

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1   **[The R.M.C. 803 session was called to order at 0901,**  
2   **21 February 2023.]**

3           MJ [COL ACOSTA]: The commission is called to order.  
4   Trial Counsel, good morning. Please identify who is here on behalf  
5   of the United States, if they have the necessary clearance, and  
6   indicate where they are appearing from.

7           TC [MR. O'SULLIVAN]: Yes, good morning, Your Honor. All  
8   personnel have the requisite clearances.

9           Just to note, these proceedings are being transmitted via  
10   CCTV to public viewing locations in the United States pursuant to the  
11   commission's order, AE 028M, dated 22 November 2019, and that  
12   includes the Pentagon today.

13           All the following personnel have the requisite clearances:  
14   Here in Guantanamo Bay, it's myself, Michael O'Sullivan; Mr. John  
15   Wells; Lieutenant Commander Cherie Jolly; Major James Garrett;  
16   Mr. Pascual Tavaréz-Patin; Staff Sergeant Maria Young; Mr. Forrest  
17   Parker Smith; Mr. Louie Marmo; and our linguist.

18           In the Remote Hearing Room in northern Virginia: Lieutenant  
19   Commander Keven Schreiber, Major Michael Ross, Major Stephen Romeo,  
20   Lieutenant Tess Schwartz, Captain Jonathan Danielczyk, Master  
21   Sergeant Laura Speranza, Ms. Paige McLachlan; from the Transregional  
22   Criminal Investigation Unit, Special Agent Paul Rude; and from the  
23   FBI, Supervisory Special Agent Mary Sonnen; and from the Office of

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 General Counsel of the FBI, Katherine Eisenreich.

2 MJ [COL ACOSTA]: Thank you, Counsel.

3 Good morning, Mr. Natale. If you could do the same for the  
4 defense, please.

5 LDC [MR. NATALE]: Absolutely. Good morning, Your Honor.

6 Anthony Natale on behalf of Mr. Nashiri. Present here in the -- here  
7 in Guantanamo is Ms. Morgan, Lieutenant Commander Piette, our  
8 interpreter. Mr. Nashiri is present. Ms. Carmon, LN1 Wood, and  
9 Mr. Dolphin.

10 In the RHR we have Mr. Padilla, Lieutenant Colonel Nettinga.  
11 We have Mr. Bendoragel. We have Mr. Roy, Mr. Roosevelt Roy. There  
12 will be Ms. Manice Brown, and there may be Staff Sergeant McGuire  
13 coming in.

14 And there may be a need for -- to have one of our other  
15 staff people to come in, Mr. Hoffmann.

16 All of the people I have set forth, Your Honor, have the  
17 necessary clearances to be here and the need to be here on our team.

18 MJ [COL ACOSTA]: All right. Thank you.

19 As Mr. Natale stated, the accused is present today. Good  
20 morning, Mr. Nashiri.

21 Government, re-call the witness.

22 ATC [Capt DANIELCZYK]: We'll grab him and bring him to the  
23 witness stand, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: Captain, what is the breakdown of the groups  
2 that you're calling today or the statements we're taking today,  
3 numerically?

4 ATC [Capt DANIELCZYK]: We have a group of one, a group of  
5 two, and a group of four.

6 MJ [COL ACOSTA]: All right.

7 ATC [Capt DANIELCZYK]: Go ahead and have a seat, Mr. Reuwer.  
8 You're still under oath.

9 **[The witness, KENNETH S. REUWER, resumed the witness stand.]**

10 **REDIRECT EXAMINATION CONTINUED**

11 **Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:**

12 Q. All right. Good morning. I'd like to talk about a  
13 Mr. Mohammed Ahmed Mahmoud al Bitar. Did you conduct an  
14 interview ----

15 MJ [COL ACOSTA]: Can you slow down for a second.  
16 Just -- you're going off of these names off a big list and then you  
17 go right into the individual. Give me the name again.

18 ATC [Capt DANIELCZYK]: Yes, Your Honor. It's Mohammed Ahmad  
19 Mahmoud al Bitar, and that is Tab 16 of 319MM.

20 MJ [COL ACOSTA]: Okay. You may proceed.

21 ATC [Capt DANIELCZYK]: Thank you, Your Honor.

22 Q. Mr. Reuwer, did you conduct an interview with Mr. Al Bitar  
23 on 10 January 2001?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. I did.

2 Q. And Mr. Bitar told you he lives in the Tawahi district of  
3 Aden and is employed as a policeman; is that correct?

4 A. That is correct.

5 Q. Where did you conduct this interview?

6 A. At the MOI/PSO facility, the compound that we've  
7 previously conducted the other interviews in in Aden.

8 Q. Was there other U.S. law enforcement personnel present?

9 A. There were.

10 Q. And who was that?

11 A. There were two FBI agents, Special Agents Khoury and  
12 Crouch.

13 Q. Were there also PSO and MOI officials present?

14 A. Yes, sir, they were.

15 Q. When you first saw Mr. Bitar, did you notice any signs of  
16 abuse?

17 A. No, sir.

18 Q. Did he appear healthy?

19 A. He did.

20 Q. Did he have clean and appropriate-looking clothing?

21 A. He did.

22 Q. Did he appear frightened in any way?

23 A. No, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Was he restrained or shackled?

2 A. No, he was not.

3 Q. Was there anything to make you think he was in custody at  
4 the time?

5 A. No, sir.

6 Q. And if there had been, would you have taken note of that?

7 A. Absolutely.

8 Q. Was your team introduced and explained to Mr. Bitar why  
9 you were interviewing him?

10 A. Yes, sir, we were.

11 Q. And did you conduct the interview using that interview  
12 protocol that we have discussed?

13 A. We did.

14 Q. Notwithstanding the interview protocols, did you  
15 experience any interference from Yemeni law enforcement personnel?

16 A. No, sir.

17 Q. From your observations, did Mr. Bitar appear to be  
18 answering your questions willingly?

19 A. Very much so, yes, sir.

20 Q. Was he cordial with you?

21 A. He was.

22 Q. Was Mr. Bitar previously interviewed by Yemeni  
23 authorities?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Yes, sir.

2 Q. Was his previous statement read to him?

3 A. Yes, it was.

4 Q. And did he verify its accuracy?

5 A. He did.

6 Q. Now, Mr. Bitar was looking after a home that was for rent;  
7 is that correct?

8 A. I'm sorry, he was?

9 Q. He was looking after a home that was for rent; is that  
10 correct?

11 A. His -- yes, a family member's home. Yes, sir.

12 Q. Did he describe those circumstances to you?

13 A. Yes, sir. He was -- he explained that the house was a  
14 vacant home belonging to his brother and sister-in-law who were out  
15 of the country -- I believe in Jordan -- and that the house had been  
16 on the market -- the rental market for about two months or so, and it  
17 had some interest but no one had -- had contracted on it.

18 And sometime in December of '99, an individual -- while he  
19 was outside working on the property or doing something at the  
20 property, an individual arrived and made inquiries about the property  
21 and the rental. They discussed options and ----

22 Q. Before you -- you continue, I just want to back up a  
23 little bit. Did Mr. Bitar describe the house to you?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     He did.

2           Q.     And how did he describe that?

3           A.     He described it as a two-story home.  He said that he had  
4   personal effects or things in storage, or the family did, on the  
5   first floor, and, therefore, the first floor was not the rental  
6   option.  But rather the second story of the home was, and it was a  
7   multi-room upstairs, the apartment, that had views overlooking  
8   the -- the Port of Aden.

9           Q.     Did all of the rooms on the second floor have a view of  
10  the Aden port?

11          A.     Apparently so.

12          Q.     Okay.  I believe you were saying he was approached by an  
13  individual.  Did Mr. Bitar describe to you this individual?

14          A.     He did.

15          Q.     How did he describe him?

16          A.     As I recall, he said he was wearing a shirt and a ma'wazz.  
17  He was -- I think this description was that he was skinny.  I do  
18  recall that he said he believed he had front-gapped teeth, slightly  
19  gapped teeth, dark hair.  I think this one, he said he had a  
20  mustache.  And on quick recall, that's the best I can -- I can do.

21          Q.     Do you recall if Mr. Bitar described his height?

22          A.     I think he was medium height.

23          Q.     And do you recall if he described this individual's age?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I do know that he did. I can't recall what he described  
2 it as. My recollection is he was 35 to 40.

3           Q.     And did this man inquire about the rental price?

4           A.     He did.

5           Q.     And how much did Mr. Bitar tell him?

6           A.     I believe he told him it was 20,000 rials a month. The  
7 guy said that was too much. They negotiated and agreed on 15,000  
8 rials a month, plus utilities. And no -- on this initial contact,  
9 there was just a discussion. No contract was done.

10          Q.     You say this initial contact. Did that man return at some  
11 point?

12          A.     Yes, sir. One or two days later, the same individual  
13 returned and met with Mr. Bitar. He produced a Hudaydah-issued  
14 government identification which identified himself as Abdo Hussein.  
15 It was a photo, ID, as was described to us, that matched the face of  
16 the individual he was speaking with, and the photo ID was -- was the  
17 validation point for the renter -- or, I'm sorry, for the -- for  
18 Mr. Bitar to enter into a written contract, which they executed.

19                 And the agreement was for 15,000 rials a month, plus the  
20 utilities was estimated -- or determined to be \$5,000 for the  
21 duration of the contract, and then he asked for a three-month  
22 contract. So doing the math, it totaled up and he collected 50,000  
23 rials up front.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You mentioned this identification that was produced. Did  
2 that appear to Mr. Bitar to be proper? Did it look real?

3 A. He accepted it, and as a police officer, we certainly gave  
4 him the benefit of the doubt that he would have told us anything  
5 different had it been the case.

6 Q. Now, you discussed a little bit this rental agreement.  
7 Were there any specific terms that Mr. Bitar insisted on for the  
8 house?

9 A. There were. He said that the -- the brother and  
10 sister-in-law that owned the home only wanted it rented to a family.

11 Q. And how did this man respond to that?

12 A. He said that was no problem; in fact, that he wasn't  
13 renting it for himself but rather for a family member and his family.

14 Q. Did this man give any additional details regarding that  
15 family member and family?

16 A. He said that they were coming from either Saudi Arabia or  
17 the Emirates. He didn't explain why they were coming or what brought  
18 them to Aden, but that the three-month lease was what they would be  
19 needing.

20 Q. And apologies if you covered this. Did this ----

21 INT: Excuse me, Your Honor. This is the interpreter. Would  
22 you please ask counsel to leave some time between the question and  
23 answer.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: Thank you. Did you hear that, Counsel?

2 You're going too fast.

3 ATC [Capt DANIELCZYK]: I did, Your Honor.

4 MJ [COL ACOSTA]: Thank you.

5 Q. Did this Mr. Abdo Hussein pay Mr. Bitar up front?

6 A. He did.

7 Q. Following the payment, did this Mr. Hussein stay at the  
8 house?

9 A. He did not. As a matter of fact, the day they did the  
10 contract, which one or two days after the initial meeting, he said  
11 that he was departing to go back to Hudaydah.

12 Q. Following that, did Mr. Bitar return to the house at some  
13 point?

14 A. Mr. Bitar did return to the house, and he told us that  
15 sometime in early January he was at the house again and he observed  
16 two individuals in -- in and at the home that were not Mr. Hussein,  
17 and he inquired of them where Mr. Hussein was. And they said that he  
18 was out of town or in Al-Hudaydah.

19 Q. Did Mr. Bitar know these individuals?

20 A. He did not. Never seen them before.

21 Q. Was he able to describe them?

22 A. He did provide descriptions to the best of his ability,  
23 which were annotated, which I can't recall the specifics of.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Would reviewing your 302 help refresh your recollection as  
2 to the descriptions of these men?

3 A. Absolutely.

4 ATC [Capt DANIELCZYK]: Your Honor, I'd like to show the  
5 witness AE 319MM, page 266.

6 MJ [COL ACOSTA]: You may proceed.

7 WIT: Thank you.

8 ATC [Capt DANIELCZYK]: I have provided the document.

9 **[The witness reviewed the evidence.]**

10 WIT: Sir, this document does not have the identifications of  
11 the two individuals.

12 MJ [COL ACOSTA]: Counsel, retrieve the document.

13 ATC [Capt DANIELCZYK]: Retrieving the document.

14 My apologies, Your Honor. Handing the witness page 266. I  
15 accidentally handed 265.

16 MJ [COL ACOSTA]: 319MM?

17 ATC [Capt DANIELCZYK]: Correct, yes, sir.

18 **[The witness reviewed the evidence.]**

19 ATC [Capt DANIELCZYK]: Retrieving the document.

20 Q. Did that refresh your recollection as to the descriptions?

21 A. It does, yes, sir.

22 Q. And how did he describe them?

23 A. The two individuals, the first of which was described as

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 about 40 years old, whitish skin, medium -- or thin, medium build.  
2 The second individual he said was about 30 years old, had a beard, a  
3 thin beard. And both were dressed in local attire.

4 Q. And did it appear to Mr. Bitar that the individuals were  
5 staying in that house?

6 A. He made the assumption or -- yes, sir, it did appear to  
7 him.

8 Q. Did Mr. Bitar see Abdo Hussein again?

9 A. Yes, sir. Again, on that day with the two individuals,  
10 they explained that he was out of town. That was in early January.  
11 Mr. Bitar told us that sometime in the next week or so, somewhere  
12 early/mid of January, he was -- he was driving through town and in  
13 the area, and he saw Mr. Hussein.

14 He stopped his vehicle and approached Mr. Hussein, who -- at  
15 which time Mr. Hussein explained that this brother and family were no  
16 longer -- or not coming to Aden and that he therefore would not need  
17 the house as a rental.

18 Mr. Bitar explained to him that he was unable to provide a  
19 refund for the moneys paid. There was no objection to that. He said  
20 he understood, and, in fact, he surrendered the key to Mr. Bitar.  
21 And that was the end of that.

22 Mr. Bitar did subsequently return to the home and checked it  
23 out and said that it was -- it was totally cleaned out and as it was

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 when they rented it.

2 Q. Did Mr. Bitar -- now, you described an interaction between  
3 Mr. Bitar and this Mr. Abdo Hussein. Did Mr. Bitar see Abdo Hussein  
4 again that same day in a separate instance?

5 A. I don't recall that he saw him the same day. I know he  
6 did say that he saw him later. I don't recall if it was later that  
7 day or just sometime shortly thereafter. But he saw him actually  
8 driving through town and described that he was driving -- was a  
9 yellow Hilux -- Toyota Hilux vehicle. There was no interaction or  
10 conversation in that -- in that latter connection.

11 Q. Now, you said that Mr. Bitar returned to the house and  
12 that it was clean. Did he say if these men or Mr. Abdo Hussein left  
13 anything behind?

14 A. He said it was completely left vacant, as it was when they  
15 assumed it.

16 Q. Did Mr. Bitar receive utility bills for the rental period?

17 A. He did. He received several -- or received the -- the  
18 total bill allotment. As you recall, I testified that he estimated  
19 5,000 rials for the utilities in advance. The total of the utilities  
20 at the time the lease ended were less than the 5,000, so it was fully  
21 covered.

22 And he opined -- he did provide the telephone number for  
23 the -- the home residence number that was actually an account that

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 his brother-in-law, the owner of the home, had, and that the use of  
2 the utilities seemed commensurate with the time and someone living in  
3 the house in that interim period.

4 Q. So let me -- let me clarify.

5 Given the amount of the bills, did Mr. Bitar believe that  
6 someone was living there?

7 A. He did, yes, sir.

8 Q. You mentioned the phone number. What was that phone  
9 number that Mr. Bitar provided you?

10 A. It was a six- or seven-digit number. I don't recall.

11 Q. Would reviewing your 302 refresh your recollection as to  
12 the phone number?

13 A. It would.

14 ATC [Capt DANIELCZYK]: Handing the witness AE 319MM,  
15 page 267.

16 **[The witness reviewed the evidence.]**

17 ATC [Capt DANIELCZYK]: Retrieving the document.

18 Q. Did that refresh your recollection?

19 A. Yes, sir. It was 245-916.

20 Q. Did Mr. Bitar hear the explosion near the USS COLE on 12  
21 October 2000?

22 A. As I recall, he did say that he heard it.

23 Q. Did he also observe smoke?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     He observed smoke at the site of the explosion, yes.

2           Q.     And was he able to see a U.S. Naval ship once the smoke  
3 cleared?

4           A.     After it cleared and he had visibility, he did say that it  
5 was a visiting U.S. Navy ship.

6           ATC [Capt DANIELCZYK]: Your Honor, may I have just one  
7 moment?

8           MJ [COL ACOSTA]: You may.

9     **[Counsel conferred.]**

10          Q.     Agent Reuwer, we talked a little bit about the interview  
11 protocols and what you were allowed and not allowed to do during the  
12 actual interviews. Can you talk about that a little bit?

13                 Was there any -- any instances where you wanted to ask more  
14 information?

15          A.     Absolutely is the answer to the question. There were  
16 numerous times in every interview we would have liked to have asked  
17 more.

18          Q.     And what -- what sort of questions or what themes were you  
19 generally prevented from asking?

20          A.     A lot of in-detail follow-up and the obvious things, like  
21 when -- the provision of a -- of a telephone number. Can you provide  
22 us the records? Can we have the records? Do you have -- do you have  
23 the records to provide to us? Can we use it for comparison

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 with -- with last month's records? All those kind of obvious  
2 investigative steps that we would normally take if we owned the  
3 investigation.

4 The protocol prohibited us from owning the investigation and  
5 limited us to inability to ask and pursue what we would call obvious  
6 logical leads.

7 Q. Now, I think previously, maybe in October, you gave some  
8 background about how these witnesses were lined up and we talked a  
9 little bit about the 302 drafting process.

10 At the end of each day that you're conducting these witness  
11 interviews, did you collaborate as a team?

12 A. We did.

13 Q. Did that include other members of the investigators that  
14 may not have been in that interview room?

15 A. By our protocol, not necessarily. There -- again, we were  
16 in a bullpen environment or in someone's hotel room which  
17 was -- maybe the beds were cleared out and it became a working suite,  
18 for example, in the hotel which was our headquarters. And people  
19 would come and go in the course of that room.

20 But when the -- in this case, the three of us would gather  
21 to go over the 302 or our respective notes in drafting the 302, we'd  
22 all have a quick powwow. One of us was designated with actually  
23 typing and executing the 302, so maybe only one was in the room with



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the computer at that moment. But then we would reconvene to say,  
2 okay, here's the draft. Let's all put an eye -- eyeball review on  
3 it.

4 Q. Did that ultimately make its way to your -- I don't know  
5 if you described it as a headquarters at -- on scene in Aden or  
6 leadership of some sort?

7 A. Yes. Every 302, once the -- the interviewing team  
8 acknowledged it and accepted it as good to go, generally our team  
9 lead who was -- it varied from -- it was always an FBI agent was the  
10 team lead. But the team lead then would go and have the next level  
11 in the hierarchy meeting, which included usually Special  
12 Agent O'Neill.

13 And that was kind of the end-of-the-day session for here's  
14 what was accomplished today, and then there was another designated  
15 team under Mr. O'Neill that -- that basically consolidated the  
16 collected 302s, were responsible for the transmission back to New  
17 York and so forth.

18 Q. That consolidation process, do you know, was that written  
19 down at all?

20 A. If the process were written down, I don't know. And I  
21 never participated in that as -- at my level.

22 Q. And so you obviously then didn't review that?

23 A. Review the process? Again, I don't know if there was a

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 written process. I was just made aware of what became of my 302 when  
2 it left our -- the three -- the three of us, when it left our review  
3 and was completed, it was passed over to that process.

4 ATC [Capt DANIELCZYK]: May I have a moment, Your Honor?

5 MJ [COL ACOSTA]: Yes.

6 **[Counsel conferred.]**

7 Q. Now, Mr. Reuwer, I just want to be clear. Did you write  
8 what was transmitted up the chain?

9 A. If I -- I did type some of the 302s. I don't recall which  
10 ones of the many interviews I conducted and participated in that I  
11 actually did the typing of.

12 Q. Well, I want to make sure that I understand.

13 So there's a 302. Is there also another summary that gets  
14 processed and pushed up the chain of command?

15 A. My understanding was there was a daily executive summary.  
16 I never saw it. I never participated in it. I only contributed to  
17 it through the submission of our 302 to that next level in the  
18 process.

19 ATC [Capt DANIELCZYK]: That's all I have, Your Honor. Thank  
20 you.

21 MJ [COL ACOSTA]: All right. Defense?

22 DC [Lt Col NETTINGA]: Thank you, Your Honor.

23 **[END OF PAGE]**

**RECROSS-EXAMINATION CONTINUED**

**Questions by the Defense Counsel [Lt Col NETTINGA]:**

Q. Good morning, Mr. Reuwer.

A. Good morning.

Q. I want to just go ahead and start where the prosecutor left off there.

So there were multiple -- as I understand it, and please correct me if I'm wrong, there were multiple summaries of the interview that were captured and passed up; is that fair to say?

A. By multiple, I'm not sure if that's necessarily accurate. If I may clarify to the ----

Q. Please.

A. ---- best of my knowledge.

Q. Please.

A. The interview and the only capturing of the interview formally was the 302. The 302 had subordinate handwritten agent notes, some of which were mine or others, of the interviewees that were the grounds for the execution of the 302 as we discussed again yesterday multiple times.

That 302 and my fellow agents' and other teams' 302s on a daily basis were each respectively passed forward, moved up the chain to the FBI team lead. What they did with it after that, to my knowledge, was only saw that the information, the 302, was provided

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to -- to New York, which was the -- the fathering field office for  
2 the investigation.

3 Whether there were other summaries drafted and written, I  
4 was never part of. I have no personal knowledge of that.

5 Q. And I understand that you may not have seen those, but you  
6 were -- it sounds like, from what I just heard, that you were aware  
7 that there was at least some sort of executive summary that was  
8 prepared to give an update and to -- and to require somebody  
9 reviewing that not to have to look at all of the 302s and the  
10 multiple pages?

11 A. Right. What we call an executive summary is -- is  
12 probably a fair description of it.

13 Q. Sure. Okay.

14 Now, were there also -- I understand that NCIS has a process  
15 called an IIR; is that correct?

16 A. No, sir. The federal government, the DoD, has an IIR  
17 process ----

18 Q. Okay.

19 A. ---- and NCIS subscribes to it.

20 Q. Can you talk to us about what that is?

21 A. An IIR is a DoD document that captures a -- an  
22 investigative or operational action. It's intelligence related,  
23 obviously, by the -- the I in the IIR. And it is a summary of

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 information relative -- often and almost always classified that  
2 reports intelligence gathering.

3 Q. All right. And were there IIRs prepared based on the  
4 interviews that you were conducting?

5 A. To my knowledge, absolutely not.

6 Q. Not at all?

7 A. Not at all.

8 Q. Okay. So certainly you were not involved in any drafting  
9 of any IIRs or anything like that?

10 A. I do not recall ever being involved in an IIR relative to  
11 the USS COLE investigation.

12 Q. Okay. All right. So let's talk about the interview of  
13 Mr. Al Bitar. This interview took place on the 10th of January 2001,  
14 right?

15 A. That's correct.

16 Q. And you indicated that he had been previously interviewed  
17 by the PSO before he talked to you?

18 A. That's my understanding, correct.

19 Q. You did not receive a copy of that, the summary of that  
20 interview?

21 A. I had not.

22 Q. Okay. I think you described yesterday how it was perhaps  
23 read to him and you were in the room, but you never received an

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 advanced copy, you didn't receive a copy once you were there?

2 A. Exactly.

3 Q. So this individual said that he had been watching over  
4 this house for his brother-in-law and that it had been -- it had been  
5 for rent for a couple of months with -- with no  
6 success -- right? -- no tenants coming forward?

7 A. Per his statement to us, correct.

8 Q. Right. He said he actually had it listed with a rental  
9 agency, and they were unable to find somebody, right?

10 A. That is correct.

11 Q. Okay. And then at some point in December, that's when  
12 he's approached by this -- this individual who ends up renting the  
13 house?

14 A. Correct.

15 Q. Okay. Were you able to get a better sense of how long  
16 this house was actually occupied or -- or the -- I guess what I  
17 should say is the time between the contract being executed and the  
18 time that the contract was essentially nullified? In other words, I  
19 don't need this anymore.

20 A. To the best of our ability, based on the information we  
21 were provided, it would be anywhere from two to five weeks.

22 Q. Okay. Okay. Copy.

23 A. Of occupancy.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Of occupancy.

2 And in that time, Mr. Al Bitar was not present at the house  
3 on a continual basis?

4 A. That's correct.

5 Q. He did make a visit. He saw a couple of folks in there  
6 that he didn't recognize on one occasion, right?

7 A. That is correct.

8 Q. And it sounds like that may have been the only visit that  
9 he had to the house during that time?

10 A. It's the only one that's recorded. He did share with us  
11 that he lived in the neighborhood.

12 Q. Right. But no specific contact that he -- he shared with  
13 you?

14 A. He shared with all the contact that he was able or that we  
15 knew of, yes, sir.

16 Q. Right. Okay. So you stated when this individual came up  
17 and asked him about the house for rent that there was nothing to his  
18 mind unusual about the request?

19 A. Correct.

20 Q. This is a policeman, as you indicated, right?

21 A. As he told us.

22 Q. And somebody that you said you'd give the benefit of the  
23 doubt to because he's a police officer?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Correct.

2 Q. And he said that this individual paid no special attention  
3 to any view that may have been visible from the apartment, from the  
4 house?

5 A. That's correct.

6 If I could clarify that last statement?

7 Q. Sure.

8 A. What -- the benefit of the doubt was given to the fact  
9 that he is the one that said he observed the identification card,  
10 and, as a police officer, our benefit of the doubt was that he didn't  
11 notice anything unusual about it.

12 Q. Oh, sure. No, I understand.

13 A. I just want to make sure that it was relative to the card.

14 Q. Got it. Got it. Thank you for the clarification. All  
15 right.

16 So this individual, Mr. Al Bitar, did give a description of  
17 the man that paid him for renting the house, right?

18 A. He did.

19 Q. And you indicated in your testimony that Mr. Al Bitar's  
20 description of this person was -- among other things, that he was  
21 skinny and of medium height. Do you recall testifying to that?

22 A. Yeah. And again, these -- I will say that these  
23 descriptions get extremely confusing and difficult to remember, and



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 I'd have to refresh to specify it again.

2 Q. No, and I -- and I totally understand. Because what this  
3 witness actually said was that he was short and well built, right?

4 A. If that's what it says in the 302, correct.

5 Q. Okay. I don't know that I got a direct answer to this,  
6 but I heard you talk about the frustration of not being able to  
7 follow up on things like phone records.

8 Did you -- were you able to get phone records based on the  
9 phone number that this individual provided?

10 A. I did not. Whether that was pursued in a subsequent  
11 investigation, I do not know.

12 Q. Okay. You're not aware that phone records were ever  
13 recovered ----

14 A. I do ----

15 Q. ---- based on ----

16 A. ---- I do not know of that.

17 Q. Okay. Do you recall when you learned that Mr. Al Bitar  
18 was being made available for an interview?

19 A. As with all the other interviews, within a 24-hour period,  
20 if not that morning.

21 Q. Okay. And again, as with all the other interviews -- and  
22 I don't want to make assumptions; that's why I've got to go through  
23 this.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Sure.

2 Q. As with all the other interviews, you -- I take it you  
3 were not provided with a description of who this individual was or  
4 how he was relevant to the case?

5 A. Correct.

6 Q. You were not provided with a statement that he had made  
7 beforehand?

8 A. That's correct.

9 Q. And it sounds like, from what we talked about yesterday,  
10 and I just want to make sure that this is still accurate: This was  
11 an individual -- Mr. Al Bitar was an individual developed by Yemeni  
12 law enforcement?

13 A. Correct.

14 Q. Okay. It was not somebody that the U.S. law enforcement  
15 had developed as a potential witness?

16 A. Correct.

17 Q. Prior to the interview or anytime after the interview, did  
18 you learn how Mr. Al Bitar's name surfaced with respect to this  
19 investigation?

20 A. I did not.

21 Q. So you don't know the circumstances surrounding how the  
22 PSO found or located this individual?

23 A. I do not.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You don't know whether this individual was taken into  
2 custody by the PSO as part of that identification?

3 A. I have no knowledge of that.

4 Q. You don't know whether he was forced, coerced, or  
5 threatened to talk to the PSO?

6 A. I have no knowledge of that.

7 Q. You don't know whether his family members were forced,  
8 coerced, or threatened so that he would talk?

9 A. Same.

10 Q. And you don't know whether he or his family members were  
11 promised anything to provide a statement to the PSO?

12 A. Same.

13 Q. This interview took place at the same location as we've  
14 described previously, the MOI headquarters?

15 A. Correct.

16 Q. You don't know how Mr. Al Bitar got to the headquarters  
17 that day?

18 A. That's correct.

19 Q. You don't know where he was located before he was in the  
20 room with you?

21 A. Correct.

22 Q. You don't know if he was commingled with other witnesses?

23 A. That is correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You were not previously provided a picture of what this  
2 individual looked like?

3 A. Correct.

4 Q. And you could not and so you did not verify his identity  
5 through any Yemeni government-issued identification?

6 A. As all of yesterday, that's correct.

7 Q. Okay. No police badge or anything like that that  
8 would -- that would help to confirm who this person was?

9 A. That's correct.

10 Q. You could not and so you did not photograph him or print  
11 him to document who you had in front of you?

12 A. That's correct.

13 Q. And you never independently verified his identity through  
14 any follow-up investigation?

15 A. That's correct.

16 Q. And that includes getting a phone number and calling that  
17 phone number to see if he answered?

18 A. That's correct.

19 Q. Or going to the house and the address that he provided?

20 A. Correct.

21 Q. The only time that you've ever spoken to him was the 10th  
22 of January 2001?

23 A. Correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And since that time, you've not made any efforts to  
2 contact him to see if he'd be available for trial?

3 A. Correct.

4 Q. And you're unaware of any efforts by the United States  
5 Government, any agency, to determine whether this individual would be  
6 available for trial?

7 A. To my personal knowledge, that's correct.

8 DC [Lt Col NETTINGA]: Your Honor, if I could have one moment?

9 MJ [COL ACOSTA]: You may.

10 **[Counsel conferred.]**

11 DC [Lt Col NETTINGA]: Those are all the questions I have at  
12 this time, Your Honor.

13 MJ [COL ACOSTA]: All right. Government, you may proceed.

14 **REDIRECT EXAMINATION CONTINUED**

15 **Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:**

16 Q. Now, Mr. Reuwer, I want to follow up on a couple things  
17 here.

18 You said that -- that Mr. Bitar and this Mr. Abdo Hussein  
19 had multiple interactions; is that correct?

20 A. Correct.

21 Q. Did you conduct a photo identification with ----

22 DC [Lt Col NETTINGA]: Objection. That's outside the scope.

23 MJ [COL ACOSTA]: Government?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ATC [Capt DANIELCZYK]: Your Honor, I missed it on direct.

2 I -- the government's more than happy to let defense conduct their  
3 cross-examination questions following.

4 MJ [COL ACOSTA]: I'll allow it. Government, you can proceed.  
5 Go ahead.

6 ATC [Capt DANIELCZYK]: Thank you, Your Honor.

7 Q. Did you conduct a photo identification with Mr. Bitar?

8 A. We did.

9 Q. And what version of the photo book did you use?

10 A. I believe that was the 2 January '00 edition.

11 Q. Now, when you say zero-zero, are you referring to 2000?

12 A. I am. I'm sorry. Yes, sir.

13 Q. Was he able to identify any photos?

14 A. He did.

15 Q. And what did he identify?

16 A. He identified, as I recall, number 20 alone as the  
17 individual that he knew from the contract and those meetings to be  
18 Mr. Abdo Hussein.

19 Q. Have you had a chance to review that photo book?

20 A. I have.

21 Q. And who is depicted in number 20?

22 A. The individual that the investigation has identified as  
23 Mr. al Nashiri.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     Now, speaking more broadly for the investigation, I  
2 believe defense asked about follow-up that you did personally. Do  
3 you recall that line of questioning?

4           A.     Yes, sir.

5           Q.     Now, approximately how many additional investigators were  
6 on the ground with you in Aden?

7           A.     Approximately there were 50 to 60 total personnel. I  
8 don't have the recollection to be able to identify how many of them  
9 were acting as security and how many were actual field investigators.

10          Q.     Were many of those people performing tasks in addition or  
11 outside of what you were currently working on?

12          A.     Absolutely. There was a great variety of activity every  
13 day.

14          Q.     So you don't know if some of those  
15 investigation -- investigative steps were being completed by those  
16 other agents; is that correct?

17          A.     To my understanding, anything that we could follow up on  
18 as a result of those 302s were being identified -- or followed up on  
19 to the best of the task force's ability. In many cases, I know  
20 because I was, you know, subsequently informed or advised we weren't  
21 able to pursue that or the team A or team B that was, you know,  
22 tasked with that follow-up was shut down or -- or locked out, or in  
23 some cases were successful. I don't have any specifics of that.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 I just know that in the course of our daily team briefs, we  
2 were all kind of briefly informed of what the other teams were doing,  
3 accomplishing, and what our next steps were.

4 ATC [Capt DANIELCZYK]: That's all I have on this one. Thank  
5 you, Your Honor.

6 MJ [COL ACOSTA]: Defense, recross?

7 DC [Lt Col NETTINGA]: Yes, Your Honor.

8 **RECROSS-EXAMINATION CONTINUED**

9 **Questions by the Defense Counsel [Lt Col NETTINGA]:**

10 Q. So I just want to clarify with respect to the  
11 identification and the ADENBOM version that was shown. That was  
12 the -- the 10th of January ----

13 A. Yes.

14 Q. ---- version, right, not the 2nd?

15 A. To the best of my knowledge, it was the 2nd, but without  
16 further review, I wouldn't want to swear to that.

17 Q. Would it help to refresh your recollection if you were  
18 able to review ----

19 A. Absolutely.

20 DC [Lt Col NETTINGA]: Your Honor, may I approach the witness  
21 with page 267 of 319MM?

22 MJ [COL ACOSTA]: You may.

23 **[The witness reviewed the evidence.]**



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DC [Lt Col NETTINGA]: Retrieving that from the witness.

2 Q. Mr. Reuwer, does that refresh your recollection as to the  
3 version of the ADENBOM book that was used with Mr. Al Bitar?

4 A. Yes, sir. I do recall that it -- now it was the 10th of  
5 January edition.

6 Q. All right. And you indicated that he identified number 20  
7 as this man that he knew as Abdo Hussein, correct?

8 A. Yes, sir.

9 Q. He did not identify number 21, number 22, also pictures of  
10 Mr. al Nashiri?

11 A. He did not.

12 Q. And with respect to follow-up investigation and other  
13 members that were on the ground there of U.S. law enforcement, it  
14 sounds like, if I heard you correctly, that they ran into the exact  
15 same problems that -- that you ran into in the interviews in terms of  
16 being prohibited from going into certain areas by the Yemeni law  
17 enforcement.

18 A. They ran into similar, not the exact same. Our -- our  
19 situation is we were in a confined room with the PSO members. They  
20 may have been out in town trying to do something and were shut down,  
21 so not exactly the same, but certainly similarly.

22 Q. Sure. But both being obstructed from doing what they  
23 needed to do to complete a full and fair investigation?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     To be thorough in a U.S. law enforcement investigation,  
2     yes, they were.

3           DC [Lt Col NETTINGA]: Absolutely, thank you. I have no  
4     further questions, Your Honor.

5           MJ [COL ACOSTA]: All right. Government? Any redirect out of  
6     that, Government?

7           ATC [Capt DANIELCZYK]: No, Your Honor, no redirect.

8           MJ [COL ACOSTA]: All right.

9           ATC [Capt DANIELCZYK]: Your Honor, this next grouping is of  
10    two, and it will be Khaled Said Salem Moqbil al Kazimi and Tarek Abd  
11    al Malek Mohammed Seif al Shouwafi.

12          MJ [COL ACOSTA]: Okay. Khaled Said Salem Moqbil al Kazimi  
13    and then the next one?

14          ATC [Capt DANIELCZYK]: Tarek Abd al Malek Mohammed Seif  
15    al Shouwafi.

16          MJ [COL ACOSTA]: Got it.

17                               **REDIRECT EXAMINATION CONTINUED**

18    **Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:**

19          Q.     Mr. Reuwer, first I want to talk about Mr. Al Kazimi. Did  
20    you conduct an interview with Mr. Al Kazimi on 14 January 2001?

21          A.     I did.

22          Q.     And Mr. Kazimi told you -- he's a self-employed fisherman;  
23    is that correct?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. That is correct.

2 Q. Where did you conduct this interview?

3 A. At the PSO interview facilities that had been provided to  
4 us at the MOI compound in Aden.

5 Q. Were there other U.S. law enforcement personnel present?

6 A. There were in this case. There were two special agents  
7 from the FBI, Agents Khoury and Agent Crouch.

8 Q. Were there also PSO and MOI present?

9 A. There were.

10 Q. When you first saw Mr. Kazimi, did you notice any signs of  
11 abuse?

12 A. None at all.

13 Q. Did he appear healthy?

14 A. He did.

15 Q. Did he have clean clothes, appropriate clothes?

16 A. He did.

17 Q. Did he appear frightened?

18 A. He did not.

19 Q. Was he restrained or shackled?

20 A. No, sir.

21 Q. Was there anything to make you think he was in custody at  
22 the time?

23 A. Nothing whatsoever.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And if he had been or if you had observed any of those,  
2 would you have taken note?

3 A. Absolutely.

4 Q. Was your team introduced to Mr. Kazimi and explained to  
5 him why you were talking to him?

6 A. We were.

7 Q. And did you conduct the interview following that interview  
8 protocol?

9 A. We did.

10 Q. Now, from your observations, did Mr. Kazimi appear to be  
11 answering your questions willingly?

12 A. He did.

13 Q. Was he cordial with you?

14 A. He was.

15 Q. Was Mr. Kazimi previously interviewed by Yemeni  
16 authorities?

17 A. I don't believe he was.

18 Q. Now, as a fisherman, did Mr. Kazimi tell you where he  
19 usually fishes?

20 A. He does. He said he usually fishes down by the  
21 Al-Burayqah bridge, which is on the southeast side of -- of Aden.

22 Q. Is he familiar with other local fishermen in that area?

23 A. He is. That's his regular employment.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And did he identify to you a Mr. Monir al Rabash?

2 A. He talked to us about Mr. Rabash, yes, he did.

3 Q. How did he tell you that he knows Mr. Rabash?

4 A. He said that Mr. Rabash is another fisherman that works  
5 in -- there locally in the area and that the Rabash family, whether  
6 it was his, his brother's family, father, I don't recall, has  
7 a -- what he described as a shanty shack there on the -- on the  
8 waterside.

9 Q. Is that also near the Al-Burayqah bridge?

10 A. It is directly to the southeast of the bridge.

11 Q. Now, focusing a month and a half to two months prior to  
12 the attack on the COLE, did Mr. Kazimi tell you that he observed  
13 anything that was significant near that bridge?

14 A. Yes, sir. He went fishing that day, and when he was there  
15 he saw a boat in the water. There was a vehicle with a trailer that  
16 seemingly had been what brought the boat to the water, but the boat  
17 was already actually launched in the water. I think he said it was  
18 tied off there to the -- to the sand or the -- to the land. And  
19 there were several individuals, one of whom was Mr. Rabash and two  
20 individuals that he did not know.

21 Q. Now, what were these men getting ready to do?

22 A. By all appearances, they were going out for a boat ride  
23 and, in fact, Mr. Rabash invited him, Mr. Kazimi, to go with them.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 He declined because he was there to be fishing.

2 Q. Did he help the men launch the boat that day?

3 A. He did, in fact. Again, the boat was actually launched in  
4 the water and what he did with a motor -- it had a motor on the boat.  
5 The motor was off, and he basically pushed the boat out into deeper  
6 water so they could safely start the motor.

7 Q. Did he mention if that motor had an electric ignition or a  
8 pull start?

9 A. He said it was an electric ignition. And as I recall, he  
10 said it was an 85-horsepower Yamaha, blue or blue-gray in color.

11 Q. What did Mr. Kazimi do after launching the boat that day?

12 A. He resumed and went fishing, went about his business.

13 Q. When Mr. Kazimi ultimately returns from fishing, were the  
14 three men, were they back?

15 A. I think they had already come back. The boat was in the  
16 water. The vehicles were still there, and I think they were over at  
17 the -- the shanty shack with Rabash.

18 Q. Was the boat secured in some way?

19 A. I think it was tied either to the land or to the deck.

20 Q. Had Mr. Kazimi ever encountered these two individuals that  
21 he didn't know before?

22 A. Never before that time, no, sir.

23 Q. Was he able to provide you a description of the men?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. He did provide generic descriptions to us, yes.

2 Q. How did he describe the first man?

3 A. Sir, as with all the descriptions, I'd be hard pressed to  
4 do that from recall.

5 Q. Would reviewing your 302 refresh your recollection as to  
6 the description of the first man?

7 A. The first man, yes, sir.

8 ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
9 page 1245. I've provided the document.

10 **[The witness reviewed the evidence.]**

11 ATC [Capt DANIELCZYK]: Retrieving the document.

12 Q. Did that refresh your recollection as to the description  
13 of the first man?

14 A. Yes, he was well built, short, dark hair, no beard, wore  
15 a -- a white shirt and a ma'wazz.

16 Q. Did Mr. Kazimi comment at all on the first man's accent?

17 A. Yes, sir. He said it was, to my recollection, a  
18 Hadhramauti accent.

19 Q. Did Mr. Kazimi also give you a description of the second  
20 man?

21 A. Yes, sir, he did.

22 Q. And how did he describe him?

23 A. Again, these descriptions run for me, so ----

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Would reviewing your 302 refresh your recollection as to  
2 the description of the second man?

3 A. Yes, sir.

4 ATC [Capt DANIELCZYK]: Providing the witness the same  
5 document.

6 **[The witness reviewed the evidence.]**

7 ATC [Capt DANIELCZYK]: Retrieving the document.

8 Q. Did that refresh your recollection?

9 A. It did. He described him as full or well built, dark,  
10 beard. He also had a Hadhramauti accent. He also further stated  
11 that he remembered that he wore glasses. There were actually two  
12 incidents, I think, in which he had seen this individual. One time  
13 he was wearing what he described as prescription glasses. The other  
14 time, I think they were sunglasses, and he was unable to determine if  
15 they were prescription or not.

16 Q. Did Mr. Kazimi provide a description of the men's boat?

17 A. He did. It was a white fiberglass boat. It had the  
18 85-horsepower Yamaha engine on it. It had red carpeting in it. It  
19 had a steering wheel. It had -- and it had two seats.

20 Q. Did he observe any registration or other markings on the  
21 boat?

22 A. He did not notice any.

23 Q. Did he observe any gear, fishing gear, oars, anything like



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that?

2 A. He specifically told us he did not identify any such gear  
3 in the boat.

4 Q. Was he able to approximate the dimensions of the boat?

5 A. I believe he said it was six meters long and two meters  
6 wide.

7 Q. Did Mr. Kazimi comment on the condition of the boat? And  
8 by that I mean whether it was used, new, et cetera.

9 A. It was not new. That -- I would recall if he said it was  
10 a new boat. It had some use on it. It was weathered or it had  
11 clearly been a used boat, but it was in good shape.

12 Q. And by Mr. Kazimi's observations, did it appear to be like  
13 a boat made in that local area?

14 A. Actually, he opined that it did not appear to be a  
15 local-made boat. In fact, he described it as something that would  
16 not have come locally from Yemen.

17 Q. Did Mr. Kazimi also provide you a description of the  
18 vehicles these men arrived in?

19 A. They had a white Nissan saloon.

20 Q. Was Mr. Kazimi able to -- did he give any descriptions of  
21 the number of doors or lift gates?

22 A. He did. As I recall, I think he said it was a four-door  
23 vehicle. This -- again, these interviews cross a lot, but he may

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 have said that this one had a large bumper.

2 Q. Would reviewing your 302 refresh your recollection?

3 A. Of the vehicle, yes, sir.

4 ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
5 page 1246.

6 **[The witness reviewed the evidence.]**

7 ATC [Capt DANIELCZYK]: Retrieving the document.

8 Q. Did that refresh your recollection?

9 A. It was a white saloon but it was a two-door, not a  
10 four-door vehicle, and it had a hatch or a rear door on the backside.

11 Q. Was Mr. Kazimi able to provide you a description of the  
12 trailer that was used?

13 A. He did.

14 Q. And did he say what material that trailer was made out of?

15 A. I think he said it was a metal trailer. It had four tires  
16 on it and it was beige or light in color.

17 Q. So we talked a little bit about one encounter that  
18 Mr. Kazimi had with these men launching the boat. Did he encounter  
19 them on any other occasions?

20 A. Yes, he did. There were two occasions.

21 Q. And when did he say those occurred?

22 A. It's easy in my mind to confuse actually both of these  
23 respective interviews that were conducted. Either his was the -- the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 next day or two after, or it was the day after -- it was 13 October.

2 I don't recall which.

3 Q. Would reviewing your 302 refresh your recollection as to  
4 other instances Mr. Kazimi had with these men?

5 A. Yes, sir, if I may, just to confirm that time.

6 ATC [Capt DANIELCZYK]: Showing the witness the same page.

7 WIT: Thank you.

8 **[The witness reviewed the evidence.]**

9 ATC [Capt DANIELCZYK]: Retrieving the document.

10 Q. Did that refresh your recollection?

11 A. Thank you, yes, sir. That clarified it.

12 In this case, this individual said the second encounter he  
13 had was a day or two after the first.

14 Q. And where did he say that that encounter occurred?

15 A. At the same location, at the deck area of the -- south of  
16 Burayqah bridge.

17 Q. What did he see?

18 A. This day the folks were -- the same visitors with  
19 Mr. Rabash were out in the boat and had come in, and I believe that  
20 he saw them encountered over at the shanty that day, but I'm not  
21 100 percent sure on that without review. But I know that he -- he  
22 witnessed them that day because that was the -- the second day in  
23 which he recalled that either the second individual wore sunglasses

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 or wore prescription glasses.

2 Q. Now, you said you weren't 100 percent sure. Would  
3 reviewing your 302 help refresh your recollection?

4 A. Yes, sir.

5 ATC [Capt DANIELCZYK]: Showing the witness the same document.

6 **[The witness reviewed the evidence.]**

7 ATC [Capt DANIELCZYK]: Retrieving the document.

8 Q. Did that refresh your recollection?

9 A. It clarified in my mind which of the two interviews this  
10 one referred to. And in this case, when he arrived, the individuals  
11 with Mr. Rabash were present. The boat was on a trailer, same  
12 trailer, same vehicle, being -- the same vehicle was pulling the  
13 trailer, but it was stuck in the sand, and they were trying to free  
14 it.

15 Q. Were they using other equipment to try to free that  
16 trailer?

17 A. At that first point, no. The -- they were trying to move  
18 it on its own. Ultimately, a -- a pickup truck was used that had  
19 a -- they described as a cage, some sort of cage on the back.

20 The reason they went to the second vehicle was the bumper  
21 was starting to pull away from -- from the first vehicle on the  
22 trailer with the weight that they were putting on it, exerting on it  
23 to move it, and that a second vehicle was brought in to assist.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You said a pickup truck. Did Mr. Kazimi describe that as  
2 a Dyna pickup style?

3 A. It was a white Dyna style and it had a black kind of  
4 three-sided cage on the -- on the cab -- or on the cargo bed.

5 Q. Was that Dyna truck ultimately successful in freeing  
6 the -- the trailer and the boat?

7 A. It was.

8 Q. When that boat and trailer was ultimately freed -- or,  
9 excuse me, the car was freed, did they take that boat and trailer  
10 with them when they left the scene?

11 A. As I recall, he left before they did.

12 Q. Did you ask Mr. Kazimi if he could identify those  
13 individuals using a photo book?

14 A. We did.

15 Q. And was that the 2 January 2001 photo book?

16 A. Yes, sir.

17 Q. Regarding the first man that he described to you, did  
18 Mr. Kazimi identify any photographs?

19 A. I don't recall. He recalled -- or he identified one of  
20 the two, as I recall. I don't remember offhand which of the two.

21 Q. Would reviewing your 302 refresh your recollection?

22 A. It would, yes, sir.

23 ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,

1 page 1245.

2 **[The witness reviewed the evidence.]**

3 ATC [Capt DANIELCZYK]: Retrieving the exhibit.

4 Q. Did that refresh your recollection?

5 A. It did. Despite his descriptions, he was unable to  
6 identify the first, but he did identify the second individual as  
7 the -- as per the photo book as number 9.

8 Q. And for clarity, when we say second individual, that was  
9 the driver of the Nissan, correct?

10 A. Correct. The one with the glasses.

11 Q. Have you had a chance to review that photo book?

12 A. I have.

13 Q. And who was depicted in photo number 9?

14 A. The individual identified to us as al Khamri.

15 Q. Now, I want to step back just for a second to make  
16 sure -- I believe you testified that the Dyna-style pickup, they  
17 stopped at one point when they were trying to free the -- the car; is  
18 that correct?

19 A. I think so.

20 DC [Lt Col NETTINGA]: Objection. That's been asked and  
21 answered. That's not what the witness said.

22 MJ [COL ACOSTA]: Government?

23 ATC [Capt DANIELCZYK]: Your Honor, I believe when

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Agent Reuwer was testifying, he said that they were trying to free it  
2 and stopped.

3 DC [Lt Col NETTINGA]: Your Honor, if I may?

4 MJ [COL ACOSTA]: You may.

5 DC [Lt Col NETTINGA]: As I recall, the question from the  
6 prosecutor was was the Dyna truck successful in pulling the -- the  
7 truck and trailer out, and the witness answered yes.

8 MJ [COL ACOSTA]: That's what I have as well.

9 Government -- sustained. Go ahead, Government.

10 Q. Following this interview, was a 302 drafted?

11 A. It was.

12 Q. And did you have a chance to review that for accuracy?

13 A. I did.

14 Q. So I'd like to move on to the next witness now,  
15 Mr. Al Shouwafi. Did you conduct an interview with Mr. Al Shouwafi  
16 on 17 January 2001?

17 A. I did.

18 Q. And Mr. Al Shouwafi told you that he enjoys snorkeling in  
19 his nonworking hours; is that correct?

20 A. That is correct.

21 Q. Where did you conduct this interview?

22 A. At the PSO facility on the Aden compound of MOI.

23 Q. Were there other U.S. law enforcement personnel present?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Two FBI agents, Khoury and Crouch.

2 Q. Were there PSO and MOI officials present as well?

3 A. There were.

4 Q. When you first saw Mr. Al Shouwafi, did he -- did you see  
5 any signs of abuse?

6 A. No, sir.

7 Q. Did he appear healthy?

8 A. He did.

9 Q. Did he have clean and appropriate-looking clothing?

10 A. He did.

11 Q. Did he appear frightened in any way?

12 A. He did not.

13 Q. Was he restrained or shackled?

14 A. He was not.

15 Q. Was there anything that you observed to make you think he  
16 was in custody at the time?

17 A. Not at all.

18 Q. If there had been, would you have taken note?

19 A. Absolutely.

20 Q. Was your team introduced to Mr. Al Shouwafi and explained  
21 why you were talking to him?

22 A. We were.

23 Q. Did you conduct that interview following those interview



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 protocols that we previously discussed?

2 A. Yes, sir.

3 Q. From your observations, did Mr. Shouwafi appear to be  
4 answering your questions willingly?

5 A. He did.

6 Q. Was he cordial with you?

7 A. He was.

8 Q. Was Mr. Al Shouwafi previously interviewed by Yemeni  
9 authorities?

10 A. I believe he was.

11 Q. And was he read his previous statement?

12 A. He was.

13 Q. Did he verify its accuracy?

14 A. He did.

15 Q. What did Mr. Shouwafi tell you he did for a living?

16 A. He was a fisherman.

17 No, I'm sorry. I take that back. The first individual was  
18 a fisherman. Again, apologies to the court.

19 This individual actually worked for his father, who owned  
20 and operated a vegetable business.

21 Q. And you said that Mr. Al Shouwafi told you he snorkels on  
22 the side, kind of in his free time?

23 A. His hobby is to be a snorkeler, yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Did he observe anything while snorkeling that was  
2 pertinent to your investigation?

3 A. Yes, sir.

4 Q. And what was that?

5 A. As I recall, what he shared with us was that some  
6 approximately three months prior to the -- the COLE incident on the  
7 12th of October ----

8 MJ [COL ACOSTA]: Counsel, can you ----

9 A. ---- he was snorkeling ----

10 MJ [COL ACOSTA]: Sir, can you hold up one second?

11 LDC [MR. NATALE]: Excuse me, Your Honor. Mr. Nashiri would  
12 like to go back to his cell, his medicine.

13 MJ [COL ACOSTA]: Okay. We were just finishing it. Can  
14 we -- the issue is not that you're interrupting. It's just can  
15 we ----

16 LDC [MR. NATALE]: I understand. We just wanted ----

17 MJ [COL ACOSTA]: We need to do it -- we're mid-answer here,  
18 so it's kind of the issue. So I don't mind stopping. It's just can  
19 we ----

20 LDC [MR. NATALE]: I understand.

21 MJ [COL ACOSTA]: In the future, can we do it when we finish  
22 at a natural break there. I'll -- if Mr. Nashiri needs to go to the  
23 back now to take medication, he may do so.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Mr. Nashiri, you understand ----

2 Does he intend on returning back as soon as he takes it  
3 back, just being brought in and brought back out -- brought out and  
4 back in?

5 LDC [MR. NATALE]: No, Your Honor. No, Your Honor. He's then  
6 going to be meeting there with Dr. Crosby.

7 MJ [COL ACOSTA]: So he's going to remain in the back  
8 here ----

9 LDC [MR. NATALE]: That's correct, sir.

10 MJ [COL ACOSTA]: ---- for the rest of the day?

11 LDC [MR. NATALE]: And he -- he may come in the afternoon  
12 session if he finishes with Dr. Crosby.

13 MJ [COL ACOSTA]: But he'll be in the local ----

14 LDC [MR. NATALE]: That is correct.

15 MJ [COL ACOSTA]: ---- area. All right. All right.

16 Guard force, if you can escort Mr. Nashiri out, please.

17 LDC [MR. NATALE]: Your Honor, Mr. Nashiri is asking that he  
18 would like to explain why, so that there's no indication that he's  
19 trying to slow or delay the process at all.

20 MJ [COL ACOSTA]: Wasn't making a -- I don't think there is  
21 any suggestion of such, but if Mr. Nashiri would like to say  
22 something to me about why he's leaving, that's fine, or you can  
23 explain for him, Counsel.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 LDC [MR. NATALE]: Your Honor, he's taking medicine for his  
2 breathing and nasal infections, in fact, so he needs to go back  
3 and -- and take that. In fact, we've also found out that the medical  
4 staff here has even made a recommendation that he may need surgery on  
5 that. So this is what he needs to do is take the medication to deal  
6 with the infection.

7 MJ [COL ACOSTA]: Okay. He has a nasal infection and he needs  
8 to go take medicine for that. Is he going to -- he's going to be in  
9 the area where he can still hear?

10 LDC [MR. NATALE]: Your Honor, he will be in the -- the room  
11 which we cannot mention, but there is no ----

12 MJ [COL ACOSTA]: Isn't there ----

13 LDC [MR. NATALE]: ---- audio.

14 MJ [COL ACOSTA]: There's no audio in that room?

15 LDC [MR. NATALE]: There's no audio in that room.

16 MJ [COL ACOSTA]: I don't believe that's -- I've been  
17 informed -- it's always been my understanding that there is audio in  
18 the room.

19 LDC [MR. NATALE]: Well, we can check, because the last thing  
20 that I heard was that -- with one of the other hearings, that there  
21 was -- there was video but not audio.

22 MJ [COL ACOSTA]: Government, are you aware of whether or not  
23 there's audio or video back there, or can they provide it to the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 back, please?

2 MATC [MR. WELLS]: Your Honor, the IT staff advises that there  
3 is audio. He'll have to listen through headphones that are  
4 available.

5 MJ [COL ACOSTA]: All right.

6 MATC [MR. WELLS]: But if there's any problem, we'd like to  
7 know and we'll fix it as soon as possible.

8 MJ [COL ACOSTA]: All right. It's -- okay. Audio is  
9 available in the back. Mr. Nashiri, you'll be able to listen through  
10 headphones in the back so you won't miss what's being said. Of  
11 course, if you're able to -- it doesn't sound like you're unable to  
12 sit here now. You just need to go back and take the medicine,  
13 apparently. Mr. Natale says you're going to be meeting with your  
14 doctor.

15 If you would like to come back, you may come back at any  
16 time since you're going to be here, and you can also listen to  
17 everything that's going on as well.

18 LDC [MR. NATALE]: Very well, Your Honor.

19 MJ [COL ACOSTA]: But this is a voluntary -- this is a  
20 voluntary ----

21 LDC [MR. NATALE]: Absence.

22 MJ [COL ACOSTA]: ---- absence right now. What I'll do even  
23 is we'll take a 20-minute recess. You can go take the medicine, talk

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to Dr. Crosby, and if you want to come back after that, you can.

2 If you do not want to come back, Mr. Nashiri, what I ask you  
3 to do is explain to your counsel that you're voluntarily remaining in  
4 the back to either meet with Dr. Crosby or because you want to stay  
5 in the back and listen, or you can come back in here at that point.  
6 All right. Thank you.

7 The commission is in recess for -- hold on. Pardon me.

8 Agent Reuwer you're -- you remain under oath. Doesn't  
9 discuss your testimony or knowledge of the case with anyone other  
10 than counsel for either side.

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

13 MJ [COL ACOSTA]: The commission is in recess for 20 minutes.

14 **[The R.M.C. 803 session recessed at 1018, 21 February 2023.]**

15 **[The R.M.C. 803 session was called to order at 1042,**  
16 **21 February 2023.]**

17 MJ [COL ACOSTA]: The commission is called to order.  
18 Government, all parties present as before?

19 TC [MR. O'SULLIVAN]: Not quite yet, Your Honor. We have one  
20 person, Lieutenant Schwartz, who is not yet back to the RHR, but  
21 folks are letting her up shortly. Otherwise, all the same.

22 MJ [COL ACOSTA]: All right. Defense, the same as before?

23 LDC [MR. NATALE]: Your Honor, we are all here. Mr. Nashiri

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 is not here and he is voluntarily not here based on the same colloquy  
2 that we had prior to the break.

3 MJ [COL ACOSTA]: All right. He's going to sit in back and be  
4 able to listen and watch, correct?

5 LDC [MR. NATALE]: That's correct, sir. Thank you.

6 MJ [COL ACOSTA]: Okay. And again, as I stated in previous  
7 rulings, if he needs recesses or extended recesses to accommodate  
8 anything -- this apparently is related to a different illness than  
9 we've talked about previously. If he needs accommodation for his  
10 previously described illnesses and stuff, as I said in a previous  
11 ruling, I can take more frequent recesses, et cetera, as necessary to  
12 accommodate that when asked.

13 This apparently appears not related to that and to a sinus  
14 infection instead, so -- but if he's unable to -- to be here, you  
15 need to articulate that and present evidence on that, okay?

16 LDC [MR. NATALE]: That's correct, Your Honor. We understand.  
17 I think the problem is that things become cumulative as -- as time  
18 goes on, and that's why the medicine combined with pre-existing.

19 But we understand and we appreciate, and he really intends  
20 to want to be here as much as he physically can.

21 MJ [COL ACOSTA]: So he's not physically unable to be here  
22 right now?

23 LDC [MR. NATALE]: Well, I mean ----

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: You said he's waiving his appearance right  
2 now?

3 LDC [MR. NATALE]: Right. What I'm saying ----

4 MJ [COL ACOSTA]: It's a voluntarily absence right now.

5 LDC [MR. NATALE]: That's correct. It's voluntary. It's just  
6 that this is needed for him to take the medication so he can more  
7 clearly breathe.

8 MJ [COL ACOSTA]: Right. So he's taking the medication ----

9 LDC [MR. NATALE]: Yes.

10 MJ [COL ACOSTA]: ---- but he's not back in here ----

11 LDC [MR. NATALE]: Correct.

12 MJ [COL ACOSTA]: ---- because he doesn't choose -- because  
13 he's choosing not to be here ----

14 LDC [MR. NATALE]: That's correct. That's correct.

15 MJ [COL ACOSTA]: ---- not because he can't be here.

16 LDC [MR. NATALE]: That's correct.

17 MJ [COL ACOSTA]: Thank you. All right.

18 **[The witness, KENNETH S. REUWER, resumed the witness stand.]**

19 MJ [COL ACOSTA]: Agent Reuwer, you remain under oath.

20 Counsel, we got interrupted there. And again, I was about  
21 to stop everything because there was a little bit of a kerfuffle  
22 going on, and I was trying to make sure that counsel was paying  
23 attention.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           If you can just talk to, again, defense, about when it's  
2 time to raise something up it's -- it's at a -- at a -- at a  
3 break -- not a break, but in between questions not in mid-answer.

4           LDC [MR. NATALE]: I understand, Your Honor, and I will ----

5           MJ [COL ACOSTA]: Although I ----

6           LDC [MR. NATALE]: ---- follow your instructions.

7           MJ [COL ACOSTA]: I understand. If it's an emergency,  
8 obviously, stop me, right? If it's nonemergent, let's see if we can  
9 get it in between questions. Thank you. Thank you.

10          LDC [MR. NATALE]: Yes, Your Honor.

11          MJ [COL ACOSTA]: All right. Government, please proceed.

12          ATC [Capt DANIELCZYK]: Thank you, Your Honor.

13                               **REDIRECT EXAMINATION CONTINUED**

14   **Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:**

15          Q.     So, Mr. Reuwer, I think we were talking about  
16 Mr. Al Shouwafi, the snorkeler in the area. And I believe you were  
17 answering the question regarding observations that he made while  
18 snorkeling that was pertinent to your investigation. And what I  
19 heard before the interruption was approximately three months prior to  
20 the COLE attack, and that's where we were interrupted, so we can pick  
21 up there.

22               What did he tell you occurred?

23          A.     Yes, sir. At approximately three months before the COLE

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1    attack on 12 October, he stated that he was snorkeling at the -- at  
2    his usual location near the Burayqah bridge, and he observed a  
3    boat -- what he described as coming in fast, and that the boat had  
4    four individuals on it, and it came into the -- into the beachhead or  
5    the deck area.

6            He was able to identify one of the four individuals as an  
7    individual he knew from the local area, a Mr. al Rabash, who was a  
8    family member of an owner of a local shanty shack or a little shack  
9    there on the beach side.

10          Q.     Is that the same Monir al Rabash that was identified by  
11    the previous declarant we just discussed?

12          A.     To all accounts, yes, sir.

13          Q.     Did Mr. Al Shouwafi give you a description of the boat  
14    that he saw?

15          A.     He did. It was a white fiberglass vessel. I think it was  
16    six to seven meters in length, approximately two meters wide. It had  
17    red carpet in it. It was motored by an 85-horsepower engine. He did  
18    not describe the make or manufacturer of the -- of the engine. It  
19    had red carpeting throughout it, and it was rigged as far as being  
20    suitable for water use, i.e., a steering wheel. It had a couple  
21    chairs in it.

22          Q.     Did he notice any storage units that were contained  
23    inside?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I believe he said there were three such storage units in  
2 the boat.

3           Q.     And based on his knowledge of the area, did he believe  
4 that the boat was built locally or outside of Yemen?

5           A.     I don't specifically recall. I do know that he or  
6 Mr. Kazimi had told us that they opined the boat was not locally  
7 made.

8           Q.     Would reviewing your 302 refresh your recollection ----

9           A.     It would.

10          Q.     ---- on that?

11           ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
12 page 1825.

13   **[The witness reviewed the evidence.]**

14           ATC [Capt DANIELCZYK]: Retrieving the document.

15          Q.     Did that refresh your recollection?

16          A.     Not exactly. That document ends on a description of the  
17 boat and it goes over to the -- presumably to the next page. I don't  
18 recall if the next page addressed that or not.

19           It did refresh my recollection, however, that the boat, by  
20 this witness, was seven to eight meters in length.

21           ATC [Capt DANIELCZYK]: Your Honor, I'd like to show the  
22 witness this document again, direct his attention to the last line.

23           MJ [COL ACOSTA]: You may proceed.

1   **[The witness reviewed the evidence.]**

2           ATC [Capt DANIELCZYK]: Retrieving the document.

3           Q.     Did that refresh your recollection as to ----

4           A.     Yeah, it did. I'm sorry. With apologies to the Court,  
5 the last line did clarify that he opined the boat was built outside  
6 of Yemen.

7           Q.     Was Mr. Al Shouwafi able to describe the other three  
8 individuals that were on the boat?

9           A.     He did. He provided reasonable descriptions for all three  
10 individuals.

11          Q.     Starting with the description of the first individual, how  
12 did he describe that person?

13          A.     Sir, again, with specificity I'd have a difficult -- going  
14 from recall.

15          Q.     Would reviewing your 302 refresh your recollection as to  
16 the description of the first man?

17          A.     It would. Thank you.

18          ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
19 page 1826.

20   **[The witness reviewed the evidence.]**

21          ATC [Capt DANIELCZYK]: Retrieving the document.

22          Q.     Did that refresh your recollection as to the first man?

23          A.     Yes, sir. He estimated him as mid to late 20s, thin

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 beard. He was wearing a white shirt and a ma'wazz. He also recalled  
2 the outstanding feature on this individual was that he was actually  
3 wearing a life vest in the boat.

4 Q. Did he comment on this man's accent?

5 A. He had a Hadhramauti or -- or a Sana'a accent.

6 Q. Did Mr. Al Shouwafi provide a description of the second  
7 man?

8 A. He did.

9 Q. And how did he describe him?

10 A. Again, with the mingling of all these witnesses,  
11 I -- I ----

12 Q. Would reviewing your 302 refresh your recollection?

13 A. It would.

14 ATC [Capt DANIELCZYK]: Showing the witness the same document.

15 **[The witness reviewed the evidence.]**

16 ATC [Capt DANIELCZYK]: Retrieving the document.

17 Q. Did that refresh your recollection?

18 A. It did. Generically, he was described as approximately 35  
19 years old. He was also wearing a white shirt -- or a shirt and a  
20 ma'wazz. He had a medium build or medium height, and, as I said, I  
21 think he was estimated to be 35 years old.

22 Q. Did he describe his complexion at all?

23 A. Medium -- medium tan. Tan.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And did he notice if this individual had facial hair?

2 A. Oh, he had a goatee.

3 Q. How did Mr. Shouwafi describe the third man?

4 A. Again, they all mingled together, but I do recall that he  
5 described him as medium built. He had dark hair. He was also  
6 dressed in a white shirt with a ma'wazz, wearing a ma'wazz. And I  
7 don't recall his facial hair, but it was described.

8 Q. Would reviewing your 302 refresh your recollection?

9 A. It would, yes, sir.

10 ATC [Capt DANIELCZYK]: Showing the witness the same document.

11 **[The witness reviewed the evidence.]**

12 ATC [Capt DANIELCZYK]: Retrieving the document.

13 Q. Did that refresh your recollection?

14 A. Yes, sir. Further he described him as medium height, well  
15 built, estimated his age to be about 39, and again, he was wearing  
16 the white shirt with a ma'wazz.

17 Q. Did Mr. Shouwafi tell you if this individual wore glasses?

18 A. He did, in fact, say that he was wearing glasses.

19 Q. Now, you said previously that Mr. Shouwafi saw the boat  
20 coming in fast. Did they ultimately secure that boat to shore?

21 A. They did. I believe he actually assisted in tying the  
22 boat to the -- to shore.

23 Q. And where did the men go after securing the boat?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Leaving their vehicles in place, he observed them with  
2 Mr. Rabash go over to the shanty shack.

3           Q.     Based on Mr. Shouwafi's observations, did these men appear  
4 to be experienced boaters?

5           A.     Actually, he said that they had, in his opinion,  
6 familiarity with boating but were not experienced boaters.

7           Q.     Did Mr. Shouwafi speak with Mr. Al Rabash about these men?

8           A.     He did. Again, he didn't know or recognize any of the  
9 three individuals, only Mr. Rabash. And Mr. Rabash explained to him  
10 that they were visitors in the area who were from a town which he  
11 identified as Kowd Al-Namir, and Kowd Al-Namir, as we learned, was a  
12 village, city, town several hours to the northeast of Aden.

13          Q.     Did Mr. Al Shouwafi provide the nationality that he came  
14 to find out that these men were from?

15          A.     He did opine on that, and I can't recall offhand  
16 what -- what his specificity was.

17          Q.     Would reviewing your 302 refresh your recollection on  
18 that?

19          A.     It would.

20                 ATC [Capt DANIELCZYK]: Providing to the witness the same  
21 document.

22                 **[The witness reviewed the evidence.]**

23                 ATC [Capt DANIELCZYK]: Retrieving the document.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Did that refresh your recollection?

2 A. It did. In this case, he -- Mr. Rabash told Mr. Shouwafi  
3 that they were Saudis from Hadhramaut.

4 Q. Did Mr. Shouwafi see a car or trailer in the area?

5 A. Both.

6 Q. Did he describe that trailer to you?

7 A. He did. It was a -- an off-white or beige trailer, boat  
8 trailer. It was attached to a vehicle, and that vehicle he described  
9 as a white Nissan.

10 Q. Regarding the trailer, did he describe if there -- the  
11 number of tires that it had?

12 A. It had four tires, two on either side.

13 Q. And regarding the car, you said it was a small Nissan.  
14 Did he provide a model?

15 A. It was a -- it was a saloon model/style, two-door.

16 Q. Now, on 12 October 2000, did Mr. Shouwafi hear an  
17 explosion?

18 A. He did.

19 Q. And what did he tell you he thought that was?

20 A. I believe his story or interview opined that it was local  
21 mining, from one of the local quarries, which is not uncommon in the  
22 area.

23 Q. And did he later learn the origin of that explosion?



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. He did.

2 Q. And what was that?

3 A. He later learned that it actually was the attack on the  
4 USS COLE on the 12th.

5 Q. Now, the day of the explosion -- or, excuse me, the day  
6 after the explosion, did Mr. Shouwafi go snorkeling?

7 A. He did. It was later in the day, and he went snorkeling  
8 at that same location that he usually goes to that we previously  
9 discussed. And when he went there, the same Nissan and the same  
10 trailer were there at the -- at the same location. The boat was not.

11 Q. And when you say the same area that we've discussed, are  
12 you referring to near the Al-Burayqah bridge?

13 A. Correct.

14 Q. Did Mr. Shouwafi talk to anybody in the area at that time?

15 A. He did. He spoke with Mr. Rabash who was also present in  
16 the area and through that discussion learned from Mr. Rabash that the  
17 individuals previously discussed, the people from Kowd Al-Namir, had  
18 gone out that morning in the boat but hadn't come back.

19 Q. And when you say the morning of the boat, you're talking  
20 the morning previous to Mr. Shouwafi going and talking to Mr. Rabash;  
21 is that correct?

22 A. Yes, sir. To be clear, the day before the 12th of  
23 October, they went out in the boat. He didn't -- he, Mr. Shouwafi,

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 arrived on the 13th, and at that time he learned that yesterday they  
2 went out on the boat.

3 Q. Okay. And I see a signal from the interpreter pop up.  
4 I'd just ask you to slow down on your response. That way there's  
5 a ----

6 MJ [COL ACOSTA]: Counsel, that's a -- that's a reminder for  
7 both of you. Go ahead.

8 ATC [Capt DANIELCZYK]: Yes, sir.

9 Q. Did you ask Mr. Shouwafi if he could identify any photos  
10 using a photo book?

11 A. We did.

12 Q. And what version of the photo book did you use?

13 A. I believe that was the 2 January edition. I'm not  
14 100 percent sure, but I would also state that to my recollection, the  
15 photo books were -- the numbers did not change between them. There  
16 were just some additions or deletions between the two.

17 Q. Was he able to identify any photos using that photo book?

18 A. He did.

19 Q. And what did he identify?

20 A. He identified the third individual that he described to us  
21 or who, in this interview, he described as the third person. And  
22 that third person he identified as number 9 from the photo book.

23 Q. Did he identify any other individuals?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     He indicated that number -- that the first UNSUB looked  
2 like one of the other individuals in the photo book.

3           Q.     Do you recall now what number he identified?

4           A.     My recollection is he said it could be number -- I don't  
5 want to say without being certain, sir.

6           Q.     Would reviewing your 302 help refresh your recollection?

7           A.     It would.

8           ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
9 page 1827.

10   **[The witness reviewed the evidence.]**

11           ATC [Capt DANIELCZYK]: Retrieving the document.

12           Q.     Did that refresh your recollection?

13           A.     It did. He described -- for the description he provided  
14 for UNSUB #1, he said it could be number 20, but that the face  
15 as -- as he recalled was a rounder face than described in the photo,  
16 or depicted in the photo.

17           Q.     Have you had a chance to review that photo book?

18           A.     I have.

19           Q.     Who was depicted in photo number 9?

20           A.     That's Mr. Al Khamri.

21           Q.     And who is depicted in photo number 20?

22           A.     Mr. al Nashiri.

23           Q.     Was a 302 drafted following this interview?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. It was.

2 Q. Did you have a chance to review that for accuracy?

3 A. I did.

4 ATC [Capt DANIELCZYK]: That's all I have, Your Honor.

5 MJ [COL ACOSTA]: All right. Defense?

6 DC [Lt Col NETTINGA]: Thank you, Your Honor.

7 **RECROSS-EXAMINATION CONTINUED**

8 **Questions by the Defense Counsel [Lt Col NETTINGA]:**

9 Q. All right, Mr. Reuwer. Let's go back and talk about  
10 Mr. al Kazimi, the fisherman who usually fished near the Al-Burayqah  
11 bridge, all right?

12 A. Okay.

13 Q. Now, you indicated that this individual was interviewed on  
14 the 14th of January 2001, right?

15 A. Correct.

16 Q. And you did show him the ADENBOM book at some point during  
17 that interview, right?

18 A. We did.

19 Q. And that -- as I understand it, as you testified, the  
20 ADENBOM book went through different revisions, not necessarily the  
21 numbers changing, but things were added, things were deleted, that  
22 sort of thing, correct?

23 A. One revision.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Okay. And it was January 2nd was the first version, and  
2 January 10th was the second version?

3 A. That's correct.

4 Q. Okay. So this interview took place on the 14th of  
5 January 2001, but this individual was shown the -- the January 2nd  
6 version of the ADENBOM book, correct?

7 A. Yes, sir.

8 Q. So I -- I'm -- do you have a recollection as to why you  
9 wouldn't have used the updated version in this interview?

10 A. My only recollection of that is that those two  
11 editions -- there were also simultaneous interviews being conducted.  
12 So while we had one -- a physical copy of one book, and as I recall  
13 there was only one master copy of each that we had, and so our team  
14 had on that day, by chance, that -- that -- the book of that edition.  
15 Another interview down the hall would have had the other copy.

16 Q. Got you. So there were different teams at the MOI on the  
17 same day interviewing folks provided by the PSO?

18 A. Yes, sir.

19 Q. Okay. And you're saying because there was only one  
20 version of each of the books, that would depend -- whatever version  
21 you had was the version you used?

22 A. That was my recollection of the answer to your  
23 question ----

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Okay.

2 A. ---- yes, sir.

3 Q. Okay. Understood.

4 Now, Mr. al Kazimi described several items that he saw on  
5 the -- on the beach that day, right?

6 A. He did.

7 Q. And you talked about that a little bit with the  
8 prosecutors. One of the things that I recall you saying was that  
9 Mr. al Kazimi had told you that the boat had two seats in it. Do you  
10 recall saying that on direct?

11 A. Yes.

12 Q. Okay. What he actually said was he was unsure if it had  
13 any chairs.

14 A. That is possible due to my miscalculation or recollection,  
15 yes, sir.

16 Q. Okay. You were also asked by the prosecutor about  
17 Mr. al Kazimi's description of the state of the boat. Do you  
18 remember that?

19 A. I was.

20 Q. And you stated that Mr. al Kazimi had told you that it  
21 was -- it was used. It was dirty, yellowing, that kind of a thing,  
22 right?

23 A. If that's -- yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Okay. And, in fact, you followed up with that in response  
2 to the prosecutor's question by saying I would recall if  
3 Mr. Al Kazimi told us that it was new, right?

4 A. If it was new, absolutely.

5 Q. Right, because that would stand out in your mind, right?

6 A. Right.

7 Q. Because that's different from what some other witnesses  
8 told you about a boat that they had seen, right?

9 A. Yes, sir.

10 Q. But, in fact, Mr. Al Kazimi told you that the boat  
11 appeared to be new.

12 A. I'd have to refresh myself to be certain of that, yes,  
13 sir.

14 Q. Absolutely.

15 DC [Lt Col NETTINGA]: Your Honor, I'm approaching the witness  
16 with page 1246 of 319MM.

17 MJ [COL ACOSTA]: You may proceed.

18 **[The witness reviewed the evidence.]**

19 DC [Lt Col NETTINGA]: I'm retrieving that from the witness.

20 Q. Mr. Reuwer, does that refresh your recollection as to what  
21 Mr. Al Kazimi told you?

22 A. Yes, sir, it does clarify. I would say over the course of  
23 23 years and so many different combinations of descriptions of

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 people, boats, trailers and cars, it's confusing. And certainly the  
2 recollection of those documents helps with my testimony. Thank you.

3 Q. Totally -- totally understood.

4 And in fact what he told was that it appeared to be new,  
5 right?

6 A. He did.

7 Q. One of the other questions that the prosecutor asked you  
8 was about an incident where Mr. Al Kazimi had seen the boat  
9 and -- the boat on a trailer attached to a pickup and it appeared to  
10 be stuck in the sand. Remember that?

11 A. I do.

12 Q. And at that point in time they were attempting to get the  
13 boat and the trailer and the pickup truck unstuck by using a Dyna  
14 pickup-style vehicle. Do you recall talking about that?

15 A. Yeah, there was only one pickup truck involved, as I  
16 recall. It was the vehicle, the sedan that was pulling the trailer.  
17 And the pickup truck, the Dyna, was brought in to help relieve that.

18 Q. Copy. I appreciate the clarification.

19 It was the Nissan that was attached pulling the trailer with  
20 the boat, and the Dyna was brought in to help free the Nissan that  
21 was pulling the boat?

22 A. As I recall, yes.

23 Q. Okay. And the prosecutor asked you if the Dyna was



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 successful in getting that -- that boat and that Nissan unstuck,  
2 right?

3 A. My recollection, yes.

4 Q. Okay. And your recollection was, yes, that the Dyna was  
5 successful?

6 A. I believe so.

7 Q. Right. But, in fact, what Mr. Al Kazimi told you was a  
8 rather lengthy story about how they had to get a front-end loader to  
9 come in and help to get the Nissan and the boat and the trailer  
10 unstuck, right?

11 A. That is correct, now that you say that, yes, sir.

12 Q. Okay. Similar to some of the other questions I've asked  
13 you with respect to the other witnesses, do you recall when you  
14 learned that Mr. Al Kazimi was being made available for an interview  
15 with you?

16 A. Either the day before or the day of, yes, sir.

17 Q. Okay. And similar to those other individuals, fair to say  
18 you did not receive any kind of a pre-brief or statement from this  
19 individual as to what the connection to the investigation was?

20 A. That's correct. I had not.

21 Q. And prior to the investigation or at any point after that  
22 investigation, did you learn how Mr. Al Kazimi's name surfaced with  
23 respect to this investigation?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I did not.

2           Q.     All right.  So you don't know how the PSO found this  
3 fisherman and decided that he was relevant to talk to you?

4           A.     That's correct.

5           Q.     You don't know the circumstances surrounding how the PSO  
6 first approached him?

7           A.     That's correct.

8           Q.     You don't know if he was taken into custody at some point  
9 by the PSO?

10          A.     That's correct.

11          Q.     You don't know whether he was forced, coerced, or  
12 threatened at any point to talk to the PSO?

13          A.     Correct.

14          Q.     Or whether his family members were forced, threatened, or  
15 coerced to talk to the PSO?

16          A.     That's correct.

17          Q.     You don't know if he was promised anything or his family  
18 members were promised anything to provide a statement to the PSO?

19          A.     I do not know.

20          Q.     You don't know where he was located prior to talking to  
21 you in the MOI Headquarters building?

22          A.     That's correct.

23          Q.     You don't know how he got to the MOI Headquarters building

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that day?

2 A. That's correct.

3 Q. You're not sure if he was commingled with other witnesses  
4 at any point?

5 A. Correct.

6 Q. You didn't receive any picture ahead of time as to what  
7 this individual looked like?

8 A. That's correct.

9 Q. And you had never seen him before?

10 A. Never had.

11 Q. You could not and so you did not confirm his identity  
12 through a Yemeni driver's license?

13 A. That's correct.

14 Q. Or Yemeni ID card?

15 A. Correct.

16 Q. Or a passport?

17 A. Correct.

18 Q. You could not and so you did not photograph him or print  
19 him to know exactly who it was that you had in front of you?

20 A. That's correct.

21 Q. And you did not independently verify his identity through  
22 any follow-up investigation?

23 A. I did not.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And you're not aware of anybody else that followed up ----

2 A. I am not.

3 Q. ---- to verify -- yeah, to verify his identity.

4 The last time you spoke with this individual -- the only  
5 time you spoke with this individual was the 14th of January 2001?

6 A. Yes, sir.

7 Q. And since that time you've not made any efforts to contact  
8 this individual to determine whether or not he'd be available for  
9 trial?

10 A. Correct.

11 Q. And you're not aware of any efforts by the U.S. Government  
12 or any agency thereof that has made any efforts to determine -- to  
13 contact this individual to determine whether he may be available for  
14 trial?

15 A. I am unaware.

16 Q. I'd like to talk about Mr. Al Shouwafi, who is the  
17 snorkeler. So he was able to give descriptions of these three men  
18 that he saw on the boat with the one man that he did know, right?

19 A. I'm sorry, with the one man?

20 Q. With the one man that he did know. He knew ----

21 A. Mr. Rabash.

22 Q. ---- Mr. Rabash, right?

23 A. And the three other individuals, correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Correct. Now, he -- as he's talking to you about this  
2 incident, it doesn't appear that he indicated to you that he ever  
3 spoke to any of these three individuals?

4 A. He indicated that he did not meet them and there were no  
5 personal introductions, so correct.

6 Q. Okay. So he saw them. He was doing whatever he was  
7 doing. He observed them on the boat, and he talked to you a little  
8 bit about trying to get the boat to shore and that kind of a thing.  
9 But he's watching?

10 A. Right.

11 Q. Okay. And you described -- for lack of a -- of a better  
12 way of transcribing this, those three individuals that were unknown  
13 or listed as UNSUBs 1, 2, and 3 in the 302, right?

14 A. Correct.

15 Q. Okay. And -- and the person that is identified on the 302  
16 as UNSUB 1 he described as 28 years old?

17 A. As I recall.

18 Q. And do you recall any clarifying information on that?

19 A. Only what I just previously testified to from my  
20 recollection or recall of the 302.

21 Q. And I guess what I'm getting at there is that's  
22 a -- that's a pretty specific number, right, 28? It's not -- it's  
23 not mid-20s. It's not 20 to 30. It's 28.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           And so what I'm asking is if -- reading the 302, if you  
2   recall whether he said anything like approximately 28 or mid-20s,  
3   maybe 28, or if he just came out and said that guy was 28, I can  
4   tell.

5           A.     That's correct. It may in this case have been something  
6   like 27, 28, I mean, terms like that. There were other interviews  
7   where the person said, oh, I believe that person to be age X and we  
8   said -- we opined that he was age X.

9           And this one, as I recall, he said about 28 -- or 27 or 28  
10   or mid-20s. Whatever the 302 specifies is what he actually told us.

11          Q.     Okay. So fair to say, if there is no qualifier in the 302  
12   such as "about" or "approximately," that -- that the witness probably  
13   didn't say "approximately" ----

14          A.     To my recollection, I can't answer that.

15          Q.     Understood.

16                 He said that this individual, this UNSUB 1 was medium height  
17   and had whitish skin?

18          A.     That's what I believe I read, yes.

19          Q.     Okay. And he said that that individual, when shown the  
20   ADENBOM Photo Book, said that it looked like number 20 but the person  
21   that he saw had a rounder face than number 20?

22          A.     That is correct.

23          Q.     All right. And he did not identify any other picture in

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the ADENBOM Photo Book such as 21 or 22?

2 A. That is correct.

3 Q. Similar to the other folks, do you recall when you learned  
4 that he was being made -- when Mr. Al Shouwafi was being made  
5 available for an interview with you?

6 A. Again, within a 24-hour pre-period, yes, sir.

7 Q. Okay. And fair to say you were not provided any advance  
8 information, statements, or otherwise about who this individual was  
9 or his connection?

10 A. Correct.

11 Q. This individual was a witness developed by Yemeni law  
12 enforcement, correct?

13 A. As we understood it, yes.

14 Q. And either prior to the investigation or at any point  
15 during the investigation, you never learned how this snorkeler's name  
16 surfaced with respect to the investigation?

17 A. Correct.

18 Q. You don't know the circumstances surrounding how the PSO  
19 first approached him?

20 A. Correct.

21 Q. You don't know whether he was taken into custody by the  
22 PSO?

23 A. Correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You don't know if he was forced, threatened, coerced by  
2 the PSO to talk to them?

3 A. Correct.

4 Q. You don't know whether the PSO forced, threatened, or  
5 coerced his family members so that he would talk to the PSO?

6 A. Correct.

7 Q. You don't know if he was promised anything or if his  
8 family members were promised anything in exchange for talking to the  
9 PSO?

10 A. Correct.

11 Q. This person had been previously interviewed by the PSO  
12 before he talked to you, correct?

13 A. My understanding, yes.

14 Q. You -- at no time were you provided with the statement  
15 that he gave to the PSO?

16 A. That's correct.

17 Q. Okay. And we've described it similar to the process that  
18 you described earlier with respect to how the PSO statement was read  
19 to the individual. Did that occur in this case?

20 A. Correct.

21 Q. You don't know if he was shown any photographs by the PSO  
22 when he was interviewed in October of 2000?

23 A. I don't know.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And that's fair to say of -- of any -- you don't know at  
2 any point if any witness was shown pictures by the PSO?

3 A. Correct.

4 Q. You don't know whether he made any identifications with  
5 the PSO?

6 A. Correct.

7 Q. You don't know if the PSO pointed out specific individuals  
8 that he might want to identify?

9 A. Correct.

10 Q. You don't know where this individual was prior to coming  
11 to the MOI Headquarters building where he was interviewed by you?

12 A. Correct.

13 Q. You don't know how he got to the MOI Headquarters  
14 building?

15 A. Also correct.

16 Q. You don't know if he was commingled with other witnesses  
17 prior?

18 A. Correct.

19 Q. You, in this instance, could not and so you did not  
20 confirm his identity through a Yemeni driver's license?

21 A. Correct.

22 Q. Yemeni ID card?

23 A. Correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Passport?

2 A. Correct.

3 Q. You could not and so you did not photograph him or print  
4 him to document who you had in front of you?

5 A. Correct.

6 Q. You never independently verified his identity through  
7 follow-up investigation?

8 A. Correct.

9 Q. This individual was shown the ADENBOM Photo Book, as we  
10 talked about previously, and this individual was shown the  
11 January 2nd version of the ADENBOM Photo Book. Would that -- to the  
12 best of your recollection, would that have been for the same reason  
13 that you described previously?

14 A. Absolutely.

15 Q. Okay. And this person, just to be clear, was interviewed  
16 on a different day than Mr. Al Kazimi who we just talked about?

17 A. I'd have to double check my notes on that ----

18 Q. Okay.

19 A. ---- to answer that.

20 Q. Fair to say some days -- well, I -- is there any way for  
21 you to determine at this point in time when you had the January 2nd  
22 book and when you had the updated version, the 10th of January photo  
23 book?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Only if it's described as which date -- or which edition  
2 we had in the course of the 302.

3           Q.     Okay. And fair to say you only had one version in your  
4 possession at any given time when you -- when you were interviewing  
5 these folks?

6           A.     As I recall, that's the case, yes.

7           Q.     So they wouldn't -- you wouldn't have shown them  
8 the -- the photo book from the 2nd and then shown them the photo book  
9 for the 10th?

10          A.     I don't recall that ever happening or having the  
11 opportunity to happen.

12          Q.     Okay. The last time you talked to this individual was the  
13 17th of January 2001?

14          A.     If that's what the date is, yes, sir.

15          Q.     All right. And that's the only time that you talked to  
16 him?

17          A.     There was only one time I spoke with him.

18          Q.     Since that time, you've not made any attempts to locate  
19 him to determine whether or not he might be available for trial?

20          A.     I have not.

21          Q.     And you're not aware of anybody in the United States  
22 government or any agency thereof who may have contacted this  
23 individual or -- or attempted to to determine whether he would be

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 able to testify at trial?

2 A. To my personal knowledge, that's correct.

3 Q. All right.

4 DC [Lt Col NETTINGA]: Your Honor, if I can have one moment.

5 MJ [COL ACOSTA]: You may.

6 DC [Lt Col NETTINGA]: Your Honor, those are all the questions  
7 I have at this point in time.

8 MJ [COL ACOSTA]: Government, redirect?

9 ATC [Capt DANIELCZYK]: No, Your Honor, not for this grouping.

10 MJ [COL ACOSTA]: All right. Agent Reuwer, you can step down  
11 until we call you back in. I'll remind you that you remain under  
12 oath. Don't discuss your testimony or your knowledge of this case  
13 with anyone other than counsel for either side. After I have a  
14 discussion with counsel, we're going to take a lunch recess. They'll  
15 tell you when to come back.

16 **[The witness was warned, was temporarily excused and withdrew from**  
17 **the RHR.]**

18 MJ [COL ACOSTA]: Government, with regard to 535 and the  
19 motion -- and the defense's request to extend their -- it's a -- to  
20 have until the 20 -- I apologize if I have dropped the date -- the  
21 21st of March I want to say is their response date that they  
22 requested, is -- you didn't oppose that. But they did file a  
23 response -- you know, they filed a second motion -- or a second

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 discovery request with you on the 29th of January. Is your -- is  
2 your lack of -- the 31st of January, pardon me.

3 The -- the -- is your lack of opposition because you intend  
4 on responding to that 29 January and the 4 October discovery  
5 requests?

6 MATC [MR. WELLS]: Yes, sir.

7 MJ [COL ACOSTA]: You're going to respond to them?

8 MATC [MR. WELLS]: Yes, sir.

9 MJ [COL ACOSTA]: Before the 21st of March, so within the next  
10 week or two?

11 MATC [MR. WELLS]: Sir, we will -- we have information in  
12 security review right now. Hopefully we can produce ----

13 MJ [COL ACOSTA]: Okay. Here's my question about that, right?  
14 Security review of -- of your internal -- I mean of your documents  
15 that were created?

16 I mean, most of their questions, right -- most of the things  
17 that they're asking for, I know some of it is the conditions,  
18 et cetera, that occurred prior to -- or the -- that led up to  
19 the -- some -- the original statements of these two witnesses in  
20 2004.

21 MATC [MR. WELLS]: Those are going to be more difficult to  
22 get, but yes, sir.

23 MJ [COL ACOSTA]: The crux of what they're asking for -- and

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 again, the defense makes an allegation specifically about a -- about  
2 recantation. They provide no evidence of it. I asked them for it  
3 yesterday. They said we don't want to give it to you right now.

4 MATC [MR. WELLS]: Yes, sir.

5 MJ [COL ACOSTA]: Okay. They're not giving it to me. They're  
6 not giving it to you. There's -- they say there's a recantation.  
7 That has to be disclosed regardless, right, so ----

8 MATC [MR. WELLS]: Absolutely.

9 MJ [COL ACOSTA]: One way or the other.

10 MATC [MR. WELLS]: If that exists, yes, sir.

11 MJ [COL ACOSTA]: Right. Most of the things they're asking  
12 for are things that should be in the possession or the minds of  
13 members of the prosecution, correct? That what happened at the  
14 meetings that you were present at, that the -- that the prosecution  
15 was present at with these other witnesses, correct?

16 So this should not have to go through a -- I don't know how  
17 that goes through a -- through a security review before you turn over  
18 here's a conversation we had about a negotiation. Does that have to  
19 go to security review as well before you're turning that over?

20 MATC [MR. WELLS]: Sir, yes, and let me ----

21 MJ [COL ACOSTA]: Okay.

22 MATC [MR. WELLS]: ---- let me explain, please.

23 MJ [COL ACOSTA]: But that's not -- but that's not the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 product, right, of any intelligence gathering, et cetera. This is an  
2 interview, a proffer session, what's going on, you know, these things  
3 that are going on. I don't understand why it's taking so long ----

4 MATC [MR. WELLS]: Yes, sir.

5 MJ [COL ACOSTA]: ---- to get that done.

6 MATC [MR. WELLS]: Well, sir, first, I've interviewed the  
7 members. The focus was the defense is making an allegation that  
8 they're either inconsistent statements or recantations. That's  
9 Brady. And if we intend to use this witness on hearsay, we have to  
10 give it. Judge said that clearly in 428. If we intend to call them  
11 as a live witness, that may be later down the road, but we still have  
12 to give that under our discovery obligations. And the rules tell us  
13 provided earlier is better for efficiency ----

14 MJ [COL ACOSTA]: Well, I'm not asking -- I asked a simple  
15 question: Why is it taking so long?

16 MATC [MR. WELLS]: Yes, sir.

17 MJ [COL ACOSTA]: Why -- you asked for -- are you -- how are  
18 you going to be able to produce it within -- we're now, you know, a  
19 month away from when they're going to do it. You've had the  
20 discovery request since the 20 -- pardon me, since the 4th of  
21 October.

22 How are -- are -- are -- what's your date that you're going  
23 to give them the answers to the question -- to the -- to the request

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 from 4 October and the 31st of January? What day are you giving it  
2 to them?

3 MATC [MR. WELLS]: Sir, I will say this. I've already  
4 provided it on 12 January in 535, what I could produce immediately,  
5 and I said we do not have any information that indicates to  
6 recantations. There is nothing like that. Inconsistent statements  
7 I'm uncertain. Mary Boese, who was the FBI agent, was taking  
8 interview notes. I've explained that in the response on 12 January.

9 As it relates to scheduling and information that might  
10 relate to that, I do have some e-mails of that. I've packaged that  
11 up. I can produce those.

12 What is in security review right now is the interview  
13 materials that were provided to the defense counsel for the detainees  
14 which are classified, and we've asked that those be declassified.

15 We've also made the position of the prosecution that we  
16 would present no evidence in our case in chief that would be  
17 classified. So this is a process that needs to go forward.

18 I am attempting to ----

19 MJ [COL ACOSTA]: This is not about the case in chief now ----

20 MATC [MR. WELLS]: ---- provide them information and answer  
21 their questions.

22 MJ [COL ACOSTA]: This is not about the case in chief now,  
23 right? We're talking about I need to know, and what I'm -- what



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 they're asking for is what happened at the meeting. Mr. Parker Smith  
2 was apparently there.

3 MATC [MR. WELLS]: Yes.

4 MJ [COL ACOSTA]: Mr. Miller was apparently there. I don't  
5 know how it's difficult. And that you said we don't have to  
6 produce -- you know, create the discovery. But attorneys regularly  
7 disclose, hey, I had a meeting with a -- with a client. I had a  
8 meeting with a witness, he said the following and they produce: I  
9 want to let you know during an interview with the prosecution on such  
10 day they made a statement that was previously inconsistent with  
11 a -- or it's consistent with the prior -- inconsistent with a prior  
12 statement, et cetera, you know, that you have to turn over.

13 MATC [MR. WELLS]: Yes.

14 MJ [COL ACOSTA]: That's a regular occurrence, correct?

15 MATC [MR. WELLS]: If I had that information ----

16 MJ [COL ACOSTA]: Right. I understand. But that's what has  
17 to occur. Part of it is ----

18 MATC [MR. WELLS]: Yes.

19 MJ [COL ACOSTA]: ---- you know, and part of what their  
20 request -- what their request was as well was about the alleged  
21 statements that occur from the interviewing agent about promises  
22 or -- or ----

23 MATC [MR. WELLS]: Yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: ---- you know, representations that that  
2 agent can assist. I don't understand why it takes -- why, you know,  
3 if those things exist that seem to be pretty specific, although all  
4 there is is a quote and not a -- I don't have a source from that from  
5 the defense. So, again, a fact alleged is not a fact until there's  
6 evidence to support it.

7 If there's things -- what -- again, before I order this, I  
8 don't want to order it and give you more time if you're going to just  
9 give it to them sooner. So what day are you going to respond to this  
10 discovery request, affirmatively or negatively, that those things  
11 exist?

12 They want to respond by the 21st of March, so that -- I  
13 would assume, then, that you're -- that today being the 21st of  
14 February, that you're responding in the next week or two. Is that  
15 correct?

16 MATC [MR. WELLS]: Sir, I will give a response by the 21st.

17 MJ [COL ACOSTA]: No. No. No. That's not what the -- they  
18 want to reply by the 21st, okay.

19 MATC [MR. WELLS]: You're asking ----

20 MJ [COL ACOSTA]: Not -- not they want to have your response  
21 by the 21st. They want to file their reply. They filed their  
22 request on the 31st of -- of January. If -- under -- what day are  
23 you going to respond to that discovery request? Not by the 21st.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Can you reply to it short of that? In two weeks?

2 MATC [MR. WELLS]: Sir, if you're asking for production of  
3 material and information to them that might exist or might not exist,  
4 that's a different request than me just putting on a pen and paper.  
5 I can do that this afternoon and say we have no responsive  
6 information at this time, no responsive information at this time,  
7 no ----

8 MJ [COL ACOSTA]: No, I understand. But that's what your  
9 responsibility is to -- you know, to do when you get a discovery  
10 request, right? And they -- they gave it to you in October, and you  
11 never responded to it. And then they filed a motion to compel and  
12 they file -- and that's when you -- that's what you finally responded  
13 to in January. Correct? You never filed a response with them ----

14 MATC [MR. WELLS]: Sir, I didn't ----

15 MJ [COL ACOSTA]: ---- from ----

16 MATC [MR. WELLS]: ---- give them a written response on this  
17 matter ----

18 MJ [COL ACOSTA]: Right. That's my -- right.

19 MATC [MR. WELLS]: I did start to investigate ----

20 MJ [COL ACOSTA]: Hold on.

21 MATC [MR. WELLS]: ---- materials and gather and put this into  
22 equity review ----

23 MJ [COL ACOSTA]: Counsel -- right ----

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           MATC [MR. WELLS]: ---- to be produced.

2           MJ [COL ACOSTA]: None of it -- but you didn't give them a  
3 response or say, hey, before you file, I'm going to get a -- we're  
4 working on it. We need about 30 days or whatever normal negotiation  
5 would be about, hey, we're looking into the following. All it was  
6 was if you're going to ----

7           MATC [MR. WELLS]: I'm ----

8           MJ [COL ACOSTA]: All I have is what I have in front of me, so  
9 you never responded to them in writing of the discovery response.  
10 That's normally how they're responded to, right, so ----

11          MATC [MR. WELLS]: Sir, there are e-mails where they requested  
12 what's the status ----

13          MJ [COL ACOSTA]: Yes.

14          MATC [MR. WELLS]: ---- and we did respond ----

15          MJ [COL ACOSTA]: Right. That was the 4 ----

16          MATC [MR. WELLS]: ---- and continued to work ----

17          MJ [COL ACOSTA]: ---- that was the December series, early  
18 December, the 1 and 2 December e-mails, correct?

19          MATC [MR. WELLS]: Yes, sir. So we're looking at the  
20 4 October.

21               I understand the commission's frustration with all of this.  
22 Where is the information to get to the defense? As I've tried to lay  
23 out on my investigation and inquiry on this matter, and I tried to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 produce the information that I thought would be relevant and material  
2 to them about the promise.

3 I put that in that response, even though perhaps under the  
4 law you're not required to do that and it's at trial counsel's  
5 discretion until much later when the witness is decided to be called.

6 MJ [COL ACOSTA]: Uh-huh.

7 MATC [MR. WELLS]: But as it relates to inconsistent and  
8 recantations, I do not have any information from the interviews that  
9 I've conducted with the prosecution members who attended those  
10 sessions or meetings with the counsel and/or the detainee present  
11 that there was a recantation. There may be inconsistent statements,  
12 but I have not found that information yet.

13 The person who was supposed to be taking the notes of that  
14 record is the FBI agent; I've explained that. The law indicates that  
15 sometimes a recreated summary could be produced. I have not  
16 personally interviewed that FBI agent. If you will give us time to  
17 do that before the 21st, maybe we can recreate those notes and  
18 provide that to them.

19 MJ [COL ACOSTA]: Often ----

20 MATC [MR. WELLS]: I think at the end ----

21 MJ [COL ACOSTA]: ---- often -- often -- often it's -- it's  
22 not you give them your notes. It's very often that it's, Counsel, I  
23 just want to give you -- I'm giving you notice right now. I

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 interviewed them. And what -- they said light was red, now they're  
2 saying the light was green. I'm giving you notice of that.

3 That alerts the defense, oh, when we go to talk to this  
4 person the next time to interview them, we want to make sure, hey,  
5 apparently you said this -- or at least now I have that, correct?  
6 Right? You know, it's not a I need to dig up everybody's notes and  
7 do this.

8 So I am frustrated with the speed of the response on this  
9 issue, especially -- you know, there's a gravity of some -- of some  
10 of these allegations. The gravity of that -- and again, it's not  
11 supported. I -- I -- it's not supported by any evidence that I have  
12 about a recantation.

13 The -- Mr. Natale, you concur? You make the allegation in  
14 the motion, but you've provided nothing to me on that, correct? You  
15 haven't given me anything on it other than the allegation in the  
16 motion -- in the motion to compel, right?

17 LDC [MR. NATALE]: Your Honor, we are willing to make an  
18 ex parte statement to show you that we do have a very good-faith  
19 basis upon which ----

20 MJ [COL ACOSTA]: Oh, I understand that you ----

21 LDC [MR. NATALE]: ---- to make this allegation.

22 MJ [COL ACOSTA]: I assume you have it in good faith, but what  
23 the issue is is just like every -- you know, there -- there has to be

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 evidence to support a finding if there was a recantation, right?

2 Because if you want me to find, Defense, that there was a  
3 recantation that they did not turn over to me, I will need some form  
4 of evidence, as in a witness sitting in a chair telling me they did  
5 it or an affidavit saying ----

6 LDC [MR. NATALE]: Well ----

7 MJ [COL ACOSTA]: ---- here is the -- this person said this on  
8 this day, right?

9 LDC [MR. NATALE]: Yes, Your Honor. We will put it on when we  
10 have our reply. When we have our reply, we will put it on and make  
11 that ----

12 MJ [COL ACOSTA]: Well, I mean, you have it, right? If you  
13 have this -- and you're saying you have it ----

14 LDC [MR. NATALE]: Yes.

15 MJ [COL ACOSTA]: ---- right? It doesn't ----

16 LDC [MR. NATALE]: Your Honor, there is ----

17 MJ [COL ACOSTA]: It would -- it would -- you know, what  
18 you're asking for, you know, what you're -- that allegation is  
19 a -- is a -- is a serious one, that the government is -- is aware of  
20 that. So that's what we'd need -- that's what the commission will  
21 need to determine that.

22 So, Government, this is what I'm trying to determine.

23 Again, I don't want to -- if -- I don't want to order something that

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the government -- you know, and give you a month to answer something  
2 that you're going to answer to the defense next week. I don't want  
3 to push this off, because I'll tell you this, my intent is to hear  
4 this issue in April, okay?

5 MATC [MR. WELLS]: Yes, sir.

6 MJ [COL ACOSTA]: My intent is to hear this in April, which  
7 means by the 21st of March, yeah, I need a -- I need a response. I'm  
8 not granting that yet because I want to see. Because if they give it  
9 to you tomorrow, I'm going to want your response much sooner.

10 So, Government, what I'm looking for from you is -- not by  
11 the end of today. By the end of tomorrow, you tell me when you're  
12 going to answer these -- answer the -- make -- be able to respond to  
13 that -- to that -- to the defense's discovery request. I want a date  
14 certain, okay?

15 I have -- I am -- I'm a -- the number of days that  
16 pass -- that have passed from October 4th until now is more than  
17 sufficient to have answered these questions in one way or the other.  
18 And, yes, it would be very nice if you put pen to paper and said,  
19 here are the answers to the questions. Okay? That -- that's what  
20 you're supposed to do. We don't have this. We don't know about it.  
21 And then generally, a caveat goes down at the bottom, but we'll get  
22 you -- but we'll keep looking and if we see anything, we'll let you  
23 know. You know, that's -- it ----



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MATC [MR. WELLS]: Your Honor ----

2 MJ [COL ACOSTA]: ---- it's how you answer questions.

3 MATC [MR. WELLS]: ---- didn't I do that on 12 January?

4 MJ [COL ACOSTA]: Well, on 12 January -- right. On 12 January  
5 to a 4 October original request.

6 MATC [MR. WELLS]: But there are e-mails in between there.

7 MJ [COL ACOSTA]: No, I understand, but that's -- there's  
8 still deadlines. Just like I was talking to the defense about their  
9 deadlines and I wasn't grilling the defense about their deadlines but  
10 they found something out in May or June. They didn't file the motion  
11 until -- they didn't file -- they didn't submit the request to you  
12 until the 4th of October. Okay?

13 There's a -- there's a timeline for both of those things.  
14 It's not grilling. It's trying to make sure that you're complying  
15 with the order that I've given. That's -- it was included in  
16 the -- in the government's response to the defense that they included  
17 going, hey, how does this comply with 428? It's not -- nothing more  
18 than trying to make sure that people are complying with the  
19 deadlines.

20 Just like I did with the defense, I'm asking the same of  
21 you. When there's time -- and I understand they went back and forth  
22 with some e-mails. In a couple -- by the close of business on  
23 Wednesday, tomorrow, give me a date certain that you can respond to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 this so that I can plan this out and that we can have witnesses -- I  
2 know that the defense has requested Mr. Miller as a witness, and  
3 we'll get to how we're going to litigate that issue or how we're  
4 going to present that hearing -- or present that issue -- how I'm  
5 going to receive evidence on this issue.

6 But I do need an answer on it, okay? The -- the defense  
7 need an answer to your request. If you ----

8 MATC [MR. WELLS]: Yes, sir.

9 MJ [COL ACOSTA]: You're saying that you're going to give it,  
10 right? You oppose me granting their -- their -- or granting their  
11 motion to compel the discovery. You oppose me -- you don't oppose me  
12 giving them more time to reply because you say you're going to give  
13 it to them.

14 If you don't need to be compelled to answer the request for  
15 discovery, then tell me when you're going to answer it so that I can  
16 either choose to tell you, no, you need to answer faster or -- or  
17 deny the motion as moot that you're going to answer the questions,  
18 okay? Give me something on Wednesday by close of business. That  
19 will give you a chance to consult and come back with that, okay?

20 MATC [MR. WELLS]: Yes, sir.

21 MJ [COL ACOSTA]: Thank you, Government.

22 LDC [MR. NATALE]: Your Honor, there's one thing that I think  
23 it's important to note, and I've been hearing statements like I don't

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 have that information. I'm not aware.

2 MJ [COL ACOSTA]: No, I understand.

3 LDC [MR. NATALE]: I ----

4 MJ [COL ACOSTA]: You're talking about from the

5 Government's ----

6 LDC [MR. NATALE]: I want to make sure that the record is

7 clear that -- I know you understand, but I wanted to be clear that

8 this is the government ----

9 MJ [COL ACOSTA]: Oh ----

10 LDC [MR. NATALE]: ---- what the government has is what the  
11 government has and that an individual can't be deliberately ignorant  
12 of what the government has.

13 And so I understand your frustration. I understand it. I  
14 appreciate it. However ----

15 MJ [COL ACOSTA]: Oh, no, no. I ----

16 LDC [MR. NATALE]: ---- it's clear ----

17 MJ [COL ACOSTA]: I'm not frustrated with the -- with anything  
18 other than the fact that these things take too long to go on  
19 answering some simple questions.

20 LDC [MR. NATALE]: You and I are in heated agreement on that.  
21 And that's all that I would like to make clear, is that it -- it  
22 doesn't make any sense that we don't even have a date when we're  
23 going to get this.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           But I heard what you said, but it is the responsibility of  
2 the government and not any one individual.

3           MJ [COL ACOSTA]: Oh, I understand. But now you've asked me  
4 to compel it, right? You've asked me to compel them to give  
5 it -- right? -- but the motion that you asked for in -- in 535, you  
6 know, the first part of the motion is to -- is to compel the  
7 production you requested -- the -- the -- the discovery that you  
8 requested in October, right?

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

10          MJ [COL ACOSTA]: Okay. And then you filed a new one in  
11 January which is more specific but in the general -- but -- but the  
12 same topics, right?

13          LDC [MR. NATALE]: Uh-huh.

14          MJ [COL ACOSTA]: The -- that's not what you're  
15 asking -- that's not what I've been asked to rule upon to compel,  
16 the -- the January request. You've asked me to compel the -- the  
17 October request.

18                 So what I'm asking the government is look at -- answer the  
19 4 October one finally, which you say you answered in January, and if  
20 you have more -- if you needed more specifics, they gave you a more  
21 specific request in January, and be ready to answer -- and tell me  
22 when you're going to answer this by the close of business tomorrow,  
23 if you can give me a date certain.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           And I'll determine whether or not I need to speed that up or  
2   slow that down, in which -- you know, and to the extent that I'll  
3   grant it, potentially incorporating and to avoid -- and to avoid  
4   duplication here, look at the 29 one because my order -- while they  
5   have not requested specific relief on the 29 -- or, pardon me, I keep  
6   saying 29 January. It's the 31st of January -- the 31 January  
7   request, I'm -- if I order discovery, it's going to -- it will, to  
8   the extent that I believe it necessary, contain the categories from  
9   the 31 January request.

10           LDC [MR. NATALE]: Uh-huh.

11           MJ [COL ACOSTA]: So look at that. Look at both of them,  
12   please, because we're -- because we're approaching the 30-day time  
13   period to respond to that essentially by the time -- well, you know,  
14   by the time the response would be ordered anyway, okay?

15           MATC [MR. WELLS]: Thank you, sir.

16           MJ [COL ACOSTA]: All right. Thank you. All right.

17           I'm not in heated agreement or disagreement with anybody.  
18   I'm just trying to get some answers here because it's -- if -- I  
19   don't take those -- the allegations, I don't take them lightly. I do  
20   want -- if they exist, I want evidence of it because without that,  
21   I -- you know, I can't accept it as a -- as a fact until it is  
22   established until I can find it.

23           The government in their response in -- to -- to 535 agreed

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to every fact except for the fact of the recantation. If you look at  
2 their facts section, they -- they concede for the purposes of the  
3 motion every fact other than that fact. If I recall correctly, and  
4 I'm pretty sure I do because that's what it says. So that's what I'm  
5 looking for.

6 And if you say you're going to put that in your reply, then  
7 I'm -- I -- I want to see it. And we're -- and to the extent that  
8 there's any dispute as to fact, that will be resolved. That's going  
9 to be the first thing on my agenda for April, for the April hearing.  
10 Thank you. All right.

11 Commission is in recess until 1300.

12 **[The R.M.C. 803 session recessed at 1144, 21 February 2023.]**

13 **[The R.M.C. 803 session was called to order at 1301,**  
14 **21 February 2023.]**

15 MJ [COL ACOSTA]: The commission is called to order.

16 Government, all parties present as before?

17 TC [MR. O'SULLIVAN]: Yes, Your Honor.

18 MJ [COL ACOSTA]: Defense?

19 LDC [MR. NATALE]: Yes, Your Honor.

20 MJ [COL ACOSTA]: Mr. Nashiri remains voluntarily absent,  
21 Defense?

22 LDC [MR. NATALE]: That is correct, Your Honor.

23 **[The witness, Kenneth S. Reuwer, resumed the witness stand.]**

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: All right. The witness remains on -- is  
2 back on the stand already. Mr. Reuwer, I remind you that you remain  
3 under oath.

4 WIT: Yes, sir.

5 MJ [COL ACOSTA]: Government, you may proceed.

6 ATC [Capt DANIELCZYK]: Thank you, Your Honor.

7 **REDIRECT EXAMINATION CONTINUED**

8 **Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:**

9 Q. For the last grouping, I want to discuss four individuals,  
10 the first by the name of Mr. Foad Saleh Qassem al Hashidy; the  
11 second by the name of Ahmed Abdallah Omar al Masbahi; the third, Omar  
12 Mohammed Omar al Masbahi; and finally, Salem Hussein Mohammad Farid.

13 MJ [COL ACOSTA]: The last name again, please.

14 ATC [Capt DANIELCZYK]: The last -- the last one is Salem  
15 Hussein Mohammad Farid. So those should be Tabs 20 ----

16 MJ [COL ACOSTA]: I got them.

17 ATC [Capt DANIELCZYK]: Yes, sir.

18 MJ [COL ACOSTA]: It's 20 -- you're -- you're going in  
19 the -- is this the order in which you're going to discuss them as  
20 well?

21 DDC [LT DANIELSON]: Yes, sir.

22 MJ [COL ACOSTA]: Because last time you gave me the names and  
23 then you went in the reverse order. So I'm just trying to -- for my

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 own purposes, you're going to go 20, 29, 66, and then 18?

2 ATC [Capt DANIELCZYK]: Correct. Yes, sir.

3 MJ [COL ACOSTA]: Okay. You may proceed.

4 ATC [Capt DANIELCZYK]: Thank you, Your Honor.

5 Q. And, Mr. Reuwer, as much as a reminder for myself as for  
6 you, there is translation going on, so I'm going to make an effort to  
7 go slower. If you can please keep that in mind as we go.

8 So first with regard to Mr. Al Hashidy, did you conduct an  
9 interview with him on 7 January 2001?

10 A. I did.

11 Q. And he told you he is an industrial crane operator; is  
12 that correct?

13 A. That's correct.

14 Q. Where did you conduct this interview?

15 A. Where did I conduct?

16 Q. Where. Yes.

17 A. In the PSO facility aboard the MOI compound in Aden,  
18 Yemen.

19 Q. Were there other individuals from U.S. law enforcement  
20 present?

21 A. Yes, there were two FBI special agents, Khoury and Crouch.

22 Q. Were there also PSO and MOI officials present?

23 A. Yes, they were.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     When you first saw Mr. Hashidy, did you notice any signs  
2 of abuse?

3           A.     No, sir.

4           Q.     Did he appear healthy?

5           A.     He did.

6           Q.     Did he have clean, appropriate-looking clothes?

7           A.     He did.

8           Q.     Did he appear frightened in any way?

9           A.     No, sir.

10          Q.     Was he restrained or shackled?

11          A.     No.

12          Q.     Was there anything to make you think that he was in  
13 custody at the time?

14          A.     No, sir.

15          Q.     And if he had been or if you had noticed anything, would  
16 you have taken note?

17          A.     Absolutely.

18          Q.     Was your team introduced to Mr. Hashidy and was it  
19 explained to him why you were talking to him?

20          A.     We were.

21          Q.     Did you conduct the interview with those interview  
22 protocols that we've discussed?

23          A.     We did.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. From your observation of Mr. Hashidy, did he appear to be  
2 answering your questions willingly?

3 A. Yes, sir.

4 Q. Was he cordial with you?

5 A. He was.

6 Q. Was Mr. Hashidy previously interviewed by Yemeni  
7 authorities?

8 A. I'm sorry, could you repeat?

9 Q. Was Mr. Hashidy previously interviewed by Yemeni  
10 authorities?

11 A. Yes, sir, he was.

12 Q. Now, as an industrial crane operator, where did  
13 Mr. Hashidy work?

14 A. He worked for the Masbahi Crane Company in the local  
15 village north of the Al-Burayqah bridge.

16 Q. Is that the same company that was owned by Mr. Abdullah  
17 Masbahi that we discussed previously?

18 A. Yes, sir, it was.

19 Q. While working at this crane yard, did Mr. Hashidy have any  
20 encounters that were pertinent for your investigation?

21 A. Yes, sir. He, in fact, had two.

22 Q. Can you please describe the first one, please?

23 A. Yes, sir. He described for us that two or three weeks

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 prior to what we know now to be the attack of the COLE on the 12th of  
2 October, so, therefore, approximately latter half of September  
3 of -- of 2000, he was working at the -- at the crane station, at the  
4 crane facility, when two customers arrived in a vehicle and  
5 approached him.

6 Q. Did Mr. Hashidy describe that vehicle to you?

7 A. He did. It was a white two-door Nissan.

8 Q. During this interaction in September, did Mr. Hashidy say  
9 who did the majority of the talking for the customers?

10 A. He addressed that issue, and specifically he was the only  
11 one there when the conversation started with the two individuals, so  
12 it was alone, himself.

13 In the course of that another employee, Omar -- I'm sorry,  
14 Ahmed Masbahi arrived and engaged and essentially Mr. -- the first  
15 individual turned over the -- the customers to Omar -- I'm sorry, to  
16 Ahmed Masbahi because he was the more experienced crane operator.

17 Q. I'm sorry. Let me be more specific in the question.

18 In that first interaction, did Mr. Hashidy describe if it  
19 was the driver or the passenger of the vehicle that did the majority  
20 of the talking for the group?

21 A. Oh, I'm sorry. From the customer's perspective, it was  
22 the driver of the vehicle. And I misspoke on the latter part of  
23 that. It was actually a secondary interview -- a secondary

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 interaction with him in which the other individual came to light.

2 Q. So the vehicle approaches. The driver does the majority  
3 of the talking. What did the driver ask of Mr. Hashidy?

4 A. He inquired if he had the crane services available at a  
5 future undetermined date to help launch a boat by crane into the  
6 water down by Al-Burayqah bridge.

7 Q. Was a price agreed upon for that job?

8 A. He was quoted a price, as I recall, of 15,000 rial to do  
9 so, and they negotiated that down to an agreed price of 10,000 rial.

10 Q. Did the driver give an approximate weight of the boat at  
11 that time?

12 A. I believe he did. I cannot recall from memory the  
13 specific weight that he opined.

14 Q. Would reviewing your 302 refresh your recollection as to  
15 the weight of the boat?

16 A. It would.

17 ATC [Capt DANIELCZYK]: All right. Your Honor, I'm showing  
18 AE 319MM, page 309.

19 **[The witness reviewed the evidence.]**

20 ATC [Capt DANIELCZYK]: Retrieving the document.

21 Q. Did that refresh your recollection?

22 A. It did. His estimate was that it was between one and one  
23 and a half tons.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     Now, during this interaction, did these people give  
2 Mr. Hashidy any identifying information?

3           A.     They did not.

4           Q.     And what instructions did Mr. Hashidy give them when they  
5 returned at a later date?

6           A.     After he made the quote to them, he assured them that he  
7 would honor the agreed price. There was no written contract,  
8 apparently. It was just a verbal agreement. He did tell them that  
9 when they came back to do it at whatever date, it would have to be  
10 during business hours. They wouldn't be open before or after,  
11 obviously. And they -- the two individuals agreed that that was no  
12 issue.

13                   And he told them that they should ask for him. He did  
14 provide his name to them. Their name was not provided to him. He  
15 also told them that in the event for any reason he wouldn't be there,  
16 that he was to provide whoever was at the business on the day they  
17 came back -- again, yet to be determined -- to let them know that he  
18 had spoken to him by name and they had been quoted the price for  
19 10,000 and, therefore, it would be honored.

20           Q.     Did Mr. Hashidy tell you whether it was an unusual request  
21 to launch a boat by crane?

22           A.     He said it wasn't unusual. If I recall correctly, what he  
23 did state was that most boats that were launched like that were

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 larger boats, heavier boats, fishing boats, commercial, and so forth,  
2 but it wasn't unheard of to do this.

3 Q. Did Mr. Hashidy provide descriptions of these two men?

4 A. He did.

5 Q. And as pertaining to the first man, what was that  
6 description?

7 A. Again, these get very confusing with all the myriad of  
8 combinations of things. To the best of my  
9 recollection -- recollection, he was -- he was bearded, had dark  
10 hair. I think he wore glasses. He was the driver of the vehicle.  
11 He was the one that predominantly conducted the -- the questioning  
12 with the witness. He was in a shirt with a ma'wazz. And offhand,  
13 that's the best I can do.

14 Q. Do you recall a description of the man's height?

15 A. Specifically, I don't without -- recall.

16 Q. Would reviewing your 302 refresh your recollection?

17 A. Yes, sir, it would.

18 ATC [Capt DANIELCZYK]: Your Honor, showing the same page of  
19 319MM, page 309.

20 MJ [COL ACOSTA]: Proceed.

21 **[The witness reviewed the evidence.]**

22 ATC [Capt DANIELCZYK]: Retrieving the document.

23 Q. Did that refresh your recollection?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     A little bit, yes, sir. He had medium height. He was tan  
2 in his skin tone and had curly hair, and he did wear the glasses.

3           Q.     Did Mr. Hashidy comment on the man's accent?

4           A.     Hadhramauti-style accent.

5           Q.     And did Mr. Hashidy approximate -- give you an approximate  
6 age of this man?

7           A.     I believe he said he was 27 or 28ish -- ish.

8           Q.     Now, pertaining to the second man, this is the passenger,  
9 then, of the vehicle. Did Mr. Hashidy provide you a description of  
10 him as well?

11          A.     He did, yes, sir.

12          Q.     Did he provide an approximate age?

13          A.     I recall he did.

14          Q.     And what was that?

15          A.     I'd have -- I can't recall offhand.

16          Q.     Would reviewing your 302 refresh your recollection?

17          A.     Yes, sir, it would.

18                ATC [Capt DANIELCZYK]: Showing the witness the same document.

19   **[The witness reviewed the evidence.]**

20                ATC [Capt DANIELCZYK]: Retrieving the document.

21          Q.     Did that refresh your recollection?

22          A.     Yes, sir.

23          Q.     And did -- what age did Mr. Hashidy describe the second

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 man to be?

2 A. Twenty-five.

3 Q. Did he also describe his -- his build?

4 A. His features were described as tall, skinny, and he  
5 likewise confirmed he too was wearing a ma'wazz and a shirt.

6 Q. Did Mr. Hashidy encounter these same men again in a  
7 subsequent time?

8 A. He did, yes, sir.

9 Q. And when was that?

10 A. On the morning of the 12th of October 2000.

11 Q. Did he provide any other details about their interactions  
12 that day?

13 A. Yes, sir. What he described was that on that day he was  
14 working in the shop in the morning when the two individuals arrived.  
15 The two individuals approached him and tried to recall with -- tried  
16 to have him recall the event from two or three weeks prior.  
17 Initially, he did not. They knew his name. They  
18 remember -- recalled the quote of 10,000 rial. And through that  
19 subsequent brief encounter, he subsequently remembered that he had  
20 had this conversation with them two or three weeks prior and  
21 acknowledged the 10,000-rial quote.

22 Q. Was this second time also to launch a boat near  
23 Al-Burayqah bridge?



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Yes, and in fact it was to do it that very day. This was  
2 the day that they had -- had come to fruition that they had discussed  
3 two or three weeks prior.

4           Q.     Was anybody else from the crane company involved in this?

5           A.     Yes, sir. Initially, one of the Masbahi brothers, Omar,  
6 was actually working on the -- was in the facility at the time they  
7 arrived. He saw them arrive. He was in the area and present during  
8 that brief conversation which I just described between the witness  
9 and the two UNSUBs.

10                 Subsequently and briefly, within a matter of a half an hour  
11 by all of the collective accounts, two other employees of the crane  
12 company arrived. They were Ahmed Masbahi and the fourth individual  
13 you named earlier, Mr. Farid, who was an employee of the company.  
14 They arrived, and upon doing so -- that's where previously I  
15 misspoke. And, in fact, that was the conversation at which the  
16 witness basically turned the two customers over to Ahmed Masbahi.

17           Q.     So the two customers are turned over to Ahmed Masbahi. To  
18 your understanding, what is Ahmed Masbahi's role?

19           A.     Ahmed Masbahi is the son of the owner. He's the senior  
20 person there representing the company at this time. He's also  
21 acknowledged as him -- by himself and the others as the more  
22 experienced crane operator. So it made sense for him to take over  
23 that posting.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. So both Mr. Hashidy, who we're discussing currently, and  
2 Ahmed Masbahi are both crane operators, correct?

3 A. They are both the crane operators, correct.

4 Q. So Ahmed comes over and takes over with these customers.  
5 What happened next?

6 A. They concurred and agreed that this would happen for  
7 10,000 rial; that they would honor that prior agreement. At that  
8 point, he -- one of the two was explaining where this was to actually  
9 occur, and the explanation was a little unclear to the -- to  
10 Mr. Masbahi.

11 So what they decided to do was have one of the two men  
12 accompany the crane while the other gentlemen drove off in the -- in  
13 the Nissan, which did not have the boat or the trailer attached to  
14 it. So the other gentlemen went off ahead or separately to meet them  
15 at the site after going to get the boat and trailer.

16 The first gentleman went on the crane and actually sat for  
17 the ride giving them directions to the location that they wanted.  
18 Ahmed Masbahi and this gentleman were in the cab of the -- of the  
19 crane while Omar Masbahi and the fourth individual, Mr. Farid, rode  
20 along on the outside of the crane.

21 Q. Before we get into the ride kind of down to the site, did  
22 Mr. Hashidy say which crane was used that day?

23 A. He did. He said it was a yellow Tadano crane, and I

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 believe he opined it to be the -- a 20-ton crane.

2 Q. Did Mr. Hashidy ever see these customers again?

3 A. After that event and they left the station, he never saw  
4 them again.

5 Q. Did he ever see their boats?

6 A. He never saw the boat or the trailer. Just the vehicle.

7 Q. In Mr. Hashidy's discussions with these men, did they ever  
8 inquire about lifting the boat out of the water?

9 A. As a matter of fact, they did not.

10 Q. Did you ask Mr. Hashidy if he could identify photos of  
11 these individuals?

12 A. We did.

13 Q. And was that using the 2 January 2001 photo book?

14 A. I believe it was.

15 Q. Was he able to identify any photos?

16 A. He was.

17 Q. What photos did he identify?

18 A. He did a positive identification on the individual we  
19 described as UNSUB 1, the driver, as several numbers, several  
20 photographs, if I recall correctly. They were 9, 10, 13, 14, and 15.

21 Q. So that was of the driver. Was he able to identify any  
22 photos of the passenger?

23 A. I believe he did. I can't recall specifically what number

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 he would have.

2 Q. Would reviewing your 302 help refresh your recollection?

3 A. Yes, sir, it would.

4 ATC [Capt DANIELCZYK]: All right. Showing the witness

5 AE 319MM, page 309.

6 **[The witness reviewed the evidence.]**

7 ATC [Capt DANIELCZYK]: Retrieving the document.

8 Q. Did that refresh your recollection?

9 A. It did. It refreshed my recollection that he was unable  
10 to identify any positive identification to a photograph.

11 Q. Have you had a chance to review that photo book?

12 A. I have.

13 Q. And who is depicted in photos 9, 10, 13, 14, and 15?

14 A. The individual known to us in the investigation as  
15 al Khamri.

16 Q. Was a 302 drafted following this interview?

17 A. It was.

18 Q. Did you have a chance to review that for accuracy?

19 A. I did.

20 Q. All right. Next I'd like to talk about Mr. Ahmed Abdullah  
21 Omar al Masbahi. Did you conduct an interview with Mr. Ahmed  
22 al Masbahi on 7 January 2001?

23 A. I did.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And again, we covered it yesterday, but to avoid confusion  
2 with the multiple Masbahis, I'll refer to this individual as Ahmed  
3 Masbahi.

4 A. Thank you.

5 Q. And I know we just covered it, but Mr. Ahmed Masbahi told  
6 you he was a crane operator; is that correct?

7 A. Yes, sir.

8 Q. Where did you conduct this interview?

9 A. At the PSO facility aboard the MOI compound in Aden.

10 Q. Were there other U.S. law enforcement personnel present?

11 A. There were. There were two FBI agents, Khoury and Crouch.

12 Q. Were there also PSO and MOI?

13 A. Yes, sir.

14 Q. When you first saw Mr. Ahmed Masbahi, did you notice any  
15 signs of abuse?

16 A. No, sir.

17 Q. Did he appear to be healthy?

18 A. Yes.

19 Q. Did he have clean, appropriate-looking clothing?

20 A. Yes.

21 Q. Did he appear frightened in any way?

22 A. No.

23 Q. Was he restrained or shackled?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. No.

2 Q. Was there anything to make you think he was in custody at  
3 the time?

4 A. Absolutely not.

5 Q. If there had been, would you have taken note of that?

6 A. Yes, sir.

7 Q. Was your team then introduced to Mr. Ahmed Masbahi and  
8 explained to him why you were talking to him?

9 A. We were.

10 Q. And did you interview him following that interview  
11 protocol?

12 A. We did.

13 Q. From your observations of Mr. Ahmed Masbahi, did he appear  
14 to be answering your questions willingly?

15 A. Yes, sir.

16 Q. Was he cordial with you?

17 A. Very much.

18 Q. Was Mr. Ahmed Masbahi previously interviewed by Yemeni  
19 authorities?

20 A. Yes, sir.

21 Q. Was he read his previous statement?

22 A. Yes, sir.

23 Q. Did he verify its accuracy?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. He did.

2 Q. As a crane operator, generally speaking, where did Ahmed  
3 Masbahi tell you he worked?

4 A. He worked for his father's business, which is the crane  
5 operation, the Masbahi crane operation in his hometown.

6 Q. And that's the same operation that we've been discussing?

7 A. Yes, sir, it is.

8 Q. Was Mr. Ahmed Masbahi working on 12 October 2000?

9 A. He was.

10 Q. Did he have any jobs earlier that morning?

11 A. He did. In fact, he was not present at the -- he was out  
12 on another job with one of the other employees earlier that morning  
13 that he had thought would take a better part of the morning. As it  
14 turned out, he said he arrived back at the shop earlier ahead of his  
15 planned schedule because the earlier job did not take as long as he  
16 had expected.

17 Q. Upon returning to the crane yard, what did he tell you he  
18 saw?

19 A. He said that the first employee, Mr. Hashidy, was already  
20 engaged in a discussion with two -- these two customers with the  
21 white Nissan, and that once he arrived he intervened and basically  
22 assumed that -- that negotiation.

23 Q. Did Mr. Hashidy tell him that the customers were looking

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to place a boat in the water?

2 A. He was told that's what it was about. I don't know  
3 specifically who it was that passed that information, whether it was  
4 Mr. Hashidy or one of the customers.

5 Q. Now, had Mr. -- did Mr. Hashidy tell Ahmed Masbahi that he  
6 knew these men?

7 A. He told them that they -- that they -- the same two  
8 individuals had been in two or three weeks prior, had made the same  
9 request that they were now trying to execute; that he had negotiated  
10 a price of 10,000 rials with them, and that this was the time that  
11 they were seeking to have that work executed.

12 Q. Did these men tell Mr. Ahmed Masbahi where the boat was to  
13 be launched?

14 A. It was to be -- yes, they did.

15 Q. And where was that?

16 A. At a site down by the Al-Burayqah bridge south of the  
17 town.

18 Q. Did they attempt to describe that to him? In other words,  
19 give him directions?

20 A. They did. They made an effort to explain it to him, and  
21 it was unclear -- the specifics of it were unclear to him. So the  
22 agreement was readily made that one of the individuals would  
23 accompany the crane in transit while the other vehicle broke off with



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the second individual, and he went to go retrieve the boat with the  
2 agreement that they would all meet at the boat site.

3 Q. Did Ahmed Masbahi describe these two men to you?

4 A. He did.

5 Q. And how did he describe the first man?

6 A. Again, these interviews -- I mean, these descriptions all  
7 run together so greatly. My recollection is that he did describe  
8 that he was wearing a striped -- one of the individuals was wearing a  
9 striped white shirt, a ma'wazz. He was, I think -- I believe he gave  
10 an age and described an accent for him. But beyond that without  
11 further -- I can't recall specifically.

12 Q. Would reviewing your 302 refresh your recollection as to  
13 the description of the first man?

14 A. It would.

15 ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
16 page 440.

17 **[The witness reviewed the evidence.]**

18 ATC [Capt DANIELCZYK]: Retrieving the document.

19 Q. Did that refresh your recollection?

20 A. It did. He described him as short, thin, light-skinned,  
21 as he had a Hadhramaut-type accent, although he also  
22 opined -- he -- the witness opined that he sounded more like he could  
23 be from Sana'a.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           He also described him in a -- in a -- what was to us an  
2 unusual description of all of the interviews that we conducted. He  
3 said -- he described the individual as handsome, handsome like a  
4 girl.

5           Q.     Did he describe to you whether or not this individual was  
6 wearing glasses?

7           A.     He did believe that he was wearing prescription glasses.

8           Q.     And did he describe to you whether or not this individual  
9 had worry beads?

10          A.     He believed this individual did have worry beads.

11          Q.     Did Ahmed Masbahi also describe to you the second man, the  
12 one who drove the car?

13          A.     He did.

14          Q.     And how did he describe him?

15          A.     He was wearing a white shirt with a ma'wazz. I believe he  
16 said he also had a Hadhramauti accent. He was a larger man than the  
17 other -- other man. Well built I think was the term that he used for  
18 him. Beyond that, I can't be specific.

19          Q.     Would reviewing your 302 refresh your recollection as to  
20 the description of the second man?

21          A.     Yes, sir, that would help.

22                 ATC [Capt DANIELCZYK]: Showing the witness the same  
23 exhibit -- excuse me, the same document.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1   **[The witness reviewed the evidence.]**

2           ATC [Capt DANIELCZYK]: Retrieving the document.

3           Q.     Did that refresh your recollection?

4           A.     It did. He was, by the way, I'm sorry, wearing the  
5 striped shirt, not the other individual. I recall that one of the  
6 two was; it was this gentleman.

7                   He was -- had curlier hair. He was heavier set. He was  
8 light-skinned, had a Hadhramaut accent. He was -- also had sandals  
9 on. It was the only footwear I recall any descriptions including.

10          Q.     Did Ahmed Masbahi tell you whether this second man had  
11 facial hair?

12          A.     I believe he was bearded as well.

13          Q.     Now, after Ahmed Masbahi agreed to do the job -- and I  
14 think you hit on it a little bit -- did they leave the crane yard at  
15 that point?

16          A.     I think he estimated it was about 15 minutes after the  
17 engagement began that they actually were on the road, yes.

18          Q.     And just to confirm, who did Ahmed Masbahi tell you was on  
19 the crane at that point?

20          A.     Ahmed advised that he was in the crane in a cab, that the  
21 individual -- that the first individual went with him while the  
22 second individual did not. And then on the back -- on the exterior  
23 of the crane were his brother, Omar, and the employee, Farid.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And where did the customer direct them to take the crane?

2 A. He gave directions for them to go south on the main  
3 highway, cross the Al-Burayqah bridge, and on the southeast corner of  
4 that intersection of the bridge, there's an area where he took them,  
5 which is ultimately what we called the launch area or the deck area.

6 Q. Did Ahmed Masbahi estimate about how long it took to make  
7 that trip?

8 A. There were two estimates in the course of these interviews  
9 that differed, so it was either 15 or 30 minutes.

10 Q. What happened after the crane arrived at the site?

11 A. When they got there, they got there ahead of the vehicle,  
12 the towing vehicle and the boat. So if I recall correctly, the UNSUB  
13 on the vehicle -- on the crane with him went off on foot to go assist  
14 the UNSUB #2 and bring the vehicle back. And, in fact, sometime  
15 shortly later, the -- the Nissan came towing the boat.

16 Q. Was Mr. Ahmed Masbahi able to describe that vehicle that  
17 was towing the boat?

18 A. He said it was a two-door white Nissan.

19 Q. Did he describe any spare tires accompanying the vehicle?

20 A. It had a large spare tire on the rear -- on the rear mount  
21 of the vehicle.

22 Q. And did he notice any special or unusual markings on the  
23 car?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     One of the doors he recalled had some red spots of some  
2 sort, undescribed further, on the vehicle.

3           Q.     Was Mr. Ahmed Masbahi also able to describe the boat that  
4 was in tow?

5           A.     He did. He told us it was a white fiberglass boat. It  
6 had red carpeting. It was fitted nautically, meaning it had a  
7 steering wheel, steering mechanism. It had a motor. It had two  
8 chairs in it. And it had a -- I'm sorry, I think I already said it  
9 had the red carpeting throughout it.

10          Q.     Did he approximate -- or was he able to give you an  
11 approximate size?

12          A.     He did. If my recollection is correct, it was about six  
13 meters. I don't recall that he gave us a width on it.

14          Q.     Was Ahmed Masbahi able to describe the trailer that the  
15 boat sat on?

16          A.     The trailer was off-white or white. White or off-white.  
17 Light in color at any rate. It was a -- and it had four tires, two  
18 on either side.

19          Q.     Did he describe any other additional material as part of  
20 that trailer?

21          A.     I believe this was the interview in which he said it had  
22 the carpeting on the trailer -- on the skids of the trailer, which is  
23 commonplace.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Was that the same carpeting that was also on the boat?

2 A. The same color carpeting. It was red, yes, sir.

3 Q. Now, just to confirm, these men who returned towing the  
4 boat, were they the same men who hired Ahmed Masbahi at the crane  
5 yard earlier that day?

6 A. Yes. The two at the launch site that we're describing now  
7 were, in fact, the same two individuals who earlier that morning had  
8 been at the crane operator.

9 Q. What did these men do with the boat after they arrived?

10 A. They provided -- with the crane set up in the right  
11 position for the crane to do its proper mobilization of the lift and  
12 launch, they supported that. They provided straps that were unique  
13 to what their request was. In fact, some of the witnesses described  
14 these straps as unique even to them. But they insisted that these  
15 particular straps be used.

16 Anyway, the operation then was that the straps were used  
17 under the boat as it was lifted off of the boat -- off of the  
18 trailer. It was then moved into the water and secured to something  
19 there on land, but not any further attached to the trailer or the  
20 car.

21 Q. So once the boat was in the water, did these customers  
22 then get in the boat?

23 A. As a matter of fact, his brother Omar was actually in the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 boat during the lift, facilitating it and dealing with the straps or  
2 the cables I was speaking of, the slings. And one of the individuals  
3 also got right into the boat as well with the brother.

4 And when all was said and done, the first individual made  
5 payment to Ahmed as agreed, the 10,000 rials, and they wrapped up  
6 their equipment and departed.

7 Q. Did Ahmed Masbahi approximate how long it took to get the  
8 boat into the water?

9 A. He did. A couple of the witnesses did. Their testimonies  
10 varied slightly, but it was anywhere between 15 and 45 minutes.

11 Q. Do you remember specifically Ahmed Masbahi, his  
12 approximation?

13 A. I don't recall specifically which his number was, no, sir.

14 Q. Would reviewing your 302 help refresh your recollection?

15 A. It would.

16 ATC [Capt DANIELCZYK]: I'm showing the witness AE 319MM,  
17 page 441.

18 **[The witness reviewed the evidence.]**

19 ATC [Capt DANIELCZYK]: Retrieving the document.

20 Q. Did that refresh your recollection?

21 A. It did. As I recall, the collective testimonies were 15  
22 to 45. Specifically to Mr. Ahmed, it was 15 to 30 minutes.

23 Q. Did either of these men, these two customers, tell Ahmed

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Masbahi why they were putting the boat into the water?

2 A. I believe they said that they were going to be taking  
3 their family for a boat ride.

4 Q. Did Ahmed Masbahi tell you whether any arrangements were  
5 made to take the boat out of the water?

6 A. Unlike the Hashidy interview, which that was not  
7 addressed, yes, it was in this case. And Mr. Ahmed Masbahi said that  
8 one of the individuals explained that when they were done they would  
9 need the boat taken out of the water but no time was allotted for  
10 that or specified.

11 And Mr. Ahmed Masbahi shared with us that because of that he  
12 wasn't going to wait around for an unknown period of time, so he told  
13 the individuals just come back to the shop when you're ready and  
14 we'll take care of you.

15 Q. When Ahmed Masbahi left the scene, where were the boat,  
16 car, and trailer?

17 A. The boat was not attached any longer to the vehicles, as I  
18 said, and it was tied up to the dock. The trailer was still attached  
19 to the boat -- or to the vehicle, to the Nissan, and they were both  
20 there where they had left and -- in the same spot from which  
21 the -- the crane had lifted the boat from the trailer.

22 Q. Did Ahmed Masbahi describe the crane he used that day?

23 A. He did. It was a yellow Tadano crane. He told us it was



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 an 18-ton crane.

2 Q. And did he approximate about what time that boat was  
3 placed in the water?

4 A. There were numerous times given that morning. He did  
5 provide an estimated time. I don't recall exactly which it was.

6 Q. Would reviewing your 302 refresh your recollection?

7 A. Yes, sir.

8 ATC [Capt DANIELCZYK]: Okay. Providing the same document to  
9 the witness.

10 MJ [COL ACOSTA]: Proceed.

11 **[The witness reviewed the evidence.]**

12 ATC [Capt DANIELCZYK]: And actually, Your Honor, this one  
13 spills onto the next page, which is also 442. I'm providing that as  
14 well.

15 MJ [COL ACOSTA]: All right. Proceed.

16 **[The witness reviewed the evidence.]**

17 ATC [Capt DANIELCZYK]: Retrieving the document.

18 Q. Did that refresh your recollection?

19 A. Yes, sir. He said it was about 11:00.

20 Q. Did you ask Ahmed Masbahi if he could identify any  
21 individuals using a photo book?

22 A. We did.

23 Q. And was that also the 2 January 2001 photo book?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. I believe so.

2 Q. Was he able to identify any photos?

3 A. Yes, he was.

4 Q. What photos did he identify?

5 A. He identified the individual whom he described as the  
6 driver, the heavier-set man with the beard, as numbers 9, 13, and 14.

7 Q. And who was depicted in photographs 9, 13, and 14?

8 A. That was Mr. Al Khamri.

9 Q. Was Ahmed Masbahi able to identify any photos of the  
10 second individual?

11 A. I know he made an effort to do so. I can't recall off the  
12 top of my head if he was positive or not.

13 Q. Would reviewing your 302 refresh your recollection?

14 A. Yes, sir.

15 ATC [Capt DANIELCZYK]: Providing to the witness AE 319,  
16 pages 441 and 442.

17 **[The witness reviewed the evidence.]**

18 ATC [Capt DANIELCZYK]: Retrieving the document.

19 Q. Did that refresh your recollection?

20 A. It did.

21 Q. Was he able to identify any photographs of the second man?

22 A. He stated that the other UNSUB individual looked like  
23 number 24 from the photo book.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And who is depicted as photo number 24?

2 A. I do not recall, but I do know that it was not either of  
3 the individuals we've previously identified.

4 Q. Would reviewing that photo book help refresh your  
5 recollection as to the identity of number 24?

6 A. It would.

7 ATC [Capt DANIELCZYK]: I'm showing the witness the photo  
8 book, which is AE 319A Attachment H1.

9 **[The witness reviewed the evidence.]**

10 ATC [Capt DANIELCZYK]: Retrieving the document.

11 Q. Did that refresh your recollection?

12 A. It does. It only confirms that I was unaware of the  
13 individual who was depicted as 24.

14 Q. Was a 302 drafted following this interview?

15 A. Yes, sir.

16 Q. And did you have a chance to review that for accuracy?

17 A. I did.

18 Q. All right. Now I'd like to talk about Mr. Omar Mohammed  
19 Omar al Masbahi. Do you remember conducting an interview with Omar  
20 al Masbahi on 7 January 2001?

21 A. I did.

22 Q. And to avoid confusion, again, I'll refer to him as Omar  
23 Masbahi.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Mr. Omar Masbahi told you he's a helper for crane operators;  
2 is that correct?

3           A.     Yes, for his father's business.

4           Q.     And where did you conduct this interview?

5           A.     At the PSO facility aboard the MOI compound in Aden,  
6 Yemen.

7           Q.     Were there other U.S. law enforcement personnel present?

8           A.     Two FBI agents, Khoury and Crouch.

9           Q.     Were there also PSO/MOI, as you described previously?

10          A.     There were.

11          Q.     When you first saw Omar Masbahi, did you notice any signs  
12 of abuse?

13          A.     No, sir.

14          Q.     Did he appear healthy?

15          A.     He did.

16          Q.     Did he have clean, appropriate-looking clothing?

17          A.     He did.

18          Q.     Did he appear frightened in any way?

19          A.     No, sir.

20          Q.     Was he restrained or shackled?

21          A.     No, sir.

22          Q.     Was there anything you observed to make you think he was  
23 in custody at the time?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Nothing.

2           Q.     And if you had observed anything, would you have taken  
3 note of that?

4           A.     Yes, sir.

5           Q.     Was your team introduced to Omar Masbahi and explained to  
6 him why you were interviewing him?

7           A.     Yes, sir.

8           Q.     Did you conduct that interview using those interview  
9 protocols that we've discussed?

10          A.     Yes, sir.

11          Q.     From your observations, was Mr. Omar Masbahi -- did he  
12 appear to be answering your questions willingly?

13          A.     Yes, sir.

14          Q.     Was he cordial with you?

15          A.     He was.

16          Q.     Was he previously interviewed by Yemeni authorities?

17          A.     Yes, he was.

18          Q.     Was he read his previous statement?

19          A.     He was.

20          Q.     Did he verify its accuracy?

21          A.     He did.

22          Q.     So I think you mentioned it. Is Omar Masbahi one of  
23 Abdullah Masbahi's sons?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. He is.

2 Q. And he, of course, works at the same crane yard, correct?

3 A. Correct.

4 Q. Was Omar Masbahi working on 12 October 2000?

5 A. He was.

6 Q. And did he observe those two men that's previously  
7 described?

8 A. He did.

9 Q. And what were they inquiring about, according to Omar  
10 Masbahi?

11 A. On the 12th of October he was at the station when they  
12 arrived. He was not out on the other job I referred to with Farid  
13 and his brother, Ahmed, so he was there when they arrived. And he  
14 observed them engaged in a conversation with Mr. Al Hashidy. He was  
15 not part of that negotiation, but observed it.

16 So he was obviously still there when his brother and Farid  
17 arrived back to the station, and he also observed the communication  
18 between the group transfer from al Hashidy to his brother, Ahmed  
19 Masbahi.

20 Q. I want to back up just -- just a second.

21 Did Omar Masbahi describe a vehicle that these individuals  
22 came to the crane yard in?

23 A. Yes. They were in a white Nissan two-door saloon.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And where did these individuals say they wanted to put the  
2 boat into the water?

3 A. He understood that this request was for a spot down by the  
4 Burayqah bridge.

5 Q. Now, did Omar tell you if these two men were at the crane  
6 yard previously?

7 A. He did not know that at the time, but he shared with us at  
8 the time of the interview that -- that he learned that Mr. Hashidy  
9 had met these two sometime beforehand.

10 Q. And did he also learn the agreement to place the boat in  
11 the water?

12 A. Yes.

13 Q. And ultimately, was Omar Masbahi asked to go on the crane  
14 to accompany Ahmed on this job?

15 A. Yes, he was tasked by Mr. Al Hashidy to accompany, and, in  
16 fact, he did go, and he was one of the folks on the exterior of the  
17 crane in transit.

18 Q. So what individuals did Omar Masbahi tell you were on the  
19 crane?

20 A. On the crane in transit were his brother Ahmed Masbahi in  
21 the cab, one of the two individuals, the customers, was in the cab  
22 giving directions. Himself and Mr. Farid, the other employee, were  
23 on the exterior of the crane in transit.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     Just kind of generally speaking, where did Omar tell you  
2 was the job site?

3           A.     He explained that it was on or off the beach down by the  
4 Al-Burayqah bridge, and again, that they crossed the bridge. It was  
5 on the south side of the bridge at this deck or docking area.

6           Q.     Now, you just mentioned a deck. Can you explain a little  
7 bit about what that is?

8           A.     The deck is a -- I don't want to call it a boat ramp  
9 because it's not really a ramp. It's a hardened-off area. Unlike  
10 the previous examples from yesterday's testimony where vehicles  
11 launching a boat were stuck in sand, so this is a hard-packed area  
12 actually designed to accommodate a vehicle without getting it stuck  
13 down by the beach from which it's ideal to launch a boat off of a  
14 crane.

15          Q.     So is that an area directly next to the water?

16          A.     It is immediately -- the water abuts up to this deck area,  
17 yes, sir.

18          Q.     Now, talking about the individual, the customer who  
19 accompanied them on the train, what did he do when they reached their  
20 destination of this deck?

21          A.     When they reached that destination, they arrived before  
22 the vehicle that had departed from the crane site, the crane  
23 operations company, to go get the vehicle -- the boat and the



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 trailer. So when they got there, he observed that individual depart  
2 them on foot to go back east to where the neighborhoods, the local  
3 neighborhoods there, and said he would be back in a little bit. He  
4 was going to go help his counterpart get the boat.

5 Q. And did he eventually return?

6 A. He did in the Nissan with the other individual pulling  
7 the -- trailering the boat.

8 Q. Did Omar Masbahi provide additional details about this  
9 Nissan?

10 A. He did. It was also described by him as a two-door white  
11 Nissan.

12 Q. Did Omar also provide a description of the boat?

13 A. He did. It was a white fiberglass boat. It was rigged  
14 out for nautical purposes. It had a steering mechanism, a steering  
15 wheel. It had a motor. It was lined with red carpet and was  
16 seaworthy.

17 Q. Did he describe the positioning of the chairs at all?

18 A. He described that there were two chairs in the boat and,  
19 as I recall, one was in the equivalent of the driver's space, i.e.,  
20 behind the wheel, and the other chair was actually stationed in front  
21 of the driver's post.

22 Q. Did he provide any approximation of the size?

23 A. He did. My recollection is it was in the same

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 neighborhood as the other, but possibly a little bit -- little bit  
2 longer. He also gave us a width on it, which I recall was two or two  
3 and a half meters wide.

4 Q. Did Omar give you a description of the trailer as well?

5 A. He did. It was also a four-wheel trailer, two on either  
6 side, of course, and he described it as a wooden trailer or a wood  
7 trailer.

8 Q. Now, speaking about the individuals, the customers, did  
9 Omar Masbahi provide descriptions of them?

10 A. Yes, he did.

11 Q. And how did he describe the driver of the Nissan?

12 A. Between the -- he was well built. He was the larger of  
13 the two in comparison sake. He was in a -- also in a white  
14 shirt -- or a shirt and a ma'wazz. He had glasses. And beyond that,  
15 I -- I can't go from recollection.

16 Q. Would reviewing your 302 refresh your recollection as to  
17 the remaining description?

18 A. It would.

19 ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
20 page 1251.

21 **[The witness reviewed the evidence.]**

22 ATC [Capt DANIELCZYK]: Retrieving the document.

23 Q. Did that refresh your recollection?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     He described him, as I said, as well built. He had a thin  
2 beard and mustache. He was described as short, and he was, in fact,  
3 wearing the attire I described.

4           Q.     Apologies if I missed it. Did he also comment on any  
5 accent the man had?

6           A.     I believe he said he had a Hadhramaut accent.

7           Q.     Now, the second man, the one who was on the crane, did  
8 Mr. Omar provide a description of him?

9           A.     He did.

10          Q.     And what was that?

11          A.     Again, in comparison, I do recall that he was a  
12 smaller-frame build than the first fella. I think he was light Arab  
13 skin tone. He was lighter, smaller frame, thinner -- I don't recall  
14 offhand if he said skinny or not -- and he was also in a shirt with a  
15 ma'wazz.

16          Q.     Did he describe if this individual wore glasses?

17          A.     I believe he said this individual wore glasses, but he was  
18 undeterminable -- it was undetermined if they were prescription or  
19 not.

20          Q.     And did Omar comment on this individual's accent?

21          A.     I cannot recall.

22          Q.     Would reviewing you 302 refresh your recollection?

23          A.     It would.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ATC [Capt DANIELCZYK]: Showing the witness the same document.

2 **[The witness reviewed the evidence.]**

3 ATC [Capt DANIELCZYK]: Retrieving the document.

4 Q. Did that refresh your recollection?

5 A. Yes. The smaller -- smaller individual was described as  
6 having an accent which Omar described as being from Sana'a.

7 Q. And did Omar Masbahi comment on the second individual's  
8 facial structure in some way?

9 A. He gave us a narrow or skinny, long, thin nose or a long  
10 nose.

11 Q. Did Omar participate in the process of placing the boat  
12 into the water?

13 A. Omar actively participated in that, in that when the boat  
14 trailered back to the -- to its launch location, Omar is the one that  
15 physically got off the crane and actually entered the boat before and  
16 while it was moved, adjusting the slings and working with the slings.  
17 He was the one that commented to us about the uniqueness of the  
18 slings.

19 Q. Are these the same slings that the men brought with them?

20 A. And that -- which they insisted on using, despite the  
21 crane having their own sling apparatus.

22 Q. And did Omar tell you, generally speaking, what these  
23 slings were made of?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     He did. He was surprised because it was something he was  
2 unfamiliar with or had not seen before, and they were basically a  
3 metal cable with a -- about three meters in length, and the metal  
4 cable was surrounded or encompassed by a plastic covering.

5           Q.     Did these men tell Omar why they were putting the boat  
6 into the water?

7           A.     I believe they said that they were just going out for  
8 a -- to take the family out for a boat ride.

9           Q.     Were any plans made to have the boat lifted out of the  
10 water?

11          A.     The plans were made for when they returned to have  
12 it -- to have it removed. He -- I don't believe he was involved in  
13 that intimate discussion of any negotiation to do so, though.

14          Q.     Did Mr. Omar Masbahi estimate about how long it took to  
15 place the boat in the water?

16          A.     He was somewhere in the 30-minute estimate, give or take  
17 15 minutes.

18          Q.     Now, after the boat was placed in the water, was payment  
19 made at that time?

20          A.     I'm sorry. After it was placed?

21          Q.     In the water, was payment made at that time?

22          A.     Yes. He observed the smaller, thinner UNSUB provide the  
23 10,000-rial payment to Ahmed, but he also said the same individual

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 handed him 200 rial as basically tip money for his -- his extra  
2 labor -- or his labor.

3 Q. And as Omar Masbahi departed on the crane, was the boat  
4 still tied to shore?

5 A. To my recollection, the boat was still secured, by his  
6 testimony, yes.

7 Q. Did you ask Omar if he could identify any individuals  
8 using a photo book?

9 A. We did.

10 Q. Was that the 2 January 2001 version?

11 A. I believe so, yes.

12 Q. Was he able to identify any photos?

13 A. He was.

14 Q. Who or what numbers did he identify?

15 A. He identified the larger person who we previously  
16 described, the driver of the vehicle, as numbers 9, 13, and 14.

17 Q. Was he able to identify the other individual?

18 A. I don't recall if Omar was or not.

19 Q. Would reviewing your 302 refresh your recollection?

20 A. Absolutely.

21 ATC [Capt DANIELCZYK]: Showing the witness AE 319MM,  
22 page 1252.

23 WIT: Thank you.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 **[The witness reviewed the evidence.]**

2 ATC [Capt DANIELCZYK]: Retrieving the document.

3 Q. Does that refresh your -- excuse me, refresh your  
4 recollection?

5 A. Yes, sir, it does. He, in fact, was not able to identify  
6 the other individual from the photo book.

7 Q. Have you had a chance to review that photo book?

8 A. I have.

9 Q. And who is depicted in photos 9, 13, and 14?

10 A. The same individual known to us as al Khamri.

11 Q. Was a 302 drafted following this interview?

12 A. Yes, sir.

13 Q. And did you have a chance to review that for accuracy?

14 A. I did.

15 Q. All right. Next I'd like to talk about ----

16 ATC [Capt DANIELCZYK]: May I have just a moment, Your Honor?

17 MJ [COL ACOSTA]: You may.

18 **[Counsel conferred.]**

19 Q. Okay. Just, generally speaking, for the al Masbahi  
20 family, are you aware if any of them were incarcerated at any point?

21 A. I have no knowledge of that at all.

22 Q. Prior to your interviews of them, to your knowledge were  
23 they in custody?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I have no knowledge that was ever the case.

2           Q.     Okay.  Now I'd like to talk about our fourth and final  
3   declarant here, Mr. Salem Hussein Mohammad Farid.  Did you conduct an  
4   interview with Mr. Farid on 7 January 2001?

5           A.     I did.

6           Q.     And Mr. Farid told you he works as a freelance helper at a  
7   crane company; is that correct?

8           A.     Yes.

9           Q.     Is that the same company owned by Mr. Abdullah Masbahi?

10          A.     It is.

11          Q.     Where did you conduct that interview?

12          A.     So ----

13                MJ [COL ACOSTA]:  I'm sorry, Counsel.  Can you repeat the  
14   date?

15                ATC [Capt DANIELCZYK]:  7 January 2001.

16          Q.     Where did you conduct that interview?

17          A.     At the PSO facility onboard the MOI compound in Aden,  
18   Yemen.

19          Q.     Were there other U.S. law enforcement personnel present?

20          A.     Yes, FBI Agents Khoury and Crouch.

21          Q.     Were there also PSO and MOI, as you previously described?

22          A.     There were.

23          Q.     Now, when you first saw Mr. Farid, did you notice any



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 signs of abuse?

2 A. No, sir.

3 Q. Did he appear to be healthy?

4 A. Yes.

5 Q. Did he have clean and appropriate-looking clothing?

6 A. He did.

7 Q. Did he appear frightened in any way?

8 A. No.

9 Q. Was he restrained or shackled?

10 A. No.

11 Q. Was there anything you observed to make you think he was  
12 in custody at the time?

13 A. No, sir.

14 Q. If you had observed anything, would you have taken note of  
15 that?

16 A. Yes, sir.

17 Q. Was your team introduced to Mr. Farid and explained to him  
18 why you were talking to him?

19 A. We were.

20 Q. And did you conduct the interview with that protocol we've  
21 discussed?

22 A. We did.

23 Q. From your observations, did Mr. Farid appear to be

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1     answering your questions willingly?

2           A.     Yes, sir.

3           Q.     Was he friendly or cordial with you?

4           A.     He was.

5           Q.     And was he previously interviewed by Yemeni authorities?

6           A.     Yes.

7           Q.     Was Mr. Farid working at the crane yard on

8     12 October 2000?

9           A.     He was.

10          Q.     Did he assist with the job early that morning?

11          A.     He did.

12          Q.     And who was he assisting at that time?

13          A.     He had gone out on an earlier job, estimated about 8:00,

14     with Ahmed al Masbahi and a crane.

15          Q.     Is that the same job that Ahmed described to you?

16          A.     It is.

17          Q.     And approximately what time did Mr. Farid tell you they

18     returned to the crane yard?

19          A.     He estimated it was about 9:30.

20          Q.     And upon returning to that crane yard, did Mr. Farid

21     observe two customers there?

22          A.     He did.

23          Q.     And who were they talking to at that time?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     At that point when they arrived -- when they arrived back,  
2 he and Ahmed arrived back, they were speaking with the first  
3 employee, Mr. Hashidy.

4           Q.     Did Mr. Farid see the car the customers arrived in?

5           A.     Yes. It was described as a white two-door Nissan.

6           Q.     Was there a model associated with the Nissan?

7           A.     I believe it was a saloon.

8           Q.     Now, what happened to the customers when Mr. Farid and  
9 Ahmed al Masbahi returned?

10          A.     The customers, again, were engaged initially with  
11 Mr. Al Hashidy. With Ahmed's arrival, al Hashidy introduced and  
12 brought them over to him, and he, Mr. Ahmed Masbahi, took over and  
13 assumed the lead on that negotiation.

14          Q.     What did Mr. Farid tell you that that job was regarding?  
15 What was the substance of their request?

16          A.     He learned that a prior arrangement had been made. He had  
17 never seen or met these individuals prior to this date, but he  
18 learned that they had come in and negotiated the price for a crane  
19 used to launch a boat, and that on this day, he understood they were  
20 back to actually do so.

21          Q.     Where was that boat to be launched?

22          A.     Out at the area by the Al-Burayqah bridge.

23          Q.     So at the crane yard, who was ultimately tasked to perform

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that job?

2 A. Ahmed as the senior crane argument was -- assumed that  
3 position and role and he, in fact, led that mission, if you will, and  
4 then he took two of his employees, Mr. Farid included, on the crane  
5 to the job site.

6 Q. Did the group then depart on the crane?

7 A. The three of them departed on the crane. Ahmed Masbahi  
8 driving it. Inside the cab with him was one of the two customers,  
9 and on the outside of the crane in transit were this witness,  
10 Mr. Farid, and Omar al Masbahi.

11 Q. You said one of the customers was on the crane. Where did  
12 Mr. Farid tell you the other customer went?

13 A. He understood that the individuals had a difficulty  
14 explaining the destination, so the two customers decided to split up.  
15 One decided to go with Mr. Al Masbahi in the crane to show him and  
16 lead him to the area.

17 The other individual departed in their white Nissan with the  
18 understanding that -- which, by the way, did not have a train -- a  
19 crane -- I'm sorry, a boat or trailer attached, and they were going  
20 to go get the boat and trailer and meet the other team back at the  
21 crane launch site.

22 Q. Did Mr. Farid provide descriptions of those two men?

23 A. He did.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And how did he describe the first, the driver of that  
2 Nissan?

3 A. In a comparison sake between the two, I know he described  
4 the driver as the larger of the two men. I know he said he was  
5 wearing a ma'wazz and a shirt. And without further prompting, I  
6 can't recall the specifics of the -- of his -- of his singular  
7 description.

8 Q. Would reviewing your 302 help you remember the specifics  
9 of that description?

10 A. Yes, sir.

11 ATC [Capt DANIELCZYK]: All right. Showing the witness  
12 AE 319MM, page 294.

13 **[The witness reviewed the evidence.]**

14 ATC [Capt DANIELCZYK]: Retrieving the document.

15 Q. Did that refresh your recollection?

16 A. It helped, yes, sir. The driver was described as being  
17 well built, dark tan complected, again, wearing a white shirt and a  
18 ma'wazz and had a beard. And that was the description I recall.

19 Q. Did Mr. Farid describe to you the accent of this  
20 individual?

21 A. He said he had -- believed he had a Hadhramaut accent.

22 Q. Now, as regarding the second man, the one who was on the  
23 crane, how did Mr. Farid describe him to you?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Again, in comparison sakes, I recall that he was described  
2 as smaller -- a smaller man than the other, but I don't -- can't  
3 recall specifics.

4           Q.     Would reviewing your 302 help you recall those specifics?

5           A.     It would.

6           ATC [Capt DANIELCZYK]: Showing the witness the same document.

7           WIT: Thank you.

8     **[The witness reviewed the evidence.]**

9           ATC [Capt DANIELCZYK]: Retrieving the document.

10          Q.     Did that refresh your recollection as to the specifics of  
11 the description of man two?

12          A.     Yes, sir. He had described him attired like I said but  
13 with a Sana'a accent. He was described as tall but skinny, light  
14 Arab skin tone, and I think he had a -- either light or faded beard,  
15 light beard. And that's what I recall.

16          Q.     Did Mr. Farid describe whether he was wearing glasses or  
17 not?

18          A.     He did say he was wearing glasses. I don't believe he  
19 knew if they were prescription or not.

20          Q.     Now, when the crane arrives to the site, was the boat  
21 there?

22          A.     It was not.

23          Q.     And what did the customer who was on the crane at the time

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 do?

2 A. He departed on foot to go eastward toward the residential  
3 area, away from the water -- I'm sorry, westward. Forgive me. East  
4 would put him in the water. And he went into that neighborhood and  
5 said he'd be back. He was going to help get the boat and trailer,  
6 which he did.

7 Q. You just said he did. Did you -- do you mean he returned  
8 with the boat?

9 A. He returned with the other individual. So the same two  
10 individuals that Mr. Farid had seen at the shop sometime earlier that  
11 morning were now back together with a boat and crane and  
12 trailer -- or boat and trailer and Nissan.

13 Q. So it was -- was it the same vehicle towing the boat ----

14 A. The same Nissan ----

15 Q. ---- earlier in the morning?

16 A. Yes, sir, it was the same Nissan.

17 Q. Did Mr. Farid give you a description of that trailer?

18 A. He did. It was either white or whitish. It also had four  
19 wheels, two on either side.

20 Q. Did Mr. Farid also provide a description of the boat?

21 A. He did. He said the boat was white. It was made of  
22 fiberglass. It had red carpeting throughout it. It had two chairs  
23 in it. It had a steering wheel. It was fitted for nautical

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 purposes. And that's what I recall his description included.

2 Q. Did Mr. Farid give -- not -- not dimensions of the boat,  
3 but any physical features that stuck out to him?

4 A. One of the individuals -- and it may have been Mr. Farid;  
5 it's difficult to recall without greater specificity -- described the  
6 boat's linear line, in other words, its above-water line, as  
7 multidimensional as opposed to one -- one height all the way  
8 throughout.

9 And if -- if I'm recalling correctly, described this one had  
10 a -- basically a centered hump at about 18 inches, or a foot and a  
11 half height, as opposed to the front and rear, which were lower.

12 Q. And did Mr. Farid describe any motor that was on this  
13 boat?

14 A. He did. My recollection is that it was a blue motor per  
15 his recollection.

16 Q. Did the customers bring any equipment with them to this  
17 launch site?

18 A. Yes. While his crane -- while the Masbahi crane had its  
19 own sling mechanism to do this purpose, they were -- the customers  
20 were both very insistent that they not use their own slings but use  
21 the customers' custom-made or custom-brought slings, which the  
22 employees did -- did do so.

23 Q. And I apologize. Backing up just a second, when



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the -- the Nissan arrives towing the boat, did Mr. Farid describe  
2 anything about the Nissan physically that stuck out to him?

3 A. I don't recall anything specific about the Nissan, no,  
4 sir.

5 Q. Would reviewing your 302 refresh your recollection as to  
6 that?

7 A. Absolutely.

8 ATC [Capt DANIELCZYK]: All right. Showing the witness  
9 AE 319MM, page 295.

10 **[The witness reviewed the evidence.]**

11 ATC [Capt DANIELCZYK]: Retrieving the exhibit.

12 Q. Did that refresh your recollection as to the car?

13 A. Yes, sir. On the vehicle, it -- he did state that it had  
14 a rear-mounted tire on the back of the vehicle, the Nissan.

15 Q. Now, while the boat is being prepared to be lowered into  
16 the water, what is Omar Masbahi -- what did he tell you he was doing?

17 A. I'm sorry. Omar or Farid?

18 Q. Omar. Or what did Farid tell you Omar is doing?

19 A. Okay.

20 Q. Excuse me.

21 A. Farid described to us that Omar had been the one in the  
22 boat from the time the boat was lifted off of the trailer and placed  
23 into the water and was the one basically negotiating and dealing with

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the slings.

2 And at that point, the other individual -- one of the -- one  
3 of the two customers also got into the boat with him when the boat  
4 was in the water, and then they tied it off -- now that it was free  
5 of the trailer, they tied it off to the deck.

6 Q. Now, did Mr. Farid describe to you any other individuals  
7 that were near the Al-Burayqah bridge at that point?

8 A. Yes, sir. We had asked, you know, all the interviewees  
9 for any extraneous activity or possibly related activity. In this  
10 case he provided to us that near -- near this launch site was  
11 a -- were three men who were cutting fish or preparing fish in some  
12 manner, and that they were parked with a -- or near a Toyota Cressida  
13 vehicle. There was no engagement with these individuals. They, by  
14 his testimony, had no relevance to this matter. They didn't  
15 acknowledge or know each other. And it was just an observation.

16 Q. So they didn't assist with the launch in any way?

17 A. Correct.

18 Q. While at the launch site, did Mr. Farid discuss payment  
19 with any of the customers?

20 A. He did. He observed -- he knew about the 10,000 payment  
21 for the job to Ahmed Masbahi. He was aware that Omar Masbahi was  
22 given a \$200 -- or 200-rial tip. And then he himself said that he  
23 was presented a 200-rial tip.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     Did these customers tell Mr. Farid why they were putting  
2 the boat in the water?

3           A.     I think he also heard -- I know several of them did, but  
4 that they were going for a boat ride.

5           Q.     And was Mr. Farid aware of any conversation regarding  
6 lifting the boat out of the water upon return?

7           A.     I think he overheard or was made aware that at some point  
8 the boat would need to be returned, but they weren't going to wait  
9 around for it, and that if the customers needed or wanted that to  
10 happen, it would happen at a later time.

11          Q.     I think you touched on it just briefly, but was the boat  
12 successfully lowered into the water?

13          A.     The boat was successfully lowered into the water, freed  
14 from the trailer, and secured to the -- the deck, the dock, or the  
15 land, yes.

16          Q.     Once the boat's in the water, did Mr. Farid and the crane  
17 personnel leave the scene?

18          A.     They did. As they departed, he was on the outside of the  
19 crane, so he had basically a 360 view of things. The crane's noisy  
20 and loud. That was relevant to his testimony.

21                 And as the crane departed, the boat was still in the water.  
22 But while they were still in view, at some distance away from  
23 it -- and I've been there, so I remember the -- the view was actually

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 pretty long and wide with -- even with the bridge.

2           So I don't know where in that course it happened, but while  
3 he still had vision of the deck launching area and saw the boat, he  
4 did see both men in it and that the boat had started. He could not  
5 hear it because of the -- the noise of the crane, but he could see  
6 that they were heading eastward, away from the docking area, alone.

7           Q.     You mentioned he saw both men in it. Were their families  
8 with them?

9           A.     There were -- no. They said they were alone in the boat  
10 and no one else had engaged or been at the pier side when they -- or  
11 dockside when they left.

12          Q.     In which direction did Mr. Farid tell you he saw the boat  
13 moving?

14          A.     They would have been going eastward.

15          Q.     Did Mr. Farid say if he had ever launched a boat this size  
16 by crane before?

17          A.     He said he had not. He was familiar with the cranes being  
18 used for launches but not one of this size.

19          Q.     Was Mr. Farid able to tell you approximately what time of  
20 day these events occurred?

21          A.     I believe it was his -- his testimony that said they  
22 arrived back at the -- they drove straight from the launch site back  
23 to the shop and they were there somewhere in the noon time frame.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Did you ask Mr. Farid if he could identify any photos of  
2 individuals using a photo book?

3 A. We did.

4 Q. And did you use the 2 January 2001 version?

5 A. We did.

6 Q. Was he able to identify the driver of the Nissan?

7 A. I believe he was able to identify one of the two  
8 individuals but not the other. And my recollection is he did  
9 identify the driver as number 9 alone.

10 Q. Would reviewing your 302 refresh your recollection as to  
11 that?

12 A. Yes, sir.

13 ATC [Capt DANIELCZYK]: All right. Showing the witness AE 319  
14 **[sic]**, page 294.

15 **[The witness reviewed the evidence.]**

16 ATC [Capt DANIELCZYK]: Retrieving the document.

17 Q. Did that refresh your recollection?

18 A. It did. With apologies, he did recall one -- make one  
19 identification for the driver. It was number 13 or 14, but not 9.

20 Q. Do you recall if it was 13 or 14?

21 A. I believe it was 13. I'm sorry, no. It was -- it was the  
22 latter number. It was 14.

23 Q. Was he able to identify the passenger of the car?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. He was not able to.

2 Q. And have you had a chance to review that photo book?

3 A. I have.

4 Q. And who is depicted number 14 in that photo book?

5 A. That was the individual known to us as al Khamri.

6 Q. Was a 302 drafted following this interview?

7 A. It was.

8 Q. And did you have a chance to review that for accuracy?

9 A. I did.

10 ATC [Capt DANIELCZYK]: Your Honor, I don't have any further  
11 questions at this time.

12 MJ [COL ACOSTA]: All right. Thank you.

13 Agent Reuwer, we're going to take a -- what I'm asking you  
14 to do is -- remind you that you remain under oath during this recess.  
15 Don't discuss your testimony with anybody other than the counsel for  
16 either side.

17 WIT: Yes, sir.

18 **[The witness was warned, was temporarily excused and withdrew from**  
19 **the RHR.]**

20 MJ [COL ACOSTA]: We're going to take a 20-minute recess. The  
21 commission is in recess.

22 **[The R.M.C. 803 session recessed at 1427, 21 February 2023.]**

23 **[The R.M.C. 803 session was called to order at 1448,**

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 **21 February 2023.]**

2 MJ [COL ACOSTA]: The commission is called to order.  
3 Government, all parties present as before?

4 TC [MR. O'SULLIVAN]: Yes, Your Honor.

5 MJ [COL ACOSTA]: Defense?

6 LDC [MR. NATALE]: Your Honor, LN1 Wood is gone but everyone  
7 else is here.

8 **[The witness, Kenneth S. Reuwer, resumed the witness stand.]**

9 MJ [COL ACOSTA]: All right. The witness remains -- is back  
10 on the stand. Sir, I remind you you remain under oath.

11 Defense, you may begin with the cross.

12 DC [Lt Col NETTINGA]: Thank you, Your Honor.

13 **RECROSS-EXAMINATION CONTINUED**

14 **Questions by the Defense Counsel [Lt Col NETTINGA]:**

15 Q. Mr. Reuwer, I know you were -- we talked about this  
16 previously. You were one of the first ones on the ground in Yemen  
17 after the COLE; is that correct?

18 A. It is.

19 Q. And I know you left at some point to go do some interviews  
20 in Germany, and then you came back and -- and conducted the  
21 interviews that we're talking about today along with other things,  
22 right?

23 A. Yes, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     My question is: At what point did you leave Aden after  
2 these interviews?

3           A.     Sir, I'm not sure I can give you that clear -- a clear  
4 answer to that. It was several months.

5           Q.     And I just want to try to narrow down as best as possible,  
6 understand that you may not remember the exact date. But would it  
7 have been -- we're talking about interviews that happened in January,  
8 basically, this -- this go-around.

9                   Would it have been February, March? Do you have any  
10 recollection as to when that might have been?

11          A.     My recollection, it would have been February or March at  
12 that point, yes, sir.

13          Q.     Okay. And then did you come back at some point to conduct  
14 further interviews?

15          A.     I do not believe I did.

16          Q.     Okay. So once you were gone, that was essentially  
17 the -- the end of your involvement on the ground there?

18          A.     My direct involvement, yes, sir.

19          Q.     Okay. I know you interviewed a number of witnesses in  
20 conjunction with the investigation for this case. Did you interview  
21 any suspects as well?

22          A.     I did.

23          Q.     And in terms of the timing of those interviews, do you



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 recall where they fell in relation to the witness interviews?

2 A. Offhand, I do not, no, sir.

3 Q. And let me try to ask that a different way. What I'm  
4 trying to understand is if it was the case where you did all of the  
5 witness interviews and then you moved on to subjects or was it just  
6 you took whoever you could whenever you could?

7 A. Sir, I'm sorry, if you'd asked me 22 years ago, I could  
8 have answered it with certainty. I can't at this time.

9 Q. Sure. Okay. All right.

10 When you say that you did have some involvement in  
11 interviewing suspects in this case, you never had an opportunity to  
12 interview Mr. al Nashiri; is that correct?

13 A. That is correct.

14 Q. Okay. All right. I'd like to talk about Mr. Al Hashidy  
15 first here, and this is one of the crane operators for -- that worked  
16 for the Al-Masbahi Crane Company.

17 You previously described this car that's been mentioned by a  
18 number of the witnesses, this Nissan saloon, as a sedan; is that  
19 accurate?

20 A. It's accurate to my recollection from the notes. The term  
21 salon **[sic]** equates in American vernacular as a sedan. Over there,  
22 the vernaculars are a little bit different. Just, for example,  
23 what's a ma'wazz? I didn't know what a ma'wazz was. I was seeing

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1    them.  Until I actually asked the questions and learned, a ma'wazz is  
2    the equivalent essentially of a Scottish kilt in Yemen attire.

3           The same questions were asked and answered and, to my  
4    recollection, a saloon was described as a sedan to us.

5           Q.     Okay.  And the reason I ask that question is there's a  
6    couple of 302s that I know you've looked at over the past little bit  
7    here that reference the saloon, and then in parentheses afterwards,  
8    it says SUV.

9           A.     Correct.

10          Q.     And I'm just trying to get a better understanding of what  
11   type of a vehicle this is.  Is it -- did you ever see this Nissan  
12   saloon or a similar type Nissan saloon to know what it was that ----

13          A.     I -- no, sir, I did not.

14          Q.     Okay.  So all you're going on is the description of  
15   whatever the witness gave you?

16          A.     Of what was provided to us, correct.

17          Q.     Okay.  So some witnesses may have described it as more of  
18   an SUV type and some may have described it as more of a sedan type?

19          A.     Presumably so.

20          Q.     Okay.  And again, some witnesses described it as having  
21   two doors, some witnesses described it as having four doors?

22          A.     That is correct.

23          Q.     All right.  So with Mr. Al Hashidy, similar to the other

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 folks that we've talked about, do you know when you learned that he  
2 was being made available for an interview for you?

3 A. I do not.

4 Q. Okay. Would it have been, again, as you've  
5 testified -- as you've testified previously, within 24 hours or maybe  
6 the morning of?

7 A. Yes, sir. It was one of those two. It was either the  
8 evening before or the morning of.

9 Q. Okay. And safe to say, consistent with the practice that  
10 had developed there, that you did not receive any advance information  
11 in terms of statement or pre-briefing as to what connection this  
12 witness had to the investigation?

13 A. Correct.

14 Q. And neither prior to the interview or at any point after  
15 the interview did you learn how the PSO developed this particular  
16 witness in this case?

17 A. Correct.

18 Q. So you don't know the circumstances surrounding how the  
19 PSO approached or found this witness?

20 A. Correct.

21 Q. You don't know whether he was taken into custody by the  
22 PSO?

23 A. Correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You don't know if he -- if he was forced, coerced,  
2 threatened to talk to the PSO?

3 A. Correct.

4 Q. You don't know if his family was forced, coerced,  
5 threatened to make him talk to the PSO?

6 A. Correct.

7 Q. You don't know whether he or his family members were  
8 promised anything in order to exchange cooperation with the PSO?

9 A. Correct.

10 Q. This individual was previously interviewed by the PSO,  
11 correct?

12 A. Yes.

13 Q. You did not receive a copy of the statement that he  
14 provided or a summary of that interview with the PSO?

15 A. That is correct.

16 Q. You don't know whether he was shown any photographs by the  
17 PSO?

18 A. Correct.

19 Q. You don't know whether he made any identifications by the  
20 PSO?

21 A. Correct.

22 Q. He was interviewed at that MOI complex that we've talked  
23 about?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Correct.

2 Q. You don't know where he was previous to arriving at the  
3 MOI complex?

4 A. That is correct.

5 Q. You don't know how he got to the MOI complex?

6 A. Correct.

7 Q. You don't know if he was commingled with other witnesses  
8 prior to his interview with you?

9 A. Correct.

10 Q. You had never met this person before?

11 A. Correct.

12 Q. Didn't know what he looked like prior to seeing him in the  
13 room?

14 A. That's correct.

15 Q. You could not and so you did not confirm his  
16 identification through any Yemeni government-issued ID?

17 A. Correct.

18 Q. You could not and so you did not photograph or print him  
19 to determine who you had in front of you?

20 A. Correct.

21 Q. And you never independently verified his identity through  
22 any follow-up investigation?

23 A. I did not.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And you're not aware of anybody else doing that?

2 A. I am unaware.

3 Q. The first and only time you spoke to him was the 7th of  
4 January 2001?

5 A. It was.

6 Q. And since then, you have not made any attempts to locate  
7 him to determine whether he may be available for trial?

8 A. I have not.

9 Q. And you're not aware of any government agency attempting  
10 to locate this individual to determine whether he's available for  
11 trial?

12 A. To my knowledge, correct.

13 Q. Sir, I'd like to talk a little bit about Ahmed Abdallah  
14 Omar Said al Masbahi, who I believe we've been referring to as Ahmed  
15 al Masbahi.

16 This individual was previously interviewed by the PSO,  
17 correct?

18 A. Correct.

19 Q. You were not provided with a statement or summary of his  
20 interview with the PSO?

21 A. Correct.

22 Q. This individual described the launch site for this  
23 boat -- right? -- the launch -- the place where the boat was

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 launched?

2 A. I'm sorry. Ahmed Masbahi did do so, yes.

3 Q. Right. And so I wanted to talk a little bit about this,  
4 because I think I heard you say in response to one of the  
5 prosecutor's questions that you've actually had an opportunity to  
6 visit this site; is that correct?

7 A. It is.

8 Q. Okay. So can you talk to us a little bit more about what  
9 this site looked like? I like you talked about some -- there was a  
10 deck and there was some hard-packed sand and maybe some loose sand.  
11 I'm just trying to get a better sense of what this area looked like.

12 A. Okay. To my recollection, it was a north-south running  
13 bridge known as the Al-Burayqah bridge. As you entered from mainland  
14 Yemen into what's known as Little Aden -- and whether that's a  
15 peninsula or not, I don't know for sure, but I know the side that we  
16 dealt with, the east side of that body of land, was also part of  
17 Little Aden.

18 Immediately southbound coming off the bridge, visibly from  
19 the bridge at a distance, I would only be able to speculate now, but  
20 certainly less than a half a mile, certainly no more than a half a  
21 mile, much closer perhaps, was this area known as the -- that came to  
22 be known to us as the deck or the launch area. It was dirty, sandy  
23 beach at the foot of the bridge along the waterfront, water being, of

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 course, right to our left underneath the bridge, and running in a  
2 southeasterly direction, the land did, as it curved around.

3 The specifics of the area were to our west of the bridge was  
4 a -- appeared to be a residential area, a residential neighborhood,  
5 common Yemeni-style homes. The site, in fact, here that we're  
6 talking about, was kind of open terrain.

7 This deck was -- I can't tell you what the material of it  
8 was at this point. I would have known then. But it was definitely  
9 hard-packed if not a concrete structure. I do not recall. But it  
10 was definitely substantial for holding a crane, for holding a boat  
11 launch and such, as presumably was learned in previous failed  
12 attempts where vehicles got stuck in the sand, and this was more  
13 suited to a -- to a launch by crane.

14 Q. Were you able to determine what that area, what that deck  
15 area was intended to be used for?

16 A. I don't know what it was intended to be used for. It was  
17 longstanding at the time we were there. But obviously it was  
18 apparently being used for this very sort of purpose.

19 It was also -- adjacent to it further to the right as you  
20 faced the water were what we described as shanties or shacks,  
21 small -- tiny small businesses operating to buy bottled water, to buy  
22 fresh fish, that sort of thing. And there were some, I don't recall,  
23 a number of how many shacks along that waterfront.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     And are these the shacks that we talked about earlier,  
2     some of the witnesses that we've talked about earlier described where  
3     we had a snorkeler and a -- that -- is that adjacent to this deck?  
4     This -- is this all one area?

5           A.     Yes.    It was the -- I believe it was the first shack in  
6     vision was what became known to us as the Rabash shack, that -- that  
7     person identified in several interviews, it was owned by his family.

8           Q.     Okay.   Was there anything of a private or restricted  
9     nature to this area of the land?

10          A.     To my recollection, it was actually very open and  
11     surprisingly free access.

12          Q.     Okay.   So public access for -- for anyone, presumably?

13          A.     Apparently and presumably, yes.

14          Q.     Okay.   And how about in the water near that area?  Did you  
15     have any -- did your investigation reveal any restricted areas in the  
16     water at that particular spot?

17          A.     I don't have any recollection of that at all.

18          Q.     Okay.   Are you familiar with the police station or police  
19     outpost that was located on the bridge close to this area?

20          A.     I don't recall that.

21          Q.     Okay.   You don't recall any law enforcement presence,  
22     permanent presence on that bridge or near that bridge that ----

23          A.     I don't recall that, no, sir.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Okay. So you mentioned that this individual identified a  
2 couple of folks after being shown the ADENBOM book, right?

3 A. Correct.

4 Q. And this is -- one of the individuals, the one who's  
5 notated here is UNSUB 1. Mr. Ahmed al Masbahi identified number 24  
6 as this UNSUB 1, correct?

7 A. As I recall, yes.

8 Q. All right. And I know you looked at that, that document,  
9 the ADENBOM book, with the prosecutor there. And I think you  
10 indicated that you were not familiar with who 24 was.

11 A. By name, I was not.

12 Q. Okay. And 24 actually in that version of the book is a  
13 composite drawing, correct?

14 A. As I believe it to be, yes.

15 Q. Okay. And I -- I know that you were -- you were on the  
16 ground for a while -- and this is what I was trying to get at as to  
17 when you left Aden, because you had previously testified that there  
18 were two versions of the ADENBOM book, correct?

19 A. Yes.

20 Q. All right. Are you aware then that there were subsequent  
21 versions of the ADENBOM book after the 10th of January version?

22 A. I am aware that they -- they existed.

23 Q. Okay. And are you aware, then, that in subsequent

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 versions of the ADENBOM book, number -- specifically I believe the  
2 next one, which was the 27th of January, that that number 24 photo  
3 was removed from the ADENBOM book?

4 A. I am not aware of that.

5 Q. Okay. And of these four that we're talking about, both  
6 Masbahi brothers identified one of the individuals that they dealt  
7 with on that day as number 24, correct?

8 A. If memory serves me correct, yes.

9 Q. Okay. But because you don't have specific knowledge about  
10 the subsequent version of the ADENBOM book, you don't have -- you  
11 don't know why the number 24 picture would have been removed?

12 A. Why it was removed?

13 Q. Correct.

14 A. I wouldn't know.

15 Q. Okay. Similar to the folks that we've talked about  
16 earlier, do you know when you learned about when Ahmed al Masbahi was  
17 being made available to you for an interview?

18 A. Either the night before or the morning of.

19 Q. Okay. And fair to say you did not receive any pre-brief  
20 or any statements as to who this individual was or how he was  
21 connected?

22 A. I did not.

23 Q. Prior to the investigation or at any point thereafter, you

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 did not learn how the PSO developed this particular individual as a  
2 witness in this investigation?

3 A. That's correct.

4 Q. And you don't know the circumstances surrounding how the  
5 PSO approached him or found him?

6 A. I do not.

7 Q. And I know we've asked this question a few times about  
8 other witnesses, with respect to whether or not you had any knowledge  
9 of the individual being in custody by Yemeni law enforcement, right?  
10 I've asked you that question a number of times?

11 A. Yes, sir.

12 Q. So with this particular individual, he did say that he had  
13 been taken into custody by Yemeni law enforcement, right?

14 A. I don't recall that.

15 Q. Okay. So if I showed you notes from that interview, would  
16 that help to refresh your recollection?

17 A. It would.

18 ATC [Capt DANIELCZYK]: Objection, Your Honor. He just said  
19 he has no knowledge of that.

20 MJ [COL ACOSTA]: Defense?

21 DC [Lt Col NETTINGA]: Your Honor, he said he didn't recall,  
22 and so I'm asking if this will refresh his recollection. He said it  
23 could, and that's a proper refreshment, as we've done many times

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 here.

2 MJ [COL ACOSTA]: Overruled. I'll allow it.

3 Q. So I have page -- I'll specifically direct you to  
4 page 446.

5 DC [Lt Col NETTINGA]: What I am handing the witness is  
6 pages 444 through 448 of 319MM, but I'll direct the witness's  
7 attention to page 446.

8 **[The witness reviewed the evidence.]**

9 DC [Lt Col NETTINGA]: I'm retrieving that document from the  
10 witness.

11 Q. Mr. Reuwer, did that refresh your recollection as to  
12 statements made by this individual that he had been in PSO or Yemeni  
13 law enforcement custody?

14 A. Actually, it does not. I don't recall that document. I  
15 don't believe that's my handwriting or my document.

16 Q. Right. Do you -- do you recognize whose handwriting that  
17 is?

18 A. I don't.

19 Q. Okay. You were -- you mentioned that you were in this  
20 interview with Agent Khoury and Agent Crouch, correct?

21 A. Yes.

22 Q. And you were in many interviews with them, right?

23 A. I was.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     And you indicated that all of you took some form of notes  
2 through that -- through that interview process, right?

3           A.     To my recollection, yes.

4           Q.     Right. Do you recall ever seeing Agent Crouch's notes on  
5 anything when you were discussing things that might have happened  
6 during that -- those interviews?

7           A.     With any specificity, no.

8           Q.     Okay. So are you able to recognize what I just showed you  
9 as Agent Crouch's notes?

10          A.     No. All I can recognize them is they are not mine.

11          Q.     Okay. So specifically with respect to the ADENBOM Photo  
12 Book that you showed this individual that we've previously talked  
13 about, do you recall this individual stating that he recognized  
14 somebody in the ADENBOM Photo Book that was not one of the two  
15 individuals that he saw on the beach that day that approached the  
16 crane company?

17          A.     I believe so.

18          Q.     But you do recall him recognizing somebody else?

19          A.     I'm sorry. Can I -- I apologize. Refresh that question,  
20 please.

21          Q.     Sure, sure, sure. Absolutely. Let me rephrase the  
22 question. So we've previously said -- you previously testified that  
23 he was able to identify UNSUB 1 and UNSUB 2 from the ADENBOM Photo

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Book, right?

2 A. Correct.

3 Q. And consistent with your practice of presenting the  
4 ADENBOM Photo Book, you essentially, as you've testified earlier,  
5 asked them is there anybody that you recognize in this book,  
6 something to that general effect?

7 A. Right.

8 Q. And this individual said, in addition to being able to  
9 identify the two individuals that I dealt with on the beach that  
10 morning, I also recognize an additional photo in the book.

11 A. Okay.

12 Q. And I'm asking: Do you remember that happening?

13 A. I'm -- vaguely.

14 Q. Vaguely? Okay.

15 Do you recall that that individual was photo number 3?

16 A. I do not.

17 Q. Okay. If I showed you some additional notes from that  
18 interview, might that help refresh your recollection?

19 A. If they're my notes, yes.

20 Q. Well, I know that we talked about earlier that there were  
21 several products that went forward and that you all had discussions  
22 about what happened, so these are notes from -- that relate to the  
23 interview. I certainly can't say whether you were involved in the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 drafting of these or not.

2 DC [Lt Col NETTINGA]: But I'd like to show the witness -- and  
3 I'll provide a copy to the government ----

4 MJ [COL ACOSTA]: Hold on. Counsel, you're walking away from  
5 a microphone and you're talking. You're talking about introducing  
6 a -- a piece of something that is not -- that the government doesn't  
7 have? Or do they have it? Is it previously marked?

8 DC [Lt Col NETTINGA]: I believe this was provided. It has  
9 been premarked, Your Honor.

10 MJ [COL ACOSTA]: Okay. So ----

11 DC [Lt Col NETTINGA]: I have a copy for the prosecutor.

12 MJ [COL ACOSTA]: Okay.

13 DC [Lt Col NETTINGA]: And I recognize I turned away too  
14 quickly there.

15 MJ [COL ACOSTA]: Yes. We got -- remember, we can only hear  
16 you when you're next to the microphone. So ----

17 DC [Lt Col NETTINGA]: Yes, sir.

18 MJ [COL ACOSTA]: ---- tell me what it is that you're handing.

19 DC [Lt Col NETTINGA]: So this is 319YY.

20 MJ [COL ACOSTA]: Okay. 319YY. Is it -- it -- in and of  
21 itself, correct?

22 DC [Lt Col NETTINGA]: Yes, Your Honor. It's a  
23 six-page document.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: Okay. Thank you. You can go give it to  
2 your prosecutorial counterpart.

3 DC [Lt Col NETTINGA]: Thank you, Your Honor. And if I may  
4 approach the witness with this, Your Honor.

5 MJ [COL ACOSTA]: You may.

6 DC [Lt Col NETTINGA]: And specifically direct the  
7 witness's -- sorry. Specifically direct the witness's attention to  
8 page 3 of this document.

9 WIT: Page which?

10 **[The witness reviewed the evidence.]**

11 DC [Lt Col NETTINGA]: I'm retrieving the exhibit from the  
12 witness.

13 MJ [COL ACOSTA]: You may.

14 Q. Agent Reuwer, does that refresh your recollection as to  
15 what Mr. Ahmed al Masbahi said about being confined by Yemeni law  
16 enforcement and recognizing somebody in the ADENBOM Photo Book as a  
17 member that he had been confined with?

18 A. I don't dispute that that's what that does says. It does  
19 nothing to refresh my memory. I don't know or believe that I've ever  
20 seen that document. I did not write that document, I'm quite  
21 certain.

22 And as I did explain yesterday, the daily process was such  
23 that our specific 302s were given to our respective team lead, always

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 an FBI agent. That FBI agent is the one that took it to the next  
2 echelon of our -- our daily protocols.

3 Q. Sure.

4 A. That document would appear to me to be something that  
5 would have been created or in support of the -- that next echelon.

6 Q. Sure. Understood.

7 And that document, you said you were not involved in  
8 drafting it. It was drafted by Mr. -- or Agent Khoury, right?

9 A. I didn't see who drafted it. I just recognize that it's  
10 not mine.

11 Q. Okay. Let me ask you this. We talked about the three  
12 United States law enforcement agents who were in the room for this  
13 interview. At any point in time, did you step out of the room so  
14 that only Agent Crouch and Agent Khoury were present in the room  
15 during this interview?

16 A. In this particular interview, I have no recollection of  
17 ever doing so. And the answer, frankly, for all the interviews is  
18 probably not.

19 Q. Okay. So it's just possible that they wrote something  
20 down and you just don't remember it?

21 A. That ----

22 ATC [Capt DANIELCZYK]: Objection, Your Honor. Calls for  
23 speculation.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: Re-ask the question -- let me hear the  
2 question again.

3 DC [Lt Col NETTINGA]: I said so -- I think I said: So it's  
4 possible that they wrote something down about what happened and you  
5 just don't remember it?

6 MJ [COL ACOSTA]: I'll let him answer. Is it possible that  
7 somebody wrote something down that you don't remember?

8 WIT: It is very possible, sir.

9 MJ [COL ACOSTA]: All right. Next question.

10 Q. All right. So you don't know whether he was forced,  
11 coerced, or threatened to talk by the PSO?

12 A. I have no indication of that whatsoever.

13 Q. Okay. From your memory, right?

14 A. From my memory.

15 Q. Right. You don't know whether his family members were  
16 forced, coerced, or threatened to talk to the PSO?

17 A. I have no knowledge of that.

18 Q. You don't know whether he or his family members were  
19 promised anything in order to provide cooperation with the PSO?

20 A. That's correct.

21 Q. You don't know if he was shown photographs by the PSO in  
22 October of 2000 when he was interviewed by them?

23 A. I do not know that.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You don't know whether he made any identifications with  
2 the PSO?

3 A. Correct.

4 Q. You don't know where he was prior to arriving at the MOI  
5 Headquarters where you interviewed him?

6 A. Correct.

7 Q. You don't know how he got to the MOI Headquarters that  
8 day?

9 A. Correct.

10 Q. You don't know if he was commingled previously with other  
11 witnesses?

12 A. Correct.

13 Q. You indicated that -- that you did not believe, based on  
14 your observations of him at the time that you interviewed him, that  
15 he was in Yemeni custody?

16 A. That is correct.

17 Q. Okay. And certainly there's nowhere in the 302 where it  
18 talks about him ever being in Yemeni custody?

19 A. Correct.

20 Q. And that's only in the documents that I showed you that  
21 you don't remember?

22 A. The ones you just showed me, I haven't had any chance to  
23 review, and I didn't just take a detailed review or read of that. I

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 just looked at it ----

2 Q. Understood.

3 A. ---- to address the issue you asked me about.

4 Q. Understood.

5 You had never seen this person before you saw him at the MOI  
6 Headquarters?

7 A. Correct.

8 Q. You were not provided a picture in advance to know what he  
9 might look like?

10 A. Correct.

11 Q. You could not and so you did not confirm his  
12 identification through any Yemeni-issued government identification  
13 card or driver's license?

14 A. Correct.

15 Q. Passport?

16 A. Correct.

17 Q. You didn't photograph or print him to document who you  
18 had?

19 A. Correct.

20 Q. And you never independently verified his identity through  
21 any follow-up investigation?

22 A. I did not.

23 Q. And you're not aware of anybody else confirming his

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 identity through any follow-up investigation?

2 A. I am not.

3 Q. The first and only time you spoke with him was on the 7th  
4 of January 2001?

5 A. It is.

6 Q. Since then, you've not made any attempts to locate him to  
7 determine whether or not he may be available to testify at trial?

8 A. I have not.

9 Q. And you're not aware of any other U.S. Government agency  
10 attempting to contact this individual to determine whether he may be  
11 available for trial?

12 A. I am not.

13 Q. Next I would like to talk about Omar al Masbahi. So,  
14 again, this is an individual that you interviewed on the 7th of  
15 January 2021 -- excuse me, 2001?

16 A. Correct.

17 Q. He had previously made a statement to the PSO?

18 A. Correct.

19 Q. And you were not provided with that statement at any point  
20 in time?

21 A. Correct.

22 Q. Similar to the other witnesses that we've talked about, do  
23 you know when you learned that he was being made available for an

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 interview?

2 A. Same as before.

3 Q. Okay. And so just to clarify "same as before," we're  
4 talking about within 24 hours, either the night before or that  
5 morning of?

6 A. Correct.

7 Q. And you were not provided with any information, any  
8 pre-brief, as to who this individual was or how he might be relevant  
9 to the investigation?

10 A. I was not. I was not.

11 Q. Okay. And during your investigation, you never learned  
12 how his name surfaced by the PSO in regards to this investigation?

13 A. I did not.

14 Q. You don't know the circumstances surrounding how the PSO  
15 approached or found him?

16 A. I do not.

17 Q. You don't know whether he was ever taken into custody?

18 A. I do not.

19 Q. You don't know whether he was ever forced, coerced, or  
20 threatened to talk to the PSO?

21 A. I do not.

22 Q. You don't know whether any family members were ever  
23 forced, coerced, or threatened to talk to the PSO?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. I do not.

2 Q. You don't know whether he or any family members were  
3 promised anything to cooperate with the PSO?

4 A. I do not.

5 Q. You don't know if he was shown photographs by the PSO when  
6 they interviewed him in October of 2000?

7 A. I don't.

8 Q. You don't know whether he made any identifications with  
9 the PSO?

10 A. I do not.

11 Q. You don't know where he was prior to arriving at the MOI  
12 building to be interviewed by you?

13 A. That's correct.

14 Q. You don't know how he got to the MOI building?

15 A. I do not.

16 Q. You don't know if he was commingled with other witnesses?

17 A. I do not.

18 Q. This individual, like the others, you could not and so you  
19 did not confirm his identification through any Yemeni identification  
20 card?

21 A. Correct.

22 Q. Or a driver's license?

23 A. Correct.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Or passport?

2 A. Correct.

3 Q. You didn't photograph or print him to document who you had  
4 in front of you?

5 A. Correct.

6 Q. And you never independently verified his identity through  
7 any follow-up investigation?

8 A. I did not.

9 Q. And you're not aware of any other individual investigating  
10 this case that -- that did the same?

11 A. I am not.

12 Q. The first and only time you talked to him was on the 7th  
13 of January 2001?

14 A. Correct.

15 Q. Since then, you've not made any attempts to locate him to  
16 determine whether he may be available for trial?

17 A. I have not.

18 Q. And you're not aware of any other government agency who  
19 has reached out to determine whether this individual may be available  
20 for trial?

21 A. I am not.

22 Q. I'd like to talk about Mr. Farid. Similar to the other  
23 folks that we've talked about, fair to say you learned about the fact

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 that this individual was going to be present for an interview with  
2 you within 24 hours of the interview taking place?

3 A. That's correct.

4 Q. Okay. Were you provided any pre-brief as to who this  
5 individual was or his connection to the investigation?

6 A. We were not.

7 Q. You did not learn how his name surfaced in regards to this  
8 investigation?

9 A. I did not.

10 Q. You don't know how -- you don't know the circumstances  
11 surrounding how the PSO found him or approached him?

12 A. I do not.

13 Q. You don't know whether he was taken into custody?

14 A. I do not.

15 Q. You don't know whether he was forced, coerced, or  
16 threatened to talk to the PSO?

17 A. I do not.

18 Q. You don't know whether any family members were ever  
19 forced, coerced, or threatened to talk?

20 A. I do not.

21 Q. You don't know whether he or other family members were  
22 promised anything to provide a statement to the PSO?

23 A. I do not.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. You don't know if he was shown photographs by the PSO in  
2 October of 2000?

3 A. I do not.

4 Q. You were not provided with any earlier statement that he  
5 had given?

6 A. Correct.

7 Q. You don't know whether he made any identifications with  
8 the PSO?

9 A. I do not.

10 Q. You don't know where he was prior to arriving at the MOI  
11 for an interview?

12 A. I do not.

13 Q. You don't know how he got to the MOI for your interview?

14 A. I do not.

15 Q. You don't know if he was commingled with other witnesses  
16 prior to your interview?

17 A. I don't know.

18 Q. And that's particularly interesting or of note in this  
19 case -- in this particular instance because the testimony of  
20 Mr. Farid -- or, excuse me, testimony -- the statement that he gave  
21 to you on the 7th of January and the statement that Mr. Omar  
22 al Masbahi gave to you on the 7th of January were fairly similar,  
23 right?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     They both told us the events of the day to their  
2 recollection.

3           Q.     Right. I mean, they were so similar that you had concerns  
4 or suspicions of coaching?

5           A.     No.

6           Q.     No?

7           A.     I didn't have any concerns, that I recall.

8           Q.     Well, I know you indicated that you took notes in those  
9 interviews, right?

10          A.     I believe I did on these.

11          Q.     Right. And sometimes you would type up excerpts of notes,  
12 either for your own use or for other folks' use.

13          A.     Anything that was done from the notes would have been a  
14 302.

15          Q.     I've got a document that is titled Reuwer Bullets,  
16 07 January 2001. Does that sound familiar to you?

17          A.     Not at all, but I'm not surprised.

18          Q.     Okay. If I were to show this to you, would that refresh  
19 your recollection?

20          A.     It should.

21                DC [Lt Col NETTINGA]: Your Honor, I have what's been marked  
22 as Appellate Exhibit 319BBB. It's a two-page document.

23                MJ [COL ACOSTA]: The government has a copy?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 DC [Lt Col NETTINGA]: I believe that they do, Your Honor, at  
2 least down there, but I have a copy for the prosecutor.

3 MJ [COL ACOSTA]: If you can hand it to him, please.

4 DC [Lt Col NETTINGA]: And I'd like to approach the witness  
5 with this document, Your Honor, to review the entire thing, but  
6 specifically the last paragraph on the second page as well.

7 MJ [COL ACOSTA]: You may proceed.

8 **[The witness reviewed the evidence.]**

9 DC [Lt Col NETTINGA]: Retrieving that exhibit from the  
10 witness.

11 Q. Agent Reuwer, does reviewing this document refresh your  
12 recollection as to having created this document?

13 A. I certainly won't -- can't deny that I wrote it. I don't  
14 recall that document, but it sounds like my writing and my -- my  
15 text.

16 As far as the questions you mentioned about arousing  
17 suspicion of coaching, it does not say I suspected such. It says it  
18 aroused questions or suspicions of coaching. That could have been  
19 from the notes, whoever took or suspected, or made that annotation in  
20 their own notes and was part of our consolidation that -- review, if  
21 you will, that day. I don't recall that.

22 It's possible that I did have that suspicion 22 years ago.  
23 I honestly don't recall it.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Understood. Understood.

2 But whether it was you or one of the other agents, somebody  
3 had questions of coaching?

4 A. I would not deny that somebody brought that up as an  
5 issue, yes, sir.

6 Q. Okay. With respect to this individual, you were not able  
7 to -- you were not permitted to and so you did not confirm his  
8 identity through any Yemeni driver's license or other  
9 government-issued identification card?

10 A. Correct.

11 Q. You didn't photograph him or fingerprint him to document  
12 who you had in front of you?

13 A. Correct.

14 Q. You never independently verified his identity through any  
15 follow-up investigation?

16 A. Correct.

17 Q. The first and only time you spoke with him was the 7th of  
18 January 2001?

19 A. Correct.

20 Q. And since then, you have not made any attempts to locate  
21 him?

22 A. I have not.

23 Q. And you're not aware of any government agency attempting

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 to locate this individual to determine whether he might be available  
2 for trial?

3 A. I am not.

4 Q. All four of these individuals that we've just talked about  
5 here described the morning of the 12th of October 2000, right?

6 A. Yes.

7 Q. And they described two men and a boat that was put into  
8 the water?

9 A. Three of them do.

10 Q. Right. Okay. And then the other one talks about one man,  
11 right?

12 A. No. The first man didn't talk about the boat being put in  
13 the water. He wasn't there to observe it or saw it.

14 Q. They all talk about the same incident where men approached  
15 to help enlist the services of the ----

16 A. At the shop, yes, sir.

17 Q. Right. None of those witnesses who you talked to  
18 identified photos 20, 21, or 22, Mr. al Nashiri?

19 A. That is correct.

20 DC [Lt Col NETTINGA]: Your Honor, if I could have a moment?

21 MJ [COL ACOSTA]: You may.

22 **[Counsel conferred.]**

23 Q. All right. So we've talked generally a little bit about

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 the interactions that you had with the Yemeni law enforcement  
2 throughout these interviews, right?

3 A. Correct.

4 Q. And you mentioned that there was always some Yemeni law  
5 enforcement presence in the room when you were conducting these  
6 interviews?

7 A. Yes.

8 Q. And when you would go out to visit the sites that you were  
9 able to go out, you would always have Yemeni law enforcement  
10 officials with you as well?

11 A. I believe that's true for every event.

12 Q. And the type of folks that we are talking about here that  
13 were present in these interviews were not strictly just, for lack of  
14 a better word, like your beat cops or low-level detectives or their  
15 equivalent over there, right?

16 A. I have no idea the answer to that.

17 Q. Okay. So are you aware that some of the highest-ranking  
18 folks in the PSO and the MOI were present in these interviews?

19 A. I am aware that one individual of a general officer status  
20 was present.

21 Q. Okay.

22 A. But you sounded like you were blanketing everybody was  
23 high end. To my understanding, these were beat detectives, if you



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 will, our counterparts in the PSO.

2 Q. Sure. No, I -- understood. And the -- I think that's  
3 clear.

4 What I was -- what I was getting at is if you were aware  
5 that there was, at times -- and you can -- you can feel free to  
6 clarify how often that was, but there were at times general  
7 officer-level individuals -- or at least one in the room when these  
8 people were being questioned?

9 A. I have no recollection of general officers, plural, ever  
10 being in the room. I'm very aware that a general officer, singular,  
11 was often in the room.

12 Q. Okay. And that had an effect -- the fact that there were  
13 Yemeni law enforcement in the room had an effect on how you were able  
14 to conduct your investigation?

15 A. And the question?

16 Q. It -- correct?

17 A. Did it have an effect?

18 Q. Yes.

19 A. Oh, absolutely.

20 Q. Right. And, in fact, there was one particular interview  
21 that you conducted or you were part of conducting where the Yemeni  
22 officials stepped out of the room for a moment and you were left  
23 alone with the witness. Do you recall that?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I recall that event happening. At this time, I cannot  
2 recall during which interview it was.

3           Q.     Okay. Do you recall interviewing an individual with the  
4 last name al Surouri?

5           A.     Yes.

6           Q.     Okay.

7           ATC [Capt DANIELCZYK]: Objection, Your Honor. Outside the  
8 scope.

9           MJ [COL ACOSTA]: Defense?

10          DC [Lt Col NETTINGA]: Your Honor, what I'm getting to is the  
11 difference between what it's like to have MOI/PSO/Yemeni law  
12 enforcement present and what it's like when they're not present. And  
13 so there was some investigation that took place after these folks  
14 left the room. And I think that's relevant to shine light on the  
15 validity of -- and the completeness with which these witnesses were  
16 able to testify or give witness statements to Mr. Reuwer and others.

17          MJ [COL ACOSTA]: Overruled. I'll allow it. Go ahead.

18          Q.     Okay. So al Surouri, does that sound like -- does that  
19 ring a bell as the incident where -- the individual that you were  
20 talking to when the Yemeni law enforcement left the room?

21          A.     It very well could have been.

22          Q.     Okay. Do you recall when the Yemeni law enforcement left  
23 the room that you were able to ask the individual some questions?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Sadly, no. What I recall was that opportunity presented  
2     itself for us to do so. It did not happen.

3           Q.     Okay. So you do not recall asking any questions of this  
4     individual?

5           A.     I recall greatly engaging with my counterparts who spoke  
6     the language, which I did not, to ask the questions. It was not  
7     done.

8     **[Counsel conferred.]**

9           Q.     Do you all -- do you recall what questions you pressed  
10    your colleague to advance to this individual?

11          A.     Generically, yes.

12          Q.     Okay. And what were those?

13          A.     You need to understand, if I may ----

14          Q.     Sure.

15          A.     ---- that the setting for such an interview, in fact, an  
16    interrogation, was very different than these other interviews that  
17    we're discussing today and yesterday, custody being the main, obvious  
18    difference.

19                 None of the interviews we've discussed was anyone in  
20    custody, to my or our knowledge. They were cordial interviews in  
21    which there was no confrontational nature to them.

22                 An interrogation takes on an entirely different tone,  
23    depending on the response of the interrogatee. In the case that

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 you're describing here with Mr. Surouri -- and I don't have the  
2 benefit of refreshing myself of that 302. It's been 20-some years.

3 But at that moment, during some point in that interrogation,  
4 for whatever reason -- I don't recall which -- one by one, the host  
5 national representatives departed the room. That afforded us, on a  
6 minute's -- on a second's notice, an opportunity to ask a question  
7 that was perhaps outside of the scope of the Bodine memorandum.

8 As a foreign intelligence agent, an operator, I saw that as  
9 an opportunity in a foreign prison, in a foreign facility, dealing  
10 with a foreign national, to push the limits and ask questions that we  
11 may not have otherwise been able to ask. Instead of my colleagues  
12 agreeing readily with me on that, there was pushback, that it was  
13 inappropriate and broke the -- violation of the MoU.

14 That discussion took seconds, minute, I don't recall. Maybe  
15 my notes would refresh me on that, if they're even in there. But I  
16 distinctly recall we're wasting time having an argument amongst  
17 ourselves.

18 And so whether or not they finally conceded that a couple  
19 rudimentary and basic questions were asked, they may have been. I  
20 don't know. But nothing as aggressive or operational as I would have  
21 liked to have been asked.

22 Q. Okay.

23 A. Does that answer your question?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. It does. It does. And I appreciate all of that context.  
2 And I just want to make sure I'm clarifying.

3 Mr. Al Surouri was in Yemeni custody at the time that you  
4 interviewed him, correct?

5 A. That is correct.

6 Q. Okay. And if -- you brought up the 302. If you had the  
7 opportunity to review the 302, would that refresh your recollection  
8 as to what happened with respect to that time frame when the Yemeni  
9 law enforcement left the room?

10 A. I would hope so, yes.

11 DC [Lt Col NETTINGA]: All right. Your Honor, I have what's  
12 been marked as Appellate Exhibit 319XX.

13 ATC [Capt DANIELCZYK]: Objection. Your Honor, what's the  
14 relevance of this?

15 MJ [COL ACOSTA]: Defense, this is a -- I believe that the  
16 government's point is that this is talking about an interrogation of  
17 somebody in custody that was held, which is somebody that we haven't  
18 discussed and the government hasn't proffered their statements,  
19 versus the statements of people that they have proffered that were  
20 not under -- in custody and in an interrogation.

21 DC [Lt Col NETTINGA]: Absolutely, Your Honor. And I  
22 understand there is a distinction here. However, what we've been  
23 talking about and what we will continue to talk about through this

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 166 series is the scope of the -- the scope of the investigation that  
2 was conducted, the limitations that were placed upon that  
3 investigation by Yemeni authorities.

4 And this highlights -- it highlights a discrepancy where  
5 that gap is able to be exploited a little bit, because it shows that  
6 in that brief window that they had, there were some questions that  
7 were able to be asked and some revelations that were made as to how  
8 individuals were treated in Yemeni custody.

9 Now, I understand that this witness -- the ones we've talked  
10 about previously today, this witness does not remember them being in  
11 custody, but we will have other testimony, I expect, that will shine  
12 further light with respect to these witnesses. And so the treatment  
13 of individuals in Yemeni custody and the effect of the Yemeni  
14 officials being present in the room while these  
15 investigations -- investigatory steps were taking place is relevant,  
16 and this -- this highlights this in a brief fashion.

17 ATC [Capt DANIELCZYK]: Your Honor, may I?

18 MJ [COL ACOSTA]: You may.

19 ATC [Capt DANIELCZYK]: This -- this statement the defense  
20 seeks to talk about is not a part of AE 319MM. Furthermore, we've  
21 already established the difference between custodial interrogations  
22 and the witness interviews we're here to discuss.

23 Agent Reuwer has already testified to the extent of Yemeni

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 involvement or not involvement in the witness interviews that we've  
2 noticed and we're presenting today.

3 DC [Lt Col NETTINGA]: And, Your Honor, if I may respond to  
4 that?

5 MJ [COL ACOSTA]: Briefly.

6 DC [Lt Col NETTINGA]: Yes, Your Honor. We're limited,  
7 like -- like anybody else, with the memory that Mr. Reuwer has, and  
8 there are things that he does not remember that you -- looking at the  
9 all the evidence, it seems like perhaps we wish that he did because  
10 it's written down in other places. So we are limited with the  
11 witness that we have here.

12 What we do have is an incident that he does remember that  
13 shines light upon the -- the nature of this investigation and the way  
14 that it was conducted. And I just -- so therefore, I think it's  
15 relevant when the court is considering the totality of the  
16 circumstances and how much weight to give to these statements that  
17 were made and whether or not they should be able to serve as  
18 substitutes for ----

19 MJ [COL ACOSTA]: Slow down. Slow down.

20 DC [Lt Col NETTINGA]: ---- substitutes for actual witness  
21 testimony.

22 MJ [COL ACOSTA]: I understand that. But your statement is  
23 about -- you believe that at least one of these four, correct, were

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 actually in custody at some point, right?

2 DC [Lt Col NETTINGA]: Yes, Your Honor. That's what the  
3 agent's notes reflect, yes.

4 MJ [COL ACOSTA]: Right. So what you want to do is use  
5 another person who had previously been -- who was previous -- who was  
6 in custody at the time of the interview.

7 Again, the person that was interviewed that we referred to  
8 today was not in custody at the time of this interview, according to  
9 what we have; however, he was previously in custody somewhere,  
10 according to some notes that you've put on.

11 And now you want to use that, use a person who was being  
12 interrogated while in custody as some form of a comparison to that,  
13 correct? Isn't that better for -- you say that you're going to bring  
14 out evidence later. Isn't that better for later, for you presenting  
15 evidence, or are you asking to convert this to your witness to  
16 present information on this?

17 DC [Lt Col NETTINGA]: No, Your Honor. And -- and I didn't  
18 mean to be coy on that. I expect that Agent Khoury is going to  
19 testify tomorrow, and I expect that Agent Khoury can testify to his  
20 notes that clearly reflect that Mr. Masbahi was in custody and  
21 identified somebody while he was in custody. And so I think that  
22 evidence -- I expect that evidence to come out.

23 For whatever reason the government chose to put on evidence



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 of these statements not through Agent Crouch, not through  
2 Agent Khoury, but through Agent Reuwer, and so that's the individual  
3 that I have. He does have a comparison in terms -- he was there on  
4 the ground for an extended period of time. I'm happy to proffer the  
5 details ----

6 MJ [COL ACOSTA]: Slow down a little bit. Slow down a little  
7 bit.

8 No, I'm aware that the Agent Khoury statements said that the  
9 individual identified somebody from a time when he was in custody  
10 being questioned, right?

11 DC [Lt Col NETTINGA]: Yes, Your Honor.

12 MJ [COL ACOSTA]: When you showed -- when the book was showed  
13 to them, he said, oh, I know that guy. I met him when I was in  
14 custody.

15 DC [Lt Col NETTINGA]: When I was being questioned ----

16 MJ [COL ACOSTA]: Right.

17 DC [Lt Col NETTINGA]: ---- by the ----

18 MJ [COL ACOSTA]: When being questioned.

19 DC [Lt Col NETTINGA]: Right.

20 MJ [COL ACOSTA]: I don't see what the relevance is of this  
21 now third individual, this other individual being questioned  
22 under -- you know, if you want to talk about the interrogation side  
23 of it, you can ask him what he knows about the interrogative -- you

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 know, what it was under the interrogation issues. I don't know what  
2 the specifics of this one have to do with -- of this one particular,  
3 Surouri, right, that have to do with anything whatsoever with the one  
4 that we -- ones that we have before us today.

5 DC [Lt Col NETTINGA]: Yes, Your Honor. And the similarity is  
6 that I realize we don't have any direct evidence that -- that the  
7 Masbahi individual was in custody at the time that Agent Reuwer  
8 interviewed him, but we do have at least some evidence that he was in  
9 custody at the time that he was questioned by PSO.

10 And so what we're talking about with respect to  
11 Mr. Al Surouri is treatment he received at the hands of the PSO when  
12 he was in custody. And so the comparison there, I think, is  
13 illustrative of the way that folks were treated in the PSO.

14 This witness has said repeatedly, I don't know the  
15 circumstances as to how this individual was approached by the PSO,  
16 how they became aware ----

17 MJ [COL ACOSTA]: Slow it down. Slow it down. You're  
18 speeding up, Counsel.

19 DC [Lt Col NETTINGA]: Yes, Your Honor.

20 MJ [COL ACOSTA]: I get it you're on a roll.

21 But what I want to talk to you about is what does Surouri  
22 and his statement have to do with this? I know you're trying to  
23 compare and contrast, but I'm not sure how it's relevant to -- to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 this.

2 DC [Lt Col NETTINGA]: Right. Your Honor, because  
3 Mr. Al Surouri says that he was sleep deprived for 11 days and beaten  
4 while he was in PSO custody, and so the fact that these things take  
5 place is relevant to talk about how that may have occurred.

6 We're operating in a giant vacuum of the limited details  
7 that we have removed 23 years ago, and so trying to shed light on  
8 what the circumstances were like on the ground, what it was like  
9 dealing with this foreign law enforcement agency and the way that  
10 they treated people in custody, that then became potential  
11 witnesses ----

12 MJ [COL ACOSTA]: Okay.

13 DC [Lt Col NETTINGA]: ---- that ----

14 MJ [COL ACOSTA]: So you want to -- you want to imply that the  
15 treatment of Mr. Surouri, who was treated allegedly poorly and then  
16 was interrogated by U.S. assets, is comparable or is potentially a  
17 way that Mr. -- one of the -- the brothers, Moussaoui brothers -- or,  
18 I apologize, their name escapes me -- one of the individuals with the  
19 crane company might have been treated the same way. That's your  
20 implication, correct?

21 DC [Lt Col NETTINGA]: Your Honor, yes. I believe it's  
22 important for the finder of fact with respect to this motion to know  
23 that these things happened to Yemenis when they were taken into

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 custody.

2 MJ [COL ACOSTA]: Well, when they get to the custodial  
3 interviews, you're going to be able to talk about that, right? And  
4 then you want to be able to argue later, look, this person was also  
5 in custody, and you're going to have Agent Khoury tomorrow to  
6 tell -- and you can ask him: Was this individual -- you know, did he  
7 say that he was in custody or not? I think that's relevant.

8 I don't -- I don't see the -- I get where you're going, but  
9 it's really an argument you're making and not presentation of -- you  
10 know, it's not a presentation that is relevant to the admissibility  
11 of this statement. It's an argument for it later, but it's not  
12 evidence of it now.

13 DC [Lt Col NETTINGA]: Your Honor, what it is is evidence of  
14 the way that Yemeni prisoners were treated by Yemeni law enforcement.

15 MJ [COL ACOSTA]: Right.

16 DC [Lt Col NETTINGA]: And so it doesn't matter -- for -- for  
17 this discussion, it doesn't matter whether he was in custody at the  
18 time that Agent Reuwer interviewed him. What mattered is that he was  
19 in custody, like the Masbahi brother, were both in custody by Yemeni  
20 law enforcement, and that with respect to the way that al Surouri was  
21 treated, he was sleep deprived and he was beaten.

22 And so those are facts establishing that these things happen  
23 in Yemeni law enforcement custody, and that's what I'm trying to

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 establish ----

2 MJ [COL ACOSTA]: Right.

3 DC [Lt Col NETTINGA]: ---- because I think that's important.

4 MJ [COL ACOSTA]: Well, I think you're going to be able to  
5 establish that when -- you know, that or the treatment when the  
6 government offers some of these custodial statements that are made  
7 later. I -- I think it's argument. I don't think it's relevant to  
8 say because we have -- here we have an interview of somebody who was  
9 in custody. We have an interview of somebody else that was in  
10 custody. This other person here, this person was treated poorly, so  
11 this other person -- so this person must -- you don't have evidence  
12 of -- of -- you're not putting on evidence of the treatment of the  
13 Musabi [sic] -- the Mashabi [sic] brother being treated poorly.  
14 You're trying to use evidence of how somebody else was treated to  
15 imply it. That's an argument. You can bring that up later.

16 The objection is sustained as far as this is concerned. Go  
17 ahead.

18 DC [Lt Col NETTINGA]: I understand, Your Honor.

19 Q. Mr. Reuwer, you are aware that people in Yemeni custody  
20 were not always treated in the fairest manner?

21 ATC [Capt DANIELCZYK]: Objection, Your Honor ----

22 MJ [COL ACOSTA]: Overruled. He can ask that question.

23 A. To my understanding, that's probably an accurate

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 statement.

2 Q. Okay. You're aware that sometimes that unfair treatment  
3 by the Yemeni law enforcement included sleep deprivation and beating?

4 A. So I was advised.

5 Q. And the bottom line was when it comes down to the working  
6 relationship between you -- and by you I mean American law  
7 enforcement and Yemeni law enforcement, again, as we've talked about,  
8 that was a consistent source of tension?

9 A. I don't know if it was consistent. It was a definite  
10 source of contention.

11 Q. Okay. They did things differently than -- than you did  
12 them or than you would have done them?

13 A. Their standards of law enforcement and ours differ  
14 greatly.

15 Q. They were not transparent always about what they were  
16 doing?

17 A. Yes, correct.

18 Q. They cut off your questioning at times?

19 A. They did.

20 Q. They did not allow you to follow up on investigative leads  
21 at times?

22 A. Correct.

23 Q. They actively obstructed your investigation?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. By our definition, correct.

2 Q. They controlled who you talked to?

3 A. Correct.

4 Q. Where you talked to them?

5 A. Correct.

6 Q. When you talked to them?

7 A. For the most part, correct.

8 Q. And you're aware that multiple members, high-ranking  
9 members of the MOI and the PSO had, at the very least, sympathies  
10 towards the al Qaeda mission?

11 A. To my understanding, I am aware that some of them did.

12 Q. Okay. And you're aware that the FBI investigated the ties  
13 between some of these high-ranking individuals who were determining  
14 the scope of your investigation and al Qaeda?

15 A. I'm sorry, repeat. The FBI seniors what?

16 Q. You bet. You're aware that the FBI investigated the ties  
17 between these high-ranking Yemeni law enforcement officials who were  
18 determining or crafting the scope of your investigation and al Qaeda?

19 A. Yes.

20 Q. Thank you.

21 DC [Lt Col NETTINGA]: I have no further questions at this  
22 time.

23 MJ [COL ACOSTA]: Thank you, Counsel.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Government, any redirect?

2 ATC [Capt DANIELCZYK]: Yes, Your Honor. May I have a moment?

3 MJ [COL ACOSTA]: You may, briefly.

4 **[Counsel conferred.]**

5 **REDIRECT EXAMINATION CONTINUED**

6 **Questions by the Assistant Trial Counsel [Capt DANIELCZYK]:**

7 Q. All right, Mr. Reuwer. Just starting off, I really want  
8 to start off where defense kind of left off. They talked a little  
9 bit about interference that the Yemenis may have had in the  
10 investigation. Can you elaborate on that within the interview  
11 sphere?

12 A. Within the course of the interview, again, part of the  
13 Bodine memorandum limited us to questions that weren't already asked  
14 or addressed if, in fact, these individuals had been prior  
15 interviewed by the PSO.

16 That was the purpose at the beginning of each interview for  
17 the statement, if it existed, to be previously obtained -- to be read  
18 for verification and accuracy by the witness. Again, that was all  
19 done in a foreign language to me, so I can only go on my  
20 interpreters' -- you know, my fellows agents saying this is what they  
21 said, and then the investigation, our query, was launched.

22 The limits were such that if we wanted to go down a  
23 particular avenue of questions, and in some occasions but not all, if



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 it was something that was previously addressed, PSO may object.  
2 Sometimes they weren't paying attention and didn't object. Sometimes  
3 they were paying attention and didn't object. So there was a very  
4 haphazard, if you will, environment there for what we could ask,  
5 couldn't ask, and get away with asking.

6 Obviously, for any of the -- I've repeatedly been asked by  
7 both: Did you follow up? Did you follow up?

8 We followed up to the best we could. Every piece of  
9 information we obtained through these cordial interviews was related  
10 back to our Aden-based headquarters and again, went to the next  
11 echelon for what -- what can we do, do we do, need we do to follow up  
12 on these? Other agents and other personnel were tasked with doing  
13 those.

14 As an example, if I may, in the preparation for these  
15 interviews today, al Rabash comes up repeatedly by several different  
16 witnesses. I'd never interviewed al Rabash. The U.S. Government  
17 would be foolish if we never made an effort to interview al Rabash.

18 I do not know that he was interviewed. I believe he was. I  
19 did not interview him. I don't have the strategic vision of the  
20 entire investigation. I can only believe that he was interviewed by  
21 some of my fellow agents, as an example.

22 Q. So taking that example, is it fair to say that there were  
23 several groups of agents going out and performing investigative

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 tasks, whether that's interviewing other people that you didn't  
2 interview or identifying other vehicles used in this -- or identified  
3 through the investigation? Is that fair?

4 A. That's a very fair statement.

5 Q. So you personally may not have knowledge of other people  
6 or vehicles identified?

7 A. That's very true.

8 ATC [Capt DANIELCZYK]: May I have a moment, Your Honor?

9 MJ [COL ACOSTA]: You may.

10 **[Counsel conferred.]**

11 ATC [Capt DANIELCZYK]: That's all I have, Your Honor. Thank  
12 you.

13 MJ [COL ACOSTA]: All right.

14 **[The military judge conferred with courtroom personnel.]**

15 MJ [COL ACOSTA]: All right. Government, it's my  
16 understanding that that's the -- the end of Agent Reuwer's testimony  
17 for this series, correct?

18 ATC [Capt DANIELCZYK]: Yes, Your Honor.

19 MJ [COL ACOSTA]: All right. Agent Reuwer, I know it's been a  
20 long time on the stand. I appreciate your patience and working  
21 through this issues -- working through these issues.

22 For the purposes of this hearing, you're -- any objection to  
23 permanent excusal for this session, Government?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 ATC [Capt DANIELCZYK]: No objection.

2 MJ [COL ACOSTA]: Defense? Somebody for the defense.

3 DC [Lt Col NETTINGA]: ---- objection, Your Honor.

4 MJ [COL ACOSTA]: Was there a "no" that preceded the word  
5 "objection"?

6 DC [Lt Col NETTINGA]: Correct.

7 MJ [COL ACOSTA]: All right. Agent Reuwer, for the purposes  
8 of this session, you are permanently excused. Do not discuss your  
9 testimony or your knowledge of this case with anyone other than  
10 counsel for either side of the case. You may step down.

11 WIT: Thank you, sir.

12 **[The witness was warned, was permanently excused and withdrew from**  
13 **the RHR.]**

14 MJ [COL ACOSTA]: All right. We pick up tomorrow with  
15 Agent Khoury, correct, Government?

16 ATC [LT SCHWARTZ]: That is correct, Your Honor.

17 MJ [COL ACOSTA]: All right. Anything else to take up before  
18 I'm going to recess until 0900 tomorrow? Government?

19 TC [MR. O'SULLIVAN]: No, Your Honor.

20 MJ [COL ACOSTA]: All right. Oh, you had something else,  
21 Mr. Natale?

22 LDC [MR. NATALE]: Yes, I -- I do. We've been led to believe  
23 that there's going to be a witness, Special Agent Sonnen, and we have

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 yet to receive her discovery. And I'm just trying to get an update.

2 We have -- there's been -- we've been talking to each other  
3 for many weeks, maybe even months about this, but evidently, it's  
4 still in the security review. I just want to know if it's going to  
5 be available to me sufficiently so I can review it prior to her  
6 testimony.

7 MJ [COL ACOSTA]: Agent Sonnen appears to be on 319, on the  
8 same series, but it says open and closed for testimony.

9 Government, is there any issue with -- what's the status of  
10 the discovery that you owe on that?

11 ATC [LCDR SCHREIBER]: As we informed defense counsel via  
12 e-mail this morning, the relevant discovery is with SC/DRT so it can  
13 be marked as well to their client. According to -- I'm looking over  
14 at my paralegal here. It's still apparently in review. Yesterday  
15 they had a holiday, so we're continuing to follow up to see when it  
16 pops out and provide it immediately. But it's with SC/DRT, sir.

17 MJ [COL ACOSTA]: So you don't have an estimate of when it's  
18 coming out?

19 ATC [LCDR SCHREIBER]: I do not for you at this moment, sir.  
20 I'm sorry.

21 MJ [COL ACOSTA]: She's not on the schedule until Thursday.  
22 Government, I want an update, let's say tomorrow at the lunch break,  
23 before we go on that, if you could provide an update as to when

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 you're going to have that out, because she -- that agent is scheduled  
2 to testify on Thursday, the second half of the day, it looks like.

3 ATC [LCDR SCHREIBER]: That's right, sir. Yes, sir. No  
4 problem. We'll -- we'll ping and ask if we can get an update.

5 LDC [MR. NATALE]: Thank you, Your Honor.

6 MJ [COL ACOSTA]: We'll give you that. All right.  
7 Government -- hold on. Not you down there -- or pardon me. We're  
8 down -- you are all up. Not you in Virginia, government here.

9 TC [MR. O'SULLIVAN]: Your Honor, just one alibi, just to  
10 remind the court and folks that 1300 to 1400 tomorrow, a couple of  
11 our folks will be getting tested.

12 MJ [COL ACOSTA]: That's northern Virginia folks?

13 TC [MR. O'SULLIVAN]: Yes. If you're thinking about  
14 scheduling for tomorrow. Just wanted to remind ----

15 MJ [COL ACOSTA]: Well, we're going to keep going, so  
16 whoever -- are any of the people that are participating in the  
17 questioning getting tested?

18 TC [MR. O'SULLIVAN]: Not tomorrow.

19 MJ [COL ACOSTA]: Okay. All right. Well, they should study  
20 hard for their test.

21 Anything else before I recess?

22 TC [MR. O'SULLIVAN]: No, Your Honor.

23 LDC [MR. NATALE]: No, Your Honor.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 MJ [COL ACOSTA]: All right. The commission is in recess  
2 until 0900.

3 **[The R.M.C. 803 session recessed at 1605, 21 February 2023.]**

4 **[END OF PAGE]**