.

23 MTC [MR. TRIVETT]: Appellate Exhibit 502VV Attachment H.

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1 LDC [MR. RUIZ]: Just one moment, Judge.

2 [Pause.]

3 LDC [MR. RUIZ]: No objection to that, Judge.

4 MJ [COL POHL]: I'm sorry. No objection?

5 LDC [MR. RUIZ]: Correct.

6 MJ [COL POHL]: Okay. The other one?

7 MTC [MR. TRIVETT]: Sir, 9/11 Commission Staff Statement
8 Number 6 regarding the role of the military against al Qaeda
9 found at AE 502VV (Gov) Attachment W.

10 LDC [MR. RUIZ]: No objection.

11 MJ [COL POHL]: Okay. Let me pull it up first, please.
12 That's Staff Statement Number 6?

13 MTC [MR. TRIVETT]: Yes, sir.

14 MJ [COL POHL]: Okay. Anything else?

15 MTC [MR. TRIVETT]: The transcript of Mr. Hawsawi's
16 Combatant Status Review Tribunal, which is found at
17 AE 502SS (Gov) Attachment R, the foundation for which the
18 defense counsel waived in a previous litigation.

19 MJ [COL POHL]: Waived or stipulated?

20 MTC [MR. TRIVETT]: They stipulated to the foundation, I
21 believe, sir.

22 MJ [COL POHL]: Okay.

23 MTC [MR. TRIVETT]: I don't want to speak for him.

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1 MJ [COL POHL]: Any objection?

2 LDC [MR. RUIZ]: Well, I -- in terms of the stipulation to
3 the foundation, Judge, I don't like the word waiver.

4 MJ [COL POHL]: No, no.

5 LDC [MR. RUIZ]: That was done in the context of how the
6 evidence would be submitted and considered by the commission.
7 I do have the same objections that I raised in 502N (MAH).

8 MJ [COL POHL]: Yeah, but I think really the issue simply
9 is a foundational issue, and that's -- when he said waiver,
10 that struck me as kind of an odd ----

11 LDC [MR. RUIZ]: For purposes of this hearing, if that
12 means establishing that the CSRT took place at a certain place
13 and time and Mr. al Hawsawi was present, that's fine.

14 MJ [COL POHL]: Okay.

15 LDC [MR. RUIZ]: In terms of the ----

16 MJ [COL POHL]: Weight to be given to it.

17 LDC [MR. RUIZ]: Not only the weight but the consideration
18 of those statements, prior to an actual suppression hearing on
19 those statements with all available evidence provided to the
20 defense, I maintain those objections in regards to those
21 statements as I have.

22 MJ [COL POHL]: Talking about for going forward or for
23 purposes of 502?

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1 LDC [MR. RUIZ]: Well, Judge, we raise those objections to
2 all statements for purposes of the 502, in 502N, as well as
3 for the CSRT statements. So I'm preserving those objections.

4 In terms of the foundational, I think, as I've
5 described it ----

6 MJ [COL POHL]: Uh-huh.

7 LDC [MR. RUIZ]: ---- for your consideration for purposes
8 of this hearing, we would not object to that foundation.

9 MJ [COL POHL]: Okay.

10 LDC [MR. RUIZ]: However, we would still ask that not only
11 that exhibit but the LHMs be withheld under seal. Again,
12 that's to diminish the prejudicial impact on Mr. al Hawsawi's
13 case.

14 MJ [COL POHL]: Okay. Anything else, Mr. Trivett?

15 MTC [MR. TRIVETT]: I think I mentioned this during the
16 direct, sir, that we would ask you to view the entire two-hour
17 video in chambers found at Appellate Exhibit 502SS
18 Attachment LLL, as it directly relates to al Qaeda's view of
19 its war against the United States and acceptance of its
20 responsibility for the three attacks the United States has
21 claimed constitute the armed conflict.

22 MJ [COL POHL]: Okay.

23 MTC [MR. TRIVETT]: We finally ask, you know, to the

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1 extent that we have to, it's always -- we're always uncertain
2 with it in regard to interlocutory matters, because obviously
3 the evidence doesn't come in the same way as it does in a
4 normal trial, but we would ask you to consider all of the
5 exhibits that were testified to today by Ms. Perkins and
6 certainly yesterday by Special Agent Fitzgerald as well, to
7 determine that Mr. Hawsawi was an alien unprivileged enemy
8 belligerent and part of al Qaeda during the charged offenses.

9 MJ [COL POHL]: Okay.

10 MTC [MR. TRIVETT]: We would also request that you view
11 the entire LHM that we were just discussing as well as its
12 accompanying attachments.

13 And other than that, sir, we have no further
14 questions for this witness and no further evidence for the
15 jurisdictional hearing against Mustafa.

16 MJ [COL POHL]: Okay. For -- unless and until a final
17 decision is made of the admissibility of the CSRT statement
18 and the L ----

19 MTC [MR. TRIVETT]: ---- HM.

20 MJ [COL POHL]: ---- HM statement, they will remain under
21 seal until we resolve that issue, and they're not to be
22 published to the outside.

23 MTC [MR. TRIVETT]: No, sir.

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1 MJ [COL POHL]: Thank you.

2 Mr. Ruiz, do you wish to cross-examine this witness
3 now, or would you want to --

4 LDC [MR. RUIZ]: Judge, may I answer that question outside
5 the presence of the witness? There may be a portion I can do.

6 MJ [COL POHL]: Okay. Ms. Perkins, I'm going to ask you
7 to wait outside.

8 [The witness withdrew from the courtroom.]

9 MJ [COL POHL]: We also both sides -- I want to discuss
10 502QQ, which is Mr. Hawsawi's list of proposed exhibits and
11 whether there's any objection to me considering those. So,
12 Trial Counsel, take a look at that while we're discussing this
13 issue.

14 LDC [MR. RUIZ]: Judge, for that piece, Major Wilkinson
15 would be the best person to handle that, with your approval.

16 MJ [COL POHL]: Well, let's see if they object first.

17 LDC [MR. RUIZ]: I understand.

18 MJ [COL POHL]: If they don't object, I think Major
19 Wilkinson will be better off if he doesn't get up.

20 LDC [MR. RUIZ]: Like I said, if I'm ahead in the bottom
21 of the ninth and I'm the home team, I normally don't go to
22 bat.

23 MJ [COL POHL]: Okay. Okay. What about cross-examining

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1 the agent ----

2 LDC [MR. RUIZ]: Judge, there are a couple of discovery
3 issues that remain for us. So the bottom line is there's a
4 significant portion of the cross-examination that I would like
5 to defer. The specifics of the discovery are a couple of
6 things.

7 First of all, there has been extensive testimony from
8 the witness in regards to her involvement in the embassy
9 bombings. We do not have any discovery regarding any
10 documents or any 302s, FBI 302s, or investigative notes that
11 she's generated during the course of those investigations.
12 Having taken the stand, we are moving for the production of
13 all of those notes to us so that we are properly able to
14 review those notes and do that ahead of time. Of course, we
15 believe that you have already ruled on this issue before and
16 they just haven't been provided, but that puts us in a
17 position where we need to get those documents, analyze them,
18 review them, digest them, and cross-reference them.

19 In relation to the agent's notes, Agent Perkins was
20 not the primary note taker; it was Agent Fitzgerald and a
21 couple of agents from the CITF. However, we received those
22 notes yesterday, both a classified and unclassified version,
23 while we were in court.

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1 I began reviewing those notes and have gotten through
2 quite a bit of those notes. But one of the things that I was
3 able to realize was that there were portions of the notes that
4 were cut off at the bottom of the page. Some of those
5 portions that were cut off at the bottom of the page were
6 provided in duplicates of the same page with a different page
7 number. And so we requested a copy that was a computerized
8 copy, but I believe it's just a computerized copy of the same
9 thing.

10 So at least for my purposes, I haven't been able to
11 determine what exactly it is that I'm missing, or if we're
12 missing everything, because we have a least three separate
13 productions of the same document. So I need additional time
14 to digest that as well.

15 You also heard today testimony from Agent Perkins,
16 and this is also something that came about with the two
17 exhibits that I submitted to the commission earlier this week,
18 502XX and 502YY, in terms of access to CIA documentation,
19 cables, information that she reviewed in preparation for
20 Mr. al Hawsawi's interrogation, statements which she testified
21 about today. We don't have any of that information.

22 We would like also to move for the production of
23 those cables that she reviewed, the specific databases that

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1 she had access to. Obviously, given the context of her
2 testimony today, they're very relevant for us to be able to
3 properly structure our cross-examination.

4 MJ [COL POHL]: You think it would be helpful to ask her
5 specifically what she reviewed and then ----

6 LDC [MR. RUIZ]: Sure. What I don't want to happen,
7 Judge -- what I'm trying to avoid is that I do ask her those
8 questions, I get some answers, but you think that we're one
9 and done, for lack of a better term. Because what I do think
10 will happen ultimately is we're going -- we're going to end up
11 with some discovery requests based on this information.

12 Now, had this information been provided to us ahead
13 of time, we could have properly framed the issue and perhaps
14 gotten through it in this session. I don't want that to be
15 held against us, so ----

16 MJ [COL POHL]: As I told you earlier, Mr. Ruiz, is that
17 if there is subsequent discovery that you've not been provided
18 that you need and it results in needing to recall the witness,
19 we will do that.

20 LDC [MR. RUIZ]: Right.

21 MJ [COL POHL]: Okay. Based on -- I mean, I'm not going
22 to penalize you that you got things late.

23 Now, as you know, these discovery issues sometimes

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1 can drag out. So the fact that we -- but if you get
2 additional discovery that is relevant to the issue before me
3 that we need to recall the witness, we'll recall the witness.

4 LDC [MR. RUIZ]: I kind of need you to order it first ----

5 MJ [COL POHL]: Oh, yeah. I know.

6 LDC [MR. RUIZ]: ---- so I can ----

7 MJ [COL POHL]: I understand the order of the thing. I'm
8 saying ----

9 LDC [MR. RUIZ]: Even when you have ordered it, they
10 haven't produced it.

11 MJ [COL POHL]: Yeah. Okay. Well, we'll discuss -- I
12 think we can discuss discovery slightly differently. But what
13 I'm saying is if a discovery issue is resolved in such a way
14 that you feel that you need to recall the witness, you will be
15 given that opportunity, is kind of what I'm saying.

16 LDC [MR. RUIZ]: Thank you. But here's what we do know
17 now. We know for a fact that the agent reviewed cables on a
18 CIA database. I don't know what they are, but we know that
19 she testified to that.

20 MJ [COL POHL]: Yeah. No, I heard the testimony.

21 LDC [MR. RUIZ]: So what I'm asking you to do is to order
22 the prosecution to provide that information to us.

23 MJ [COL POHL]: Well, let's see -- let's ask her so we can

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1 narrow down what she's -- what she reviewed. What I'm saying
2 is ----

3 LDC [MR. RUIZ]: I understand you want me to pinpoint it.

4 MJ [COL POHL]: Well, I'm just saying she's available.

5 LDC [MR. RUIZ]: Sure.

6 MJ [COL POHL]: She's outside that door and she's
7 available. So rather than say to the government tell us what
8 she reviewed, we can ask her if she's got any type of clarity
9 of -- or memory of what she reviewed or what she thinks she
10 reviewed and we can go from there. And then the government is
11 in a better position to actually provide it. You may already
12 have them. You just don't know what she herself had seen.

13 LDC [MR. RUIZ]: I guess that would be a possibility.
14 We've put our heads together and do not think we have any of
15 that, but ----

16 MJ [COL POHL]: Well, we don't know what she -- she said
17 she reviewed some CIA information. I'm not even sure they're
18 cables. But the database should be the same database. You
19 don't know what part of what you should have ----

20 LDC [MR. RUIZ]: Sure.

21 MJ [COL POHL]: ---- that she was -- looked at. Unless
22 there's a third database out there I don't know about and ----

23 LDC [MR. RUIZ]: Can we do this? I'm going to see if we

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1 can do this. Could I begin my examination with that tomorrow,
2 and then what that will do is give us an opportunity to go
3 back and make sure we scrub our records ----

4 MJ [COL POHL]: Okay.

5 LDC [MR. RUIZ]: ---- and make sure that we're in the best
6 position we can be before we ask those questions.

7 MJ [COL POHL]: Okay. Okay. Do you want to start with
8 Ms. Perkins or Agent Fitzgerald first?

9 LDC [MR. RUIZ]: I will start with Agent Fitzgerald first,
10 Judge.

11 MJ [COL POHL]: Okay. And another issue is: You
12 indicated you might have another 505(h) notice?

13 LDC [MR. RUIZ]: That was filed as soon as we got the
14 notes.

15 MJ [COL POHL]: No, but have -- has it been filed? Has it
16 been accepted for filing and there's a number on it and the
17 government knows what we're talking about? At lunch, as I
18 understood, you had asked for a number, but it had not been
19 actually filed.

20 LDC [MR. RUIZ]: I thought -- well, let me find out for
21 sure.

22 MJ [COL POHL]: Sure.

23 LDC [MR. RUIZ]: So we have asked for an AE number, but

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1 one has not been assigned.

2 MJ [COL POHL]: Okay. Okay. So that's what I -- so it's
3 still ----

4 LDC [MR. RUIZ]: Once we get that, we will file the 505.
5 And that is in reference to the classified statements that we
6 received yesterday.

7 MJ [COL POHL]: Okay. Hold on.

8 Trial Counsel, what's your view of the 502QQ (MAH)?
9 Any objection to me considering, given the weight they
10 deserve, those exhibits?

11 MTC [MR. TRIVETT]: I do have some specific ones, if I can
12 approach?

13 MJ [COL POHL]: Okay. So then we're going to need your
14 compatriot. Okay. Go ahead.

15 MTC [MR. TRIVETT]: Court's indulgence for a second, Your
16 Honor. I just want to pull it up.

17 MJ [COL POHL]: Okay.

18 [Pause.]

19 MTC [MR. TRIVETT]: Okay, sir. I have it up. So the list
20 of exhibits, the first one, being the summary of
21 interrogation, we have no objection to.

22 MJ [COL POHL]: Okay. There's a paragraph 6, list of
23 attachments; that's what you're talking about?

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1 MTC [MR. TRIVETT]: I don't object to the -- no, actually,
2 it just says list of exhibits in paragraph 3.

3 MJ [COL POHL]: Okay. Just want to make sure we're
4 reading from the same point.

5 MTC [MR. TRIVETT]: Yes, sir.

6 DC [MAJ WILKINSON]: That would be Attachment B, sir.

7 MJ [COL POHL]: Okay. I'm just telling you what I'm
8 reading from.

9 MTC [MR. TRIVETT]: Okay.

10 MJ [COL POHL]: On page -- there's an Attachment A,
11 there's Attachment B, Attachment C.

12 MTC [MR. TRIVETT]: In the list of attachments, sir?

13 MJ [COL POHL]: Just from the list of attachments is what
14 I'm operating from.

15 MTC [MR. TRIVETT]: Okay. I see. Attachment A is
16 certificate of service, Attachment B is the summary of
17 interrogation.

18 MJ [COL POHL]: Right. So just tell me -- don't tell me
19 what you disagree with -- or agree with; tell me, going down
20 that list, which ones you object to.

21 MTC [MR. TRIVETT]: We would note that we did not have an
22 opportunity to cross-examine Professor Marco Sassòli or Leslie
23 Green, and that -- the legal opinions but ----

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1 MJ [COL POHL]: Just so it's clear ----

2 MTC [MR. TRIVETT]: Yes, sir.

3 MJ [COL POHL]: ---- I'm just talking about to consider,
4 you know, weight's a different issue altogether and if it's
5 a -- neither side presents a declaration of affidavit that the
6 other side didn't get a chance to cross-examine, that goes
7 into the weight analysis. I got it. Go ahead.

8 MTC [MR. TRIVETT]: No objection to those attachments.
9 There was a couple of requests for judicial notice that were
10 incorrect, and I'm trying to think if this is in the same list
11 of attachments. We would oppose the judicial notice aspect.

12 MJ [COL POHL]: Well ----

13 MTC [MR. TRIVETT]: Especially in regards to the East
14 Africa bombing attacks. I think they were off by over 200
15 deaths. Let me see, now I'm on paragraph 4.a. which is
16 page 2.

17 MJ [COL POHL]: Yeah. Now you're back to the motion
18 itself.

19 MTC [MR. TRIVETT]: Yes, sir. It was more concerning
20 about the judicial notice than the exhibits -- than the
21 attachments, rather.

22 MJ [COL POHL]: Okay. Okay.

23 DC [MAJ WILKINSON]: Sir, with respect ----

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1 MJ [COL POHL]: Judicial notice deals with al Qaeda in the
2 United States, right?

3 DC [MAJ WILKINSON]: Sir, with respect to paragraph 4.b.
4 that he's referring to ----

5 MJ [COL POHL]: Uh-huh.

6 DC [MAJ WILKINSON]: ---- we don't actually need judicial
7 notice of anything in that paragraph anymore because the
8 testimony of the government's agents has provided what we
9 need. That's not related to the attachments, it's just
10 judicial notice.

11 MJ [COL POHL]: No, yeah. Okay. So 4.b. you're
12 withdrawing your request for judicial notice of that. Okay.

13 DC [MAJ WILKINSON]: Yes, sir.

14 MJ [COL POHL]: Okay. Any other thing than the judicial
15 notice?

16 MTC [MR. TRIVETT]: Just going through it again.

17 Nothing through f., and we continue to object to
18 information about the Mau Mau Emergency and all of those
19 things, but those are legal objections. If you determine that
20 they're relevant, we're not going to object on any
21 foundational grounds.

22 MJ [COL POHL]: Yeah. Judicial notice is a different
23 concept than relevance, simply, but, you know. But you are

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1 arguing they're not relevant as you argued before.

2 MTC [MR. TRIVETT]: Correct. So other than that, no other
3 objections, sir.

4 MJ [COL POHL]: Do any of the -- anything in the thing?

5 MTC [MR. TRIVETT]: Negative.

6 MJ [COL POHL]: Okay. Therefore, I will consider
7 everything and give it the weight that it deserves that's in
8 the exhibit. Okay.

9 Any other housecleaning issues on the 502, Mr. Ruiz?

10 LDC [MR. RUIZ]: No, Judge.

11 MJ [COL POHL]: Where are we at? And again, I'm just
12 talking about process here and procedure, not substance,
13 because we've got the wrong prosecution team here, on 532.
14 Apparently, Mr. Connell is now involved because I got a long
15 list of new exhibits.

16 LDC [MR. CONNELL]: Yes, sir. Mr. Williams declined our
17 request for an interview.

18 LDC [MS. BORMANN]: And, Judge, I have an exhibit based
19 upon that.

20 MJ [COL POHL]: Okay. I want to be careful with handling
21 exhibits right now on this.

22 LDC [MS. BORMANN]: I agree with you. Judge, I have a
23 suggestion, if I may.

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1 MJ [COL POHL]: Uh-huh.

2 LDC [MS. BORMANN]: I think if we ask that Major Lebowitz
3 switch out with the regular trial team, there are some matters
4 I would ask the court to address that would be short lived and
5 it might resolve this issue more quickly later on down the
6 week.

7 MJ [COL POHL]: Okay. Yeah. I'm thinking of a way ahead
8 here, too. Okay. We'll take a recess. We'll ask Major
9 Lebowitz to return and the regular prosecution team to leave.
10 Once that's done, we will immediately then pick up with 532
11 issues.

12 Commission is in recess.

13 [The R.M.C. 803 session recessed at 1556, 6 December 2017.]

14 [The R.M.C. 803 session was called to order at 1557,
15 6 December 2017.]

16 [Abigail Perkins resumed her seat on the witness stand.]

17 MJ [COL POHL]: The commission is called to order. All
18 parties are again present. Ms. Perkins is rejoining us.

19 Just have a seat, Ms. Perkins. We're going to excuse
20 you for today. You are going to be recalled tomorrow for
21 cross-examination; but between then and now, don't discuss
22 your testimony with anybody except for the attorneys for
23 either side or the accused. Do you understand that?

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1 WIT: Yes.

2 MJ [COL POHL]: Okay. Thank you for your testimony. You
3 are excused.

4 [The witness was warned, temporarily excused, and withdrew
5 from the courtroom.]

6 MJ [COL POHL]: That being said, we -- Mr. Trivett.

7 MTC [MR. TRIVETT]: Sir, do we have an order of march
8 tomorrow for the witnesses, including the defense witness?

9 MJ [COL POHL]: Fitzgerald, Perkins, defense witness.

10 MTC [MR. TRIVETT]: Thank you, sir.

11 MJ [COL POHL]: Okay. And he is on island?

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

13 MJ [COL POHL]: And then we'll tentatively, just for this
14 side of the room, and then we'll probably address the 532 on
15 Friday. But we also have an 806 tomorrow with the two
16 witnesses, too, so how we're going to fit them all in, we'll
17 see. But okay.

18 Commission is in recess.

19 [The R.M.C. 803 session recessed at 1558, 6 December 2017.]

20 [END OF PAGE]

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1 [The R.M.C. 803 session was called to order at 1603,
2 6 December 2017.]

3 MJ [COL POHL]: Commission is called to order. Any
4 changes in the defense since we recessed about five minutes
5 ago? Apparently not.

6 The regular prosecution team has left us, and Major
7 Lebowitz has now joined us. Just to update you, Major
8 Lebowitz, is that apparently the defense attempted to talk to
9 Mr. Williams and Mr. Williams decided he didn't want to talk
10 to the defense; is that correct?

11 LDC [MS. BORMANN]: Yes, Judge.

12 MJ [COL POHL]: Okay. And, Ms. Bormann, you had some type
13 of exhibit you wanted to give to me that, of course, you've
14 given a copy to Major Lebowitz also.

15 LDC [MS. BORMANN]: Judge, I handed to Major Lebowitz
16 what's already been marked as AE 532Z, as in zebra, (WBA). It
17 is an e-mail where -- it's two individuals having an e-mail
18 conversation.

19 MJ [COL POHL]: Uh-huh. I can read it. I got it in front
20 of me.

21 LDC [MS. BORMANN]: It's Major Wareham e-mailing Gregory
22 Williams. Gregory Williams, if you'll remember ----

23 MJ [COL POHL]: I remember who he is.

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1 LDC [MS. BORMANN]: Yeah. He did the declaration for the
2 prosecution for the special trial counsel, and then he did a
3 supplemental declaration. And in neither of those
4 declarations does he answer any questions regarding what
5 appears to be a pending investigation.

6 MJ [COL POHL]: Okay.

7 [Military judge conferred with courtroom personnel.]

8 LDC [MS. BORMANN]: So we -- Major Wareham reached out to
9 him to ask that ultimate question, and the declarant who
10 declared for the prosecutor didn't want to answer any
11 questions for the defense.

12 So I believe you need to hear from people who know.
13 So I am going to ask you to order that Mr. Williams appear via
14 VTC, as well as a representative from DoD CAF. I have spent
15 the last day or so reviewing DoD manuals because this job has
16 me reviewing all sorts of things. And so I'm going to refer
17 you to the exhibit filed by Mr. al Baluchi's team; that's
18 532Y, as in yellow, and it contains relevant sections of DoD
19 manuals, et cetera, involving the investigation that is
20 currently being pursued.

21 I'm going to direct your attention to
22 DoD Manual 5200.02, Section 9.2. It's Attachment -- forgive
23 me while I dig for it.

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1 MJ [COL POHL]: D?

2 LDC [MS. BORMANN]: I think it's C.

3 MJ [COL POHL]: You sure it's not D?

4 LDC [MS. BORMANN]: No, I'm not sure at all. It could be
5 D. What is it? D, like David.

6 MJ [COL POHL]: Delta.

7 LDC [MS. BORMANN]: D, like David Nevin.

8 And if you look at Section 9.2., it applies here.
9 It's "Referal" -- sic, they're missing an R. But it says,
10 "Referal of Derogatory Information for Action." It's clear,
11 when you read that, that there are a bunch of stages. So
12 derogatory information has been referred.

13 Then there's a determination -- if you read through
14 the rule, there's an initial determination of whether or not
15 access will be immediately restricted. That's the 15-day rule
16 that you were speaking with Major Lebowitz about the other
17 day. That immediate access was not restricted; however, that
18 doesn't end, that only begins the process.

19 The process then goes on to what's called a final
20 determination, and -- so the 15-day access issue is, of
21 course, pending final determination. And what happens between
22 the 15-day rule and the final determination is called
23 investigation.

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1 And if you look at subsection 3 of 9.2, found at
2 page 56 of that manual, you will see it says, "If further
3 information is needed to resolve all allegations, the DoD CAF
4 will request additional investigation." Of course, the term
5 additional means that there had to be previous investigation
6 and, of course, that's where we are right now.

7 The next stage after the investigation and further
8 investigation would be an issuance of an unfavorable security
9 determination. That would not be final because the step after
10 that would be an appeal process, and then eventually there
11 would be a final determination.

12 So this thing is far from over, and, you know, I've
13 done a lot of reading in the last couple of days on this
14 issue. But one thing is clear to me, is it's not over. And I
15 think you need to hear evidence instead of my argument on the
16 point.

17 So absent any questions from you ----

18 MJ [COL POHL]: I don't have any right now.

19 LDC [MS. BORMANN]: ---- that's what I'm asking for.

20 MJ [COL POHL]: Okay. Major Lebowitz, you got a response?

21 STC [MAJ LEBOWITZ]: I do, Your Honor. Good afternoon,
22 Your Honor.

23 MJ [COL POHL]: Good afternoon.

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1 STC [MAJ LEBOWITZ]: Ms. Bormann raised several issues and
2 concerns, but what she's essentially getting at is to the
3 merits argument of the conflict issue. What Ms. Bormann is
4 getting to is where we are -- and I can explain again. Where
5 we are right now, where the status of this issue is right now,
6 Ms. Bormann is jumping to the world of speculation and
7 hypothetical of what may happen or what may not happen.

8 MJ [COL POHL]: Why won't Mr. Williams talk to the defense
9 counsel? Who is his counsel that advised him?

10 STC [MAJ LEBOWITZ]: He has, I mean ----

11 MJ [COL POHL]: Did he talk to you?

12 STC [MAJ LEBOWITZ]: Not about this issue, about the ----

13 MJ [COL POHL]: I'm talking about -- okay. But I'm saying
14 is Mr. Williams -- and I don't know whether it was his
15 decision or somebody else's, but at the end of the day, he
16 interjected himself as a witness on this issue, okay. He
17 filed a declaration. He says, I'm done. Well, you want me to
18 consider his declaration. Why should he be done? I mean,
19 because there's questions here now.

20 STC [MAJ LEBOWITZ]: I believe ----

21 MJ [COL POHL]: And if somebody has a question, why don't
22 we -- what's -- if he followed the right -- all we're talking
23 about is process here, right?

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1 STC [MAJ LEBOWITZ]: I believe ----

2 MJ [COL POHL]: You're talking about following procedures
3 and process. Why can't he come in and explain what the
4 procedures and processes are as he understands them?

5 STC [MAJ LEBOWITZ]: There's a couple of aspects about
6 that, Your Honor. Again, I'm not speaking for Mr. Williams,
7 as I did not discuss the witness request.

8 MJ [COL POHL]: Okay.

9 STC [MAJ LEBOWITZ]: However, the concern -- it's --
10 Ms. Bormann is essentially asking for the director of security
11 and someone from the CAF to come in here. It really is
12 becoming an Egan issue where she's asking this commission to
13 start litigating security clearance matters and getting
14 into ----

15 MJ [COL POHL]: Okay. Here's what I want to know, okay,
16 and I have yet to get a clear answer, is: What is the status
17 of this whole thing? What you told me was it's -- somehow in
18 the normal course of business, it will be addressed. And I
19 don't know what that means.

20 STC [MAJ LEBOWITZ]: I can tell you, Your Honor, I will
21 tell you right now where we are, where the status -- where
22 this currently is is that the DoD CAF has determined that
23 counsel's continued eligibility to classified information is

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1 consistent with national security. That is in paragraph 15 of
2 the declaration -- I have a supplemental one, but of the
3 declaration you already have. There is no adverse impact to
4 counsel's security clearance.

5 MJ [COL POHL]: Excuse me. Let me back up a question.
6 You have a supplemental declaration. Do I have that?

7 STC [MAJ LEBOWITZ]: I would ask to add it into the record
8 now, Your Honor.

9 MJ [COL POHL]: You know, it's difficult for me to deal
10 with things I don't have.

11 STC [MAJ LEBOWITZ]: I understand.

12 MJ [COL POHL]: Have you given it to the defense?

13 STC [MAJ LEBOWITZ]: Yes, Your Honor. On Monday night.

14 MJ [COL POHL]: Okay.

15 STC [MAJ LEBOWITZ]: I was hoping to pre-mark it, but I
16 wanted to follow the rules of supplements in the motion ----

17 MJ [COL POHL]: Yeah, I'm with you. I'm with you. Okay.

18 Major Lebowitz, I understand it's just you by your
19 lonesome when you got 20 attorneys on the other side, but
20 that's how the government chose to resource this.

21 STC [MAJ LEBOWITZ]: Your Honor, I will say the
22 supplemental declaration reiterates as the current facts what
23 was stated in the original declaration.

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1 MJ [COL POHL]: Yeah. Let me take a look at it.

2 Just for the record, technically, as Major Lebowitz
3 is correct, there should have been a motion to file a
4 supplement and be going through that process. But in order to
5 resolve this issue, we're going to short-circuit that process
6 and just treat this as an additional exhibit attached to the
7 record as 532AA.

8 Let me have a chance to read it here, Major Lebowitz.

9 STC [MAJ LEBOWITZ]: Yes, sir.

10 [Pause.]

11 [Military judge conferred with courtroom personnel.]

12 MJ [COL POHL]: Okay. Ms. Bormann, I just wanted to
13 clarify something that I overlooked the other day. When you
14 filed 532W, you referred to the CISO as an employee of WHS.

15 LDC [MS. BORMANN]: Yes. That is what we were told by
16 the ----

17 MJ [COL POHL]: Okay.

18 LDC [MS. BORMANN]: ---- individual who spoke with him.

19 MJ [COL POHL]: Okay. He works for me.

20 LDC [MS. BORMANN]: Okay.

21 MJ [COL POHL]: Okay, just to make it clear. Now, he may
22 fall under WHS in the concept as contract employees may, but
23 he is not part of the WHS OSS system or anything like that.

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1 All of the CISOs you see in court work for me, and so they're
2 not speaking for anybody ----

3 LDC [MS. BORMANN]: Oh, we didn't intend to have them
4 speak for anybody.

5 MJ [COL POHL]: Okay. I just wanted to make it clear that
6 there's an issue about WHS OSS in this.

7 LDC [MS. BORMANN]: My point was that the
8 investigation had -- I mean, had they actually wanted to do an
9 investigation here, they had a WHS employee who was told it
10 was unintentional. And then they had the chief of OSS told
11 the same thing.

12 MJ [COL POHL]: That's -- my only point is is that OSS --
13 WHS OSS is not my CISOs.

14 LDC [MS. BORMANN]: Got it.

15 MJ [COL POHL]: Okay. So anything told to them is not --
16 and when I'm referring to them, I'm pointing to the CISO who
17 is sitting here -- but anything told to the CISOs who work for
18 me is not the same thing as telling it to WHS OSS. And I want
19 to make sure there's no confusion to that effect. That's all
20 I'm saying.

21 LDC [MS. BORMANN]: There is none. And I wanted to lay
22 out in there to the best of my understanding, because I didn't
23 file ----

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1 MJ [COL POHL]: Yeah.

2 LDC [MS. BORMANN]: ---- the pleading, what our
3 understanding of what the process -- what happened was so that
4 you were aware. First we went here and then after that, you
5 know, to resolve the other issues, then we went to OSS. So we
6 have actually spoken with OSS, and that's why you have
7 the ----

8 MJ [COL POHL]: I understand. I didn't want any confusion
9 made that speaking to my CISO is the same as WHS.

10 LDC [MS. BORMANN]: It's not and we understand that it's
11 not.

12 MJ [COL POHL]: That's the only point I wanted to make on
13 that exhibit. Okay.

14 LDC [MS. BORMANN]: Do you have any questions for me on
15 anything else?

16 MJ [COL POHL]: Probably, but not right now.

17 LDC [MS. BORMANN]: Okay.

18 MJ [COL POHL]: Okay. Back to Major Lebowitz. Okay, back
19 to Mr. Williams and his second supplemental declaration as
20 it's labeled, okay.

21 STC [MAJ LEBOWITZ]: Your Honor, I think where we left off
22 was, I wanted to express to the commission where the facts
23 stand on this issue today. And again, as you look on the

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1 supplemental, it's on page -- it's paragraph 4, in the
2 original declaration it's paragraph 15; and again, the DoD CAF
3 determined that counsel's continued eligibility to classified
4 information is consistent with national security.

5 So there is no current investigation. There is no
6 adverse impact -- and I will explain, because I heard from the
7 defense in there. There is no adverse impact to counsel's
8 security clearances in the original declaration on page -- or
9 paragraph 19. He goes on to say, "The mere fact that an
10 individual report is made to the CAF would not be considered
11 an adverse security action unless his or her access to
12 classified information is suspended," which, as we pointed
13 out, has not been done. So whatever may or may not come next
14 is purely speculative.

15 Now, to get to the reaction in the room when I said
16 no investigation. The information is currently waiting for an
17 adjudicator to review it on a person-by-person basis.

18 Now, with respect to the learned counsel as well as
19 Lieutenant Colonel Poteet, it's in paragraph 20 of the
20 original declaration, which is for those four defense counsel,
21 the DoD CAF has advised that it will hold any determination in
22 abeyance until it can be considered along with the completed
23 background investigations to be completed.

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1 In the meantime, there is no disturbance to the
2 existing security clearances for those four individuals. For
3 the other -- for the rest of the affected counsel, in
4 paragraph 21 of the original declaration, it goes on to say
5 all 11 continue to have access.

6 So what Ms. Bormann was jumping to was -- between the
7 15 days that we discussed the other day where they made the
8 initial determination, she is now jumping to the speculation
9 point of what may or may not happen, the fear of what may or
10 may not happen. But as this commission is well aware, that a
11 potential security clearance action does not create a conflict
12 of interest. Speculation is not a conflict of interest. Fear
13 of what may come down the pike is not a conflict of interest.

14 MJ [COL POHL]: Okay.

15 STC [MAJ LEBOWITZ]: So that's where we stand, Your Honor.

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

17 Go ahead, Major Wareham. You're leaning forward in
18 the foxhole.

19 DDC [Maj WAREHAM]: And thank you, Your Honor. I
20 understand that there could be some view that Mr. al Baluchi's
21 clearances aren't directly invoked here. But as an officer of
22 the court, I'm concerned with clear, complete, and accurate
23 information being presented, and I'm not hearing it.

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1 To help out, I've found a number of sources, Your
2 Honor, and submitted them in our notice of exhibits. But the
3 easiest way to get through this voluminous material is to look
4 at the chart on Attachment C, page 11 of the Government
5 Accountability Office survey. Now, this is not a primary
6 source document. I've included the primary source documents.
7 But it gives some perspective on why we're running into some
8 muddy waters here and some misunderstandings.

9 First off, it should be noted -- and I can support it
10 with all of primary sourcing underneath, but I don't think
11 that's necessary at this stage. But to give you an idea why
12 some testimony and some actual evidence might be worthwhile
13 here, is there's actually two processes going on concurrently,
14 and they're distinct from each other.

15 The reason for this is because, as I understand the
16 clearance review that's taking place, and the people and the
17 status of the individuals that are involved and their
18 employment status, there's a Department of Defense CAF
19 adjudication that occurs for military and civilian personnel,
20 and then there's a contractor CAF review, but these are two
21 distinct and different processes.

22 As you could see, if you review -- DoD Manual 5200.02
23 applies to military and civilian, while DoD Directive 5200.6

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1 actually guides the contractor process. While it starts
2 off ----

3 STC [MAJ LEBOWITZ]: Excuse me, Your Honor. I'm sorry, I
4 didn't mean to interrupt.

5 MJ [COL POHL]: Well ----

6 STC [MAJ LEBOWITZ]: I just wanted to -- there is a fact
7 that I learned and inquired that actually I think addresses
8 the exact issue. So instead of going so far afield into the
9 weeds of policies and procedures, there is -- the fact is is
10 that WHS checked JPAS and confirmed with the DoD CAF that none
11 of the 11 individuals are coded in JPAS as contractors. As
12 such, 5200.02 is the correct policy for each of the 11
13 counsel.

14 MJ [COL POHL]: Okay.

15 DDC [Maj WAREHAM]: And that would be an adjudicated fact,
16 Your Honor, that might -- I don't know -- be useful coming
17 from a witness or some other capacity that we should probably
18 explore here. Because it seems to me that ----

19 MJ [COL POHL]: Let me ask you this. Let's -- let me ask
20 you this: Do you have the two declarations from Mr. Williams.
21 What would you want him to testify to?

22 DDC [Maj WAREHAM]: So to be very clear and to make an
23 Egan distinction here, like you said, Your Honor, the process,

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1 the process and the nature of actions. So we hear terms like
2 normal business process or normal process, and it sanitizes,
3 in essence, what is going on. Just because there's not
4 necessarily an investigator walking the streets right now
5 looking for people does not mean that an investigation is not
6 going on.

7 From what I've gleaned from, again, voluminous
8 material that might be better coming from actual witnesses, is
9 that where we're at on this process is the step one,
10 consolidated adjudication facility -- facilitator -- facility
11 adjudicator.

12 What has happened is this has gone to the initial
13 determination, whether or not suspension is immediately
14 necessary, that national security information is immediately
15 at risk and therefore is immediately necessary to be
16 suspended; which from my understanding of the affidavits and
17 declarations, they made that initial determination that
18 immediate suspension was not necessary. But this doesn't
19 close the investigation that is going on.

20 And the terms used throughout the primary source
21 document, to include 5200.6 -- or 5200 point, excuse me, 02,
22 is that an investigation is open. And while it sounds like
23 they're trying to consolidate an issue investigation, which is

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1 how I would characterize this, an actual adverse issue
2 adjudication, they're trying to consolidate that, apparently
3 for administrative efficiency's sake with the periodic review,
4 because those also go to the same first-level CAF reviewers.
5 It doesn't mean that an investigation as to these particular
6 issues, and that -- an investigation that would impact the
7 quality -- potentially impact the quality of the work being
8 done isn't actually going on.

9 LDC [MR. RUIZ]: Judge, pardon the interruption. I need
10 to ask for a couple of my counsel to be excused,
11 Ms. Lachelier, Major Wilkinson, and Commander Dave Furry. May
12 they be excused?

13 MJ [COL POHL]: They may be.

14 LDC [MR. RUIZ]: Thank you.

15 DDC [Maj WAREHAM]: So at this point, from what I've
16 gleaned from this material, the initial adverse entry triggers
17 a CAF, DoD CAF, review. This information starts to coalesce
18 and goes to the same individuals who have to do our initial or
19 who have to do our periodic, but it's an actual issue-focused
20 or adverse-issue-focused investigation.

21 Now, what I think the government is meaning, and I
22 would love to clarify with witness testimony, is normal
23 business process is that even though the investigation's open

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1 and it invokes an adverse issue that potentially could --
2 is -- well, is an active conflict right now, they -- it goes
3 on that same stack that all of our initial adjudications go
4 to. And that's why he, I think, initially threw out the one
5 year, you know, as a benchmark or some such when he was
6 discussing with -- discussing it with you earlier.

7 And so there is an investigation, and I think we need
8 to clarify that. Because as I read it, there's actually an
9 investigation, especially in the 5200 series, all the way
10 through to the PSAB, all the way to the three-personnel appeal
11 board, all the way through the orders allow them to direct
12 further investigation or acquire new evidence.

13 So as far as a counsel's performance and whether or
14 not a counsel could be tainted through the government's
15 process here, it seems as if it -- if it could carry through
16 the entire process until final determination is made by an
17 appellate board that still is allowed to take new evidence.

18 STC [MAJ LEBOWITZ]: I'm not sure what the process is,
19 Your Honor, of ----

20 MJ [COL POHL]: Hold on, Mr. Lebowitz -- Major Lebowitz.
21 Mr. Nevin.

22 LDC [MR. NEVIN]: Thanks, Your Honor. And I think that
23 Ms. Bormann said it correctly: This isn't over yet. And it

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1 isn't just exactly in the realm of speculation because we have
2 an actual allegation. We have a conclusion that we are said
3 to have acted willfully to -- or that we appear to have acted
4 willfully to release classified information.

5 I went through these materials as well, and it's -- I
6 think you can see from the face of these materials that there
7 is still an inquiry -- you can call it an inquiry, you can
8 call it whatever you want, but, in fact, it's an
9 investigation. They're still waiting to decide this issue.
10 There is an adjudicator -- I take it it's an adjudicator at
11 the DoD CAF who is going to render a decision about this.
12 It's either going to be a favorable decision or there's going
13 to be a request for the provision of additional information.

14 But this ----

15 MJ [COL POHL]: Or you could provide additional
16 information sua sponte, too.

17 LDC [MR. NEVIN]: Yes. I understand.

18 MJ [COL POHL]: You all have those options.

19 LDC [MR. NEVIN]: We have been offered the opportunity to
20 do that. But my point is -- I guess my point is, there's
21 still a decision that has to be made by these folks at the DoD
22 CAF as to whether or not we get to keep our clearances.

23 Now, I will tell you that these materials are also --

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1 very clearly have a suggestion that this should be reported to
2 law enforcement when it's appropriate. I understand they're
3 saying they haven't reported, but -- to law enforcement at
4 this point, but the materials very clearly say that that
5 should be done.

6 Now, I am -- this is different from a situation
7 where -- that we faced before where you concluded that the
8 investigation was over. I told you about the wolves
9 surrounding the campfire and you said you -- I believe,
10 concluded that I was speculating that the wolves were going to
11 be coming in to the clearing with me.

12 But in this situation ----

13 MJ [COL POHL]: I vaguely recall that conversation, or
14 that discussion. But I know what you are talking about. Go
15 ahead.

16 LDC [MR. NEVIN]: In this situation, very clearly, the
17 allegation has been made. The referral has taken place. The
18 people who make the decision about our security clearances,
19 and possibly worse, are sitting on it deciding what to do
20 next. It isn't over. And I can walk us through these
21 voluminous materials in considerable detail to demonstrate
22 that. The materials indicate that there are two kinds of
23 adjudications, interim and final. They indicate that the

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1 interim adjudication takes place within 15 days. And I
2 understand, based on what we have heard repeatedly, that
3 that -- that we're not -- our access has not been taken away
4 based on that.

5 But now there continues on to a final determination,
6 and this is what the adjudicator at the DoD CAF is doing. And
7 that has to do -- there is no particular time deadline within
8 which that has to occur. And there is -- very clearly, if
9 they decide that -- that they're not going to reach a
10 favorable determination, then they're obligated to let us know
11 that and give us an opportunity to present additional
12 information in our defense or whatever we want to present.

13 And there is also -- I'm a little alarmed to learn
14 that I'm not considered a contractor in this process, because
15 I am, in fact, a contractor. And my read of the rules is that
16 the process with respect to contractors is considerably more
17 robust. But set that aside for a minute.

18 I mean, I think it illustrates to some extent the
19 kind of arbitrary quality of this. But in any event, really,
20 when you -- if you look at what Mr. Williams is saying, he
21 says exactly this: This declaration that was just provided to
22 you today at paragraph 3, this is 532AA ----

23 MJ [COL POHL]: Uh-huh.

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1 LDC [MR. NEVIN]: ---- paragraph 3 says after this gets to
2 the DoD CAF, one of three things can happen: Render a
3 favorable determination -- that hasn't happened yet --
4 determine that there's more information needed; or issue a
5 statement of reasons. And the statement of reasons says
6 here's why we're talking your security clearance away; and,
7 you know, if you disagree, tell us.

8 MJ [COL POHL]: Okay.

9 LDC [MR. NEVIN]: And so we clearly have not gotten to the
10 end of this process yet.

11 And I pointed this out when we talked about this on
12 Monday, but these materials also indicate very clearly that
13 we're here only talking about eligibility for
14 national security information. We are not talking about SCI
15 or SAP access. And both of those are also extremely important
16 to us.

17 All of these allegations deal with -- deal with basic
18 eligibility, not with SAP. And if you -- this would be
19 Attachment D of the materials that Mr. Wareham was referring
20 to that he filed. It's 5200.02, paragraph 7.11, SAP is
21 handled by somebody else. SAP is handled by somebody known as
22 the SAP Central Office. And we haven't heard any statement
23 from Mr. Lebowitz saying that there's no -- that the SAP

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1 process is finished.

2 MJ [COL POHL]: Okay.

3 LDC [MR. NEVIN]: And the same is true with respect to
4 SCI. And there's a separate -- because there's a separate
5 process for SCI. And those materials are attached to the
6 materials Mr. Wareham showed you.

7 So I -- I mean, the other thing ----

8 MJ [COL POHL]: I hear you, Mr. Nevin. I got it. I got
9 it.

10 LDC [MR. NEVIN]: Okay. So I guess really, what I'm
11 saying is, I don't mind if Mr. Williams comes and testifies,
12 but I think you have everything you need to decide this right
13 now.

14 And really, the problem -- our problem is
15 Mr. Mohammad doesn't have a lawyer right now. He needs a
16 lawyer to advise him what this means. And maybe we need to
17 set this over for Mr. Williams. Maybe we need to come back
18 and argue about it in January. I'm fine with doing all of
19 that, but Mr. Mohammad needs guidance on this, and I can't do
20 it. I can't -- none of us can give it to him.

21 MJ [COL POHL]: Well, General Baker says he doesn't have
22 anybody to give him.

23 LDC [MR. NEVIN]: Right.

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1 MJ [COL POHL]: So ----

2 LDC [MR. NEVIN]: So we need to get about the business
3 of -- and ----

4 MJ [COL POHL]: So, I mean, I'm just saying is that you
5 say we can come back and do this in January. I mean,
6 realistically we have to go find a learned counsel,
7 independent counsel for each of these three accused. If it's
8 necessary, it's necessary. But we're not talking about
9 there's one waiting outside to take the job.

10 LDC [MR. NEVIN]: Let me say two things about that. One
11 is that, of course, I didn't set this up. Mr. Mohammad nor
12 I ----

13 MJ [COL POHL]: I know that. But I'm just saying is that
14 don't -- you make it seem like ----

15 LDC [MR. NEVIN]: Don't act like it's just some simple
16 thing.

17 MJ [COL POHL]: Yeah.

18 LDC [MR. NEVIN]: I understand. I appreciate that. I
19 didn't mean to try to like run it by you.

20 MJ [COL POHL]: No, I heard it before you ran it by me.
21 Don't worry about it.

22 LDC [MR. NEVIN]: Right. But it is true that this is how
23 this process is set up. The government made the decision to

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1 make it a capital case. The government made the decision to
2 say that it appeared that we had willfully disclosed
3 classified information. The government ----

4 MJ [COL POHL]: But, Mr. Nevin, let's -- let's -- I agree
5 with all of that. But this was all started by the defense
6 submitting a classified document on an unclassified system.

7 LDC [MR. NEVIN]: What do you mean when you say the
8 defense?

9 MJ [COL POHL]: I'm just saying is that there's a -- a 527
10 was filed with a classified attachment on an unclassified
11 network.

12 LDC [MR. NEVIN]: Yes, sir.

13 MJ [COL POHL]: Why I say defense is because it came from
14 them. There were 11 defense counsel's name on it.

15 LDC [MR. NEVIN]: But, therefore, what?

16 MJ [COL POHL]: I'm not saying therefore, what, but I'm
17 saying that's the triggering event of this whole thing.

18 So we're trying to -- what I'm saying is just -- the
19 government did make some choices here that perhaps you could
20 take issue with, but what started this was a mistake, as
21 Ms. Bormann agrees to, a mistake by the defense of conflating
22 two documents resulting in a spill. Okay. But that's what
23 started this.

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1 LDC [MR. NEVIN]: We get ----

2 MJ [COL POHL]: Now whether the government overreacted or
3 not, that's a different issue. But don't paint this all as a
4 government -- as government is to blame for this mess.

5 LDC [MR. NEVIN]: Well, but two -- two things in response
6 to that. First of all, I mean, I wasn't really talking about
7 this specific situation. I was really more talking about the
8 complexity of this environment where you have to have SAP
9 access and you have to do -- I mean, you do -- it's all taking
10 place at Guantanamo. It's extremely complicated. And that is
11 all the government's business. All of that complication that
12 you just referred to with the difficulty of getting a lawyer
13 down here to advise Mr. Mohammad, that is all the government's
14 doing.

15 But with respect to this issue, I agree that someone
16 on the defense side pressed send on an e-mail. And I read the
17 declaration of Mr. Bigley that was attached to
18 Mr. Binalshibh's pleading, the lawyer with expertise -- who
19 represents them with expertise in national security matters.
20 And he points out, not all 11 of those people gathered around
21 a terminal and pressed send. And before you make a referral
22 to an agency that has the ability to take away a valued
23 property right, and say in the referral that there's evidence

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1 that these three lawyers here acted willfully to disclose
2 classified information, don't you have an obligation to make
3 some sort of inquiry?

4 Why is it that three weeks after that takes place --
5 more than that, three weeks after Mr. Lebowitz ----

6 MJ [COL POHL]: Mr. Nevin, I hear what you're saying, but
7 my problem really is -- I read that declaration.

8 LDC [MR. NEVIN]: Yeah.

9 MJ [COL POHL]: Okay. And I'm asking -- I'm thinking to
10 myself -- he is correct. One person pushed send.

11 LDC [MR. NEVIN]: Yeah.

12 MJ [COL POHL]: Okay. Who knows who pushed send.

13 LDC [MR. NEVIN]: Everybody who got the e-mail.

14 MJ [COL POHL]: No. Okay. Okay.

15 LDC [MR. NEVIN]: It says "From" up at the top.

16 MJ [COL POHL]: Okay. So that's the one person -- I mean,
17 the question is how did this get attached, and you said one
18 person pushed send, and that's the person that gets hung up on
19 this?

20 LDC [MR. NEVIN]: No. What I'm saying is you know that we
21 didn't all -- as he said, we didn't all gather around the
22 terminal and all press send together. So what did happen?

23 MJ [COL POHL]: Okay.

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1 LDC [MR. NEVIN]: Okay. Do you just say, well, all 11 of
2 those guys must have acted willfully to disclose classified
3 information? Do you do -- is that reasonable?

4 MJ [COL POHL]: No, I'm not saying that it is. But I'm
5 saying who is in the position to explain exactly how this
6 happened?

7 LDC [MR. NEVIN]: Any one of us.

8 MJ [COL POHL]: Any one of this? I don't ----

9 LDC [MR. NEVIN]: I think if you -- if you just come to us
10 and you say what happened, you're going to get a response.

11 MJ [COL POHL]: Okay. Okay. Let me ask you this -- and I
12 don't want to go too far down this road because, you know,
13 this whole -- one of the things that this came up with is the
14 allegation triggers potential violation of criminal statute.

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

16 MJ [COL POHL]: Okay. So if somebody came to the -- to
17 the defense counsel -- and I don't want you to necessarily
18 answer, just put this rhetorically out there -- saying who
19 took the banner markings off a classified document?

20 LDC [MR. NEVIN]: What's your question?

21 MJ [COL POHL]: Well, my question is, is that whoever
22 says, "I did that," wouldn't they be incriminating themselves of
23 violating a statute?

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1 LDC [MR. NEVIN]: Well, here's the other part of this
2 that ----

3 MJ [COL POHL]: Or maybe there's an innocent explanation.

4 LDC [MR. NEVIN]: Yeah.

5 MJ [COL POHL]: But the bottom line is the government
6 coming to you doesn't know the innocent explanation and the
7 people who may know an innocent explanation have chosen not to
8 volunteer it. That's what we got.

9 LDC [MR. NEVIN]: Actually, that's not true. If you look
10 at 532W, whiskey, I think, Ms. Bormann's, there was -- there's
11 a direct statement that someone from their team went to
12 WHS OSS and offered an explanation. And ----

13 MJ [COL POHL]: Yeah, but what it says is unintentionally
14 confused with a different document by a defense team member.
15 I've got that part.

16 LDC [MR. NEVIN]: Okay.

17 MJ [COL POHL]: Okay. And -- but the other part of it is,
18 is the document itself that was submitted ----

19 LDC [MR. NEVIN]: Uh-huh.

20 MJ [COL POHL]: ---- had banners on it saying it was
21 SECRET.

22 LDC [MR. NEVIN]: Right.

23 MJ [COL POHL]: And those banners were obscured -- were

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1 redacted out and then sent in the system.

2 LDC [MR. NEVIN]: Okay.

3 MJ [COL POHL]: So that's the second part of that. That's
4 different than just simply -- if you have -- I understand the
5 confusion, and I know exactly what we're talking about,
6 because you've got the memo from General Baker, and you've got
7 the e-mail from General Baker. I've got that.

8 LDC [MR. NEVIN]: Right.

9 MJ [COL POHL]: Okay. And the explanation -- and there's
10 confusion that the memo was supposed to be sent, not the
11 e-mail. I've got that.

12 LDC [MR. NEVIN]: Right.

13 MJ [COL POHL]: That still does not explain how the banner
14 markings were taken off the thing.

15 LDC [MR. NEVIN]: I agree. And all -- and I know -- I
16 imagine Major Lebowitz is -- is going crazy over here
17 listening to this because he doesn't want us to argue about
18 whether or not we should have our security clearances taken
19 away. He's made the point again and again this is not the
20 forum for that ----

21 MJ [COL POHL]: Yeah.

22 LDC [MR. NEVIN]: ---- and I stopped the other day when we
23 were having this discussion. I said, wait, do you want to

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1 talk about that?

2 And -- but honestly, in some ways, the fact that we
3 do have clear defenses to this, to these allegations if all of
4 the facts are known, makes the nature of the conflict even
5 greater. Because the government did not conduct an inquiry
6 that at least reached to me, didn't even ----

7 MJ [COL POHL]: Uh-huh.

8 LDC [MR. NEVIN]: ---- didn't even tell me there was an
9 issue in this respect until three weeks after 532 got filed.
10 And I just never had a chance to be heard on it before this
11 was all ----

12 MJ [COL POHL]: Okay.

13 LDC [MR. NEVIN]: ---- in full career. So but ----

14 MJ [COL POHL]: No, I understand your point, Mr. Nevin,
15 and today we really weren't going to -- we have gotten more
16 into this than I really wanted to, it was just kind of for the
17 way ahead. Because my real concern is, is my short target on
18 this issue is that there apparently are some questions for
19 Mr. Williams about how long this process will take and what it
20 is. And what we're doing right now is some of us, and I'm
21 putting myself in this category, not you or Major Wareham or
22 Major Lebowitz, that some of you may understand this morass of
23 regulations and how they all work, but I'm just not that

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1 smart.

2 So I think we need to call a witness who is that
3 smart who knows the procedure. And since he chose to
4 interject himself in this, whether he chose or was chosen,
5 whatever, I think Mr. Williams is the appropriate person to do
6 that. So why don't we hear from Major Williams and we will
7 see whether or not we -- or Mr. Williams, whether we need to
8 hear from anybody else after he comes in.

9 So, Major Lebowitz, on Friday morning, 9:00, have
10 Mr. Williams here via VTC to discuss this issue, okay? Clear?

11 STC [MAJ LEBOWITZ]: Clear, Your Honor. There is -- I
12 just have to ----

13 MJ [COL POHL]: You have to set the logistics up, I know.
14 I know. Again, you're all by yourself. I got it. But just
15 tell Mr. Williams all we want to do is discuss his affidavit
16 and the procedures because he's the subject matter expert and
17 the judge needs some help. So just tell him that.

18 But tell him this is not a -- if it has to change to
19 something more directed, it will be, but he's basically being
20 ordered to appear to explain his affidavit, his declarations,
21 okay?

22 STC [MAJ LEBOWITZ]: I'll just ask Your Honor for
23 clarification. The one thing that my concern is is to avoid

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1 is getting into this litigating the security function and
2 litigating the decisions made by his office ----

3 MJ [COL POHL]: I want to talk about process. If we get
4 afield from that to an inappropriate area, you will have the
5 opportunity to object, and I will rule accordingly. I can't
6 say now exactly what the left and right lanes will be, but the
7 concern is: What is the process going forward? What does due
8 course mean? What implications are there currently now?
9 That's all we're talking about.

10 I want somebody who understands all of these rules
11 and can explain them to me, okay?

12 STC [MAJ LEBOWITZ]: Yes, Your Honor. I will check his
13 availability for sure.

14 MJ [COL POHL]: Mr. Harrington.

15 LDC [MR. HARRINGTON]: Judge, we would also like to
16 produce Mr. Bigley on Friday also. We think that he -- I
17 don't know what Mr. Williams' experience is within DoD CAF,
18 but Mr. Bigley has experience of working right inside of it,
19 as he indicates in his affirmation. And there's plenty more
20 that I have to say about this situation, which you don't want
21 to hear right now, but I'll be glad to tell you on Friday.
22 But it's much more than what Major Lebowitz wants the court to
23 think that it is.

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1 MJ [COL POHL]: What's his availability?

2 LDC [MR. HARRINGTON]: Mr. Bigley?

3 MJ [COL POHL]: Uh-huh.

4 LDC [MR. HARRINGTON]: I don't know at the moment but I'm
5 sure that we can make him available, Judge, he ----

6 MJ [COL POHL]: And, of course, the question is going to
7 be asked, he's just going to appear voluntarily?

8 LDC [MR. HARRINGTON]: Yes.

9 MJ [COL POHL]: Okay, without any reimbursement?

10 LDC [MR. HARRINGTON]: We'll take care of the
11 reimbursement.

12 MJ [COL POHL]: Okay. And I don't say that cynically.

13 LDC [MR. HARRINGTON]: No, I understand.

14 MJ [COL POHL]: If a witness is necessary and
15 reimbursement -- and he lives where?

16 LDC [MR. HARRINGTON]: In Washington, D.C., Judge.

17 MJ [COL POHL]: Okay. Okay. So ----

18 LDC [MR. HARRINGTON]: I'm sorry. He lives in California.
19 But he's available.

20 MJ [COL POHL]: That's what I thought, it was in
21 Los Angeles. So see what you can work out. I'm not making
22 any decision right now ordering his presence, but if he's
23 available and we can work it out, it may be useful to get him.

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1 STC [MAJ LEBOWITZ]: Your Honor, I just received word that
2 Mr. Williams, his last day on the job was today. He is in the
3 middle of a PCS, and he will be on the road for the rest of
4 this week. And you cannot make these things up, I realize,
5 Your Honor.

6 So may I go to the podium?

7 MJ [COL POHL]: I'm going to tell you this: What is
8 Mr. Williams' title that expires today?

9 STC [MAJ LEBOWITZ]: Director of security, Your Honor.

10 MJ [COL POHL]: Okay. And when he leaves, there's a new
11 director of security? There's an acting director of security?

12 STC [MAJ LEBOWITZ]: My understanding is that there is a
13 replacement, but the replacement will not be in the
14 position -- I have not -- I have no knowledge of who ----

15 MJ [COL POHL]: Who's in charge?

16 STC [MAJ LEBOWITZ]: I don't have that information right
17 now, Your Honor.

18 MJ [COL POHL]: Okay. Here's what you are going to do:
19 You're going to find a DoD employee who knows the whole
20 process that can give an informed opinion of where this stuff
21 is. Now, you may -- I was assuming that you'd have an acting
22 chief. Does the whole OSS collapse for -- until the
23 replacement shows up or is somebody in charge?

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1 STC [MAJ LEBOWITZ]: I see your point, Your Honor,
2 and ----

3 MJ [COL POHL]: Yeah. Whoever is in charge. And have
4 them read Mr. -- and have this person read Mr. Williams'
5 declarations, and up to speed on the case, and I want the
6 person in charge.

7 And let me just kind of explain this so everybody
8 understands this. This issue has got to be resolved. Okay.
9 I mean, I'm not making light of Mr. Williams' departure. But
10 this issue has got to be resolved. And it has to be resolved,
11 quite frankly, before we can do a lot of other stuff. We can
12 do some stuff as we're doing with the 502.

13 So if there's nobody available who can help us on
14 this this week, that means we're going to have to kick this
15 down the road until January. I don't like kicking things down
16 the road. So find somebody who can come in and enlighten me
17 on this issue on Friday.

18 If it's absolutely impossible, well, the government's
19 shut down, we're not paying anybody, that happens. The result
20 is this will -- we'll have to kick this issue down the road
21 until January and we'll have the same discussion again and
22 it's another example of things slowing down for reasons, okay?

23 STC [MAJ LEBOWITZ]: Yes, Your Honor. I just want to note

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1 an objection. I know we'll -- before Friday of having -- if
2 we're going to have a government official speak to government
3 processes, particularly with this aspect, that I don't think
4 we're going to need, nor should this commission get into,
5 having a counsel for the defense that they hired to advise
6 them and deal with this issue, the private attorney, and I
7 object to that.

8 MJ [COL POHL]: Objection is noted.

9 Mr. Nevin.

10 LDC [MR. NEVIN]: I'm not -- I just -- I only want to ask
11 when this person is identified, whether we would have an
12 opportunity to talk to him, if he's -- him or her, if he or
13 she is willing to talk to us, please.

14 MJ [COL POHL]: I admire your optimism. Let's let the
15 person get up to speed and we'll just call them as a witness,
16 because of my instinct on the track record of government
17 witnesses who are going to want to talk to you. This witness
18 is going to be -- have to get up to speed anyway. So let's
19 wait until he or she -- and again, because I'm really talking
20 more about processes but also where this case lies in the
21 scheme of things, okay?

22 Commission is in recess.

23 [The R.M.C. 803 session recessed at 1652, 6 December 2017.]

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