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1   **[The R.M.C. 803 session was called to order at 0901,**  
2   **22 February 2023.]**

3           MJ [COL ACOSTA]: The commission is called to order.

4           Trial Counsel, good morning. Please identify who is here on  
5   behalf of the United States, that they have the necessary clearance  
6   and where they're located from today.

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

9           These proceedings are being transmitted via CCTV to public  
10   viewing locations in the United States pursuant to the commission's  
11   order at AE 028M dated 22 November 2019. They are being transmitted  
12   to the Pentagon and Fort Meade. There are some transmission issues  
13   with Norfolk. We'll have more information later.

14          MJ [COL ACOSTA]: You don't have any information on that or  
15   you will have more information on that?

16          TC [MR. O'SULLIVAN]: We will have more information later.  
17   Right now the transmission is not very good, so ----

18          MJ [COL ACOSTA]: Okay.

19          TC [MR. O'SULLIVAN]: ---- we're working on it.

20          MJ [COL ACOSTA]: I'm sure they're working on it in the back,  
21   as long as they keep it up and, you know ----

22          TC [MR. O'SULLIVAN]: Yes, sir.

23          MJ [COL ACOSTA]: ---- they can correct it.

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1 TC [MR. O'SULLIVAN]: So here at Guantanamo are myself,  
2 Michael O'Sullivan; Mr. John Wells; Lieutenant Commander Cherie  
3 Jolly; Major James Garrett; Mr. Pascual Tavaréz-Patin;  
4 Staff Sergeant Jaune Daniels; Mr. Forrest Parker Smith; Mr. Louie  
5 Marmo.

6 Up north in the Remote Hearing Room in Virginia are  
7 Lieutenant Commander Keven Schreiber, Major Michael Ross,  
8 Major Stephen Romeo, Lieutenant Tess Schwartz, Captain Jonathan  
9 Danielczyk, Staff Sergeant Kyle Swayzee, Ms. Paige McLachlan. From  
10 the Transregional Criminal Investigation Unit, Special Agent Paul  
11 Rude. From the FBI, Supervisory Special Agent Mary Sonnen. And from  
12 the Office of General Counsel, Ms. Katherine Eisenreich.

13 MJ [COL ACOSTA]: All right. Thank you, Counsel.

14 Defense, good morning.

15 LDC [MR. NATALE]: Good morning, Your Honor. Anthony Natale  
16 on behalf of Mr. Nashiri. He is not here today, and I'm sure you'll  
17 go through the colloquy.

18 Here in the ELC, in addition to myself, is Ms. Carmon,  
19 Ms. Morgan, Lieutenant Commander Piette, Mr. Dolphin, and LN1 Wood.

20 In the RHR, we have Mr. Padilla, Lieutenant Colonel  
21 Nettinga, Ms. Brown, Staff Sergeant McGuire, Mr. Roy, and  
22 Mr. Bendernagel.

23 All of the people I have listed have the proper clearance to

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1 be present for all of these hearings.

2 MJ [COL ACOSTA]: Thank you.

3 As defense noted, the accused is absent today. Government?

4 ATC [MAJ GARRETT]: Good morning, Your Honor.

5 MJ [COL ACOSTA]: Good morning.

6 ATC [MAJ GARRETT]: Government calls a representative from the  
7 Joint Task Force Legal Support Section to the witness stand. Please  
8 raise your right hand.

9 **LIEUTENANT COLONEL, U.S. ARMY, was called as a witness for the**  
10 **prosecution, was sworn, and testified as follows:**

11 ATC [MAJ GARRETT]: Please have a seat.

12 **DIRECT EXAMINATION**

13 **Questions by the Assistant Trial Counsel [MAJ GARRETT]:**

14 Q. Lieutenant Colonel, are you employed with the Office of  
15 the Staff Judge Advocate for Joint Task Force Guantanamo Bay?

16 A. I am.

17 Q. Did you have an opportunity this morning to meet with the  
18 accused, Mr. al Nashiri, regarding his rights to attend this hearing?

19 A. I did.

20 Q. Did Mr. al Nashiri indicate whether he would attend  
21 today's proceedings?

22 A. He did.

23 Q. What did he communicate with you?

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1 A. He decided not to attend.

2 ATC [MAJ GARRETT]: Your Honor, may I retrieve the statement  
3 of understanding from the court reporter?

4 MJ [COL ACOSTA]: You may. What's it marked as?

5 ATC [MAJ GARRETT]: Your Honor, it's marked as 375U.

6 I have in front of me a statement of understanding of right  
7 to be present at commissions proceedings executed today, 22  
8 February 2023. Again, that's marked as Appellate Exhibit 375U. A  
9 copy has been provided to the defense.

10 Your Honor, may I approach the witness?

11 MJ [COL ACOSTA]: You may. You may move freely.

12 ATC [MAJ GARRETT]: I have handed the document to the witness.

13 Q. Lieutenant Colonel, I've presented to you what has been  
14 marked as Appellate Exhibit 375U. Do you recognize this form?

15 A. I do.

16 Q. Did you use this form to communicate to Mr. al Nashiri his  
17 right to attend the proceedings?

18 A. I did.

19 Q. And what was his election whether to attend or not today?

20 A. He elected not to attend.

21 Q. Did he communicate anything else with you?

22 A. He did.

23 Q. What was that?

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1           A.     He stated that he was not feeling well and that he wanted  
2     the judge to know that he was not comfortable riding in the van up  
3     here today.

4           ATC [MAJ GARRETT]:   Your Honor, I have nothing further.  
5     Retrieving the document.

6           MJ [COL ACOSTA]:    Defense?

7                                   **CROSS-EXAMINATION**

8     **Questions by the Learned Defense Counsel [MR. NATALE]:**

9           Q.     Sir, what else did he tell you about why he was not here  
10    today?

11          A.     He just said that the van makes him feel uncomfortable, he  
12    still wasn't feeling well from yesterday, and that he didn't want to  
13    ride in the van up here today.

14          Q.     Anything else?

15          A.     That was it.

16          LDC [MR. NATALE]:   No further questions.

17          MJ [COL ACOSTA]:    Any redirect?

18          ATC [MAJ GARRETT]:   No follow-up questions, Your Honor.   We do  
19    ask that you make a finding that the accused made ----

20          MJ [COL ACOSTA]:    Let me excuse ----

21          ATC [MAJ GARRETT]:   ---- a knowing and voluntary waiver.

22          MJ [COL ACOSTA]:    Let me excuse the witness real quick.

23          ATC [MAJ GARRETT]:   Yes, Your Honor.

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1 MJ [COL ACOSTA]: Okay. I don't have any questions for you.  
2 Don't discuss your testimony or your knowledge of this case with  
3 anyone other than counsel for either side. You can step down.

4 WIT: Thank you, Your Honor.

5 MJ [COL ACOSTA]: You can step down.

6 **[The witness was warned and withdrew from the courtroom.]**

7 MJ [COL ACOSTA]: Government, do you have anything else to  
8 present?

9 ATC [MAJ GARRETT]: Your Honor, we ask that you find that the  
10 accused made a knowing and voluntary ----

11 MJ [COL ACOSTA]: You have no other evidence?

12 ATC [MAJ GARRETT]: No, Your Honor.

13 MJ [COL ACOSTA]: Okay.

14 Defense, do you have anything to present?

15 LDC [MR. NATALE]: No, Your Honor.

16 MJ [COL ACOSTA]: All right. Government?

17 ATC [MAJ GARRETT]: We ask that you find that the accused made  
18 a knowing and voluntary waiver of his right to attend today.

19 MJ [COL ACOSTA]: Defense, anything to be heard?

20 LDC [MR. NATALE]: No, Your Honor.

21 MJ [COL ACOSTA]: Any opposition to the knowing and a  
22 voluntary waiver of his right to be present today?

23 LDC [MR. NATALE]: Your Honor, the one thing that we

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1 would -- I guess I should have asked was who was the translator for  
2 him and as far as what statements were made.

3 MJ [COL ACOSTA]: Well ----

4 LDC [MR. NATALE]: I don't think he's -- he's a native  
5 speaker.

6 MJ [COL ACOSTA]: I -- I'm sure he's not. Do you want me to  
7 re-call the witness so you can ----

8 LDC [MR. NATALE]: Yes, please.

9 MJ [COL ACOSTA]: ---- ask him some questions?

10 Go ahead and re-call the witness, please.

11 ATC [MAJ GARRETT]: Your Honor, the government would remind  
12 the court that the identity of the translator is protected.

13 MJ [COL ACOSTA]: I understand. It's -- he's just going to  
14 ask him some questions about that. If he can't reveal it, then he's  
15 not going to reveal it.

16 Government, do you want to take control of the witness?

17 **[The witness, Lieutenant Colonel, U.S. Army, resumed the witness**  
18 **stand.]**

19 MJ [COL ACOSTA]: Have a seat.

20 Go ahead, re-swear him.

21 ATC [MAJ GARRETT]: I'll re-swear you in.

22 **[END OF PAGE]**

23

1 **LIEUTENANT COLONEL, U.S. ARMY, was called as a witness for the**  
2 **prosecution, was sworn, and testified as follows:**

3 ATC [MAJ GARRETT]: Please have a seat. The defense has some  
4 questions for you.

5 MJ [COL ACOSTA]: All right. You've been called back because  
6 the defense stated that they did have some actual questions for you  
7 that they wanted to ask now, so go ahead.

8 **CROSS-EXAMINATION CONTINUED**

9 **Questions by the Learned Defense Counsel [MR. NATALE]:**

10 Q. Sir, did you have a translator?

11 A. I did.

12 Q. And who was that translator?

13 MJ [COL ACOSTA]: Again, the government has -- the -- has  
14 indicated to the commission that -- I think you were having a  
15 conversation at the time, which was fine ----

16 LDC [MR. NATALE]: Oh, I'm sorry.

17 MJ [COL ACOSTA]: ---- that the identity of the translator,  
18 it's a protected -- is protected.

19 LDC [MR. NATALE]: Very well.

20 MJ [COL ACOSTA]: So you can ask about the translator.

21 LDC [MR. NATALE]: Very well.

22 Q. Do you -- did you take any notes as to what specific  
23 questions you asked or what the translator said to you?



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1           A.     I did not take any notes.

2           Q.     Do you have any idea, is the words which you said were  
3     attributable to Mr. Nashiri that the words that he said were, in  
4     fact, a translation, precisely word for word, or whether it was a  
5     paraphrasing of what he said?

6           A.     It very well may have been a paraphrasing. They were not  
7     necessarily word for word. So I can't tell you if it was the exact  
8     wording.

9           Q.     Okay. So -- and was any of this on film or recorded?

10          A.     Not that I'm -- not that I -- I don't think anything was  
11     recorded that I'm -- that I'm aware of.

12           LDC [MR. NATALE]: Okay. No further questions.

13           MJ [COL ACOSTA]: All right.

14           Government, any redirect -- any cross?

15           ATC [MAJ GARRETT]: Yes, Your Honor.

16           LDC [MR. NATALE]: Your Honor, there's one thing that I want  
17     to say afterwards.

18           MJ [COL ACOSTA]: Well, right, but we have a witness on the  
19     stand, so let me --

20           Government?

21                               **REDIRECT EXAMINATION**

22     **Questions by the Assistant Trial Counsel [MAJ GARRETT]:**

23           Q.     Was the accused given his normal medicine this morning?

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1           A.     Not that -- not that I'm tracking or aware of. And the  
2 only reason that I'm stating that is because he, from what I  
3 understand, had told the guard force early that he was not going to  
4 go.

5           Q.     So he had the opportunity but declined the medicine?

6           A.     That would be my understanding, but I'm not positive on  
7 that, only because I wasn't present. So I can't say with a hundred  
8 percent certainty on it.

9           ATC [MAJ GARRETT]: Nothing further, Your Honor.

10          MJ [COL ACOSTA]: All right.

11          Any redirect on that?

12          LDC [MR. NATALE]: No, Your Honor.

13          MJ [COL ACOSTA]: The accused said -- pardon me, the accused.  
14 The trial defense counsel said that he had no questions. All right.

15          Any other questions before I excuse the witness a second  
16 time?

17          LDC [MR. NATALE]: No, Your Honor.

18          ATC [MAJ GARRETT]: No, Your Honor.

19          MJ [COL ACOSTA]: All right. You're again permanently  
20 excused. Same warning as before. You may step down.

21          **[The witness was warned, was permanently excused, and withdrew from**  
22 **the courtroom.]**

23          MJ [COL ACOSTA]: All right, Defense, you said you had no

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1 evidence to present, but you wish to be heard?

2 LDC [MR. NATALE]: Yes, Your Honor. The -- this sort  
3 of -- the impact of this is that because the transcripts of open  
4 hearings are redacted, we will not be able to provide Mr. Nashiri  
5 with the opportunity to even read the transcript of these  
6 proceedings.

7 And as a result, I think that I just want to have that,  
8 again, put on the record, that these are the situations where, if we  
9 had unredacted open court transcripts, that he would be able to read  
10 verbatim what happened here.

11 MJ [COL ACOSTA]: All right. Anything else?

12 LDC [MR. NATALE]: Nothing further.

13 MJ [COL ACOSTA]: Government?

14 ATC [MAJ GARRETT]: Your Honor, this has been previously  
15 litigated in the 099 series, also in 205JJ, regarding the adequacy of  
16 medical care. There's been no new evidence showing that he's  
17 medically incapable of participating.

18 MJ [COL ACOSTA]: All right.

19 ATC [MAJ GARRETT]: Thank you.

20 MJ [COL ACOSTA]: Defense ----

21 LDC [MR. NATALE]: Your Honor ----

22 MJ [COL ACOSTA]: ---- you stood up.

23 LDC [MR. NATALE]: ---- this is -- this matter is open in 533,

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1 regarding the transcripts.

2 MJ [COL ACOSTA]: No, I understand as far as the transcripts.  
3 I'm talking about his presence here and his -- whether or not he's  
4 voluntarily waived his right to be here or not.

5 LDC [MR. NATALE]: Your Honor ----

6 MJ [COL ACOSTA]: The -- his ability and his right to waive  
7 his presence are -- while you can argue there's a relation to the  
8 transcript, they are not -- it's not necessarily connected to -- your  
9 right to waive your presence doesn't mean -- doesn't have to do with  
10 the -- how the transcripts are handled, right? It's not conditioned.  
11 Your right to waive your presence isn't conditioned on the  
12 transcript.

13 LDC [MR. NATALE]: No, it isn't, Your Honor ----

14 MJ [COL ACOSTA]: Right.

15 LDC [MR. NATALE]: ---- but I think the point that I want to  
16 make is that when we say it was a voluntary and knowing waiver, that  
17 is different than he just didn't feel like coming today. And I think  
18 that it's important that we have on the record, which we have the  
19 testimony of, that what has been termed to be free and voluntary is a  
20 result of a medical condition and the fact that he is not physically  
21 feeling well.

22 And so ----

23 MJ [COL ACOSTA]: Understood.

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1           LDC [MR. NATALE]: ---- I think that there's a -- there's a  
2 big distinction, even though someone could say, yeah, I feel  
3 terrible, I can't come today, I'm vomiting or whatever, that would be  
4 construed as someone saying that. But we can't lose sight of the  
5 fact that this is someone who has suffered from torture, and there's  
6 no question as to the effects and the long-lasting effects that it  
7 has had on him.

8           So when we say voluntarily, yeah, he -- he's probably  
9 choosing to maintain what's best for his health, but it isn't in the  
10 sense of I don't want to be here, I don't really care about these  
11 proceedings. And I think that's something that's very important and  
12 that we have to realize in this situation.

13           You saw yesterday that there was -- there was -- he had to  
14 leave. There was a substantial blockage. And what we learned was  
15 the blockage makes him feel that he can't breathe, which reminded him  
16 of when he was being waterboarded. So ----

17           MJ [COL ACOSTA]: I have no evidence of that other than you  
18 saying it to me right now.

19           LDC [MR. NATALE]: Exactly.

20           MJ [COL ACOSTA]: And I have no diagnosis from -- I have the  
21 diagnosis of -- of the things that occurred to him -- you know,  
22 from -- in the past. I have that, yes, but I don't have anything to  
23 support what you just said.

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1 LDC [MR. NATALE]: Well, then, Your Honor, we would like -- I  
2 would be able to put witnesses on to that effect.

3 But I think that there's a distinct difference between  
4 someone who says, you know, I just don't want to show up and the fact  
5 that there is a medical condition that predicates that.

6 And this is one of the problems we have. We have been  
7 asking for months and months to allow our doctor to talk doctor to  
8 doctor to the -- to say what is going on? They have refused. They  
9 will not respond. You know the problems we've had getting medical  
10 records.

11 So we are put in a situation where, for reasons unknown to  
12 us, doctors can't talk to doctors, and, therefore, we're being  
13 prevented from preventing -- presenting to you what is the actual  
14 situation.

15 I just want to put, you know, that on the record. We -- we  
16 have filed motions before. We're going to be filing motions again,  
17 saying that we should have access to this information. And -- but we  
18 can't ignore the reality of -- and take things in a separate -- as if  
19 they're separate and distinct and unrelated to what has been going  
20 on.

21 MJ [COL ACOSTA]: All right. Thank you, Counsel. I'll note  
22 that since I've been -- you can have a seat.

23 Since I've been on the commission, it has been the -- the

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1 regular practice, for whatever reasons, that the accused has appeared  
2 for days. This is not an abnormal pattern of events. I don't have  
3 evidence of anything other than what has been presented about his  
4 motion sickness, et cetera, and how that's exacerbated perhaps by  
5 the -- the ride.

6 I have nothing to present -- to indicate that he cannot  
7 participate because of the medicines that he takes. It's just that  
8 he is uncomfortable. While there are times at which we are all  
9 uncomfortable or not feeling well when -- when it is time for us  
10 to -- to work or to perform, that doesn't mean that we are unable to  
11 do it. That is the normal course of human events, that we don't  
12 always feel a hundred percent.

13 So I'm -- I find that his waiver is knowing and voluntary  
14 and that he's absent -- he has exercised his right to not be here  
15 voluntarily and that he has not been forced to not be here.

16 Government, I believe we're continuing with 319?

17 ATC [LT SCHWARTZ]: That is correct, Your Honor. The  
18 government would call Special Agent Andre Khoury to the stand.

19 TC [MR. O'SULLIVAN]: Your Honor, while that's happening, I  
20 just have an update. I'm informed that all sites are up.

21 MJ [COL ACOSTA]: All broadcast sites?

22 TC [MR. O'SULLIVAN]: Yes.

23 ATC [LT SCHWARTZ]: And, Your Honor, while Special

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1 Agent Khoury is coming to the stand, this is one of the witnesses, I  
2 remind the court, we will be switching attorneys once the government  
3 is done with the hearsay evidence to another trial counsel for AE  
4 461.

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

6 ATC [LT SCHWARTZ]: Thank you.

7 MJ [COL ACOSTA]: Lieutenant Schwartz, how many statements are  
8 you taking today?

9 ATC [LT SCHWARTZ]: Yes, sir. In total we're going to be  
10 taking seven. The -- there's a grouping -- two groupings of two for  
11 the morning. I figure that we'll get there before lunch, Your Honor.  
12 And I'll go through them, if you would like now or after I swear him  
13 in, whatever your preference.

14 MJ [COL ACOSTA]: You can do it after you swear him in. I  
15 just -- I think I've mislocated my list of names. Give me one  
16 second.

17 ATC [LT SCHWARTZ]: No problem, sir. I'll go ahead and swear  
18 him in. Thank you.

19 Agent Khoury, if you could raise your right hand.

20 **SPECIAL AGENT ANDRE KHOURY, civilian, was called as a witness for the**  
21 **prosecution, was sworn, and testified as follows:**

22 ATC [LT SCHWARTZ]: Thank you. Please take a seat.

23 MJ [COL ACOSTA]: All right. Go ahead, Counsel.



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1 ATC [LT SCHWARTZ]: Thank you, Your Honor.

2 **REDIRECT EXAMINATION CONTINUED**

3 **Questions by the Assistant Trial Counsel [LT SCHWARTZ]:**

4 Q. And can you please state your name for the record,  
5 Agent Khoury?

6 A. Andre Khoury.

7 Q. And to reiterate, you are continuing testimony that you  
8 gave to this commission in December of 2022, correct?

9 A. That's correct.

10 Q. Okay.

11 ATC [LT SCHWARTZ]: Your Honor, the first grouping that we're  
12 going to do is of two, and that is statements number 101 and 45 of  
13 319MM. Would you like the names, Your Honor?

14 MJ [COL ACOSTA]: When you can -- you can ask him, but I've  
15 got -- you've got 101 ----

16 ATC [LT SCHWARTZ]: ---- and 45, and it will be in that order.

17 MJ [COL ACOSTA]: ---- and 45?

18 ATC [LT SCHWARTZ]: Yep.

19 MJ [COL ACOSTA]: Okay. Go ahead.

20 ATC [LT SCHWARTZ]: Thank you, sir.

21 Q. All right. So, Special Agent Khoury, I just want to just  
22 kind of reiterate a few things that we talked about last time in  
23 terms of generalities for the investigation that you conducted for

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1 the USS COLE bombing, okay?

2 A. Sure.

3 Q. As a reminder, a few housekeeping -- there is a crosswalk  
4 in front of you with names and protected identities. If you believe  
5 anything I'm asking you might elicit a name that is protected, please  
6 refer to the crosswalk and give me the identifier that's provided.  
7 Same will go for defense counsel as well.

8 A. Sure.

9 Q. This is an open hearing right now, so if you believe your  
10 answer will be classified, please just let me know and we can handle  
11 that.

12 A. Okay.

13 Q. As a reminder for me, I'm going to remind myself to slow  
14 down when I talk. I would ask the same for you, just as it's being  
15 translated so we don't give anyone any headaches.

16 MJ [COL ACOSTA]: It's not being translated today. The  
17 accused is not present. So you can ----

18 ATC [LT SCHWARTZ]: Okay, copy that.

19 MJ [COL ACOSTA]: That doesn't mean ----

20 ATC [LT SCHWARTZ]: I'll still slow down.

21 MJ [COL ACOSTA]: That does not mean that you need to return  
22 to your normal speed, that just means that you need to get back down  
23 to a speed capable of comprehension. Thank you.

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1 ATC [LT SCHWARTZ]: Copy that, sir.

2 Q. Special Agent Khoury, do you recall testifying here in  
3 December?

4 A. Yes.

5 Q. And has anything changed in the testimony that you gave in  
6 relation to the answers you provided since then?

7 A. No.

8 Q. In relation to all the interviews that you conducted,  
9 including the names that we talk about today, can you tell us  
10 generally what was the goal in talking to these witnesses?

11 A. Just trying to obtain information to identify some of the  
12 perpetrators in the USS COLE bombing.

13 Q. And in these interviews, would it at times lead you to  
14 other witnesses to talk to as well?

15 A. Yes.

16 Q. Okay. Could you use and did you use information that you  
17 gained in one interview as a way of leading you to maybe another  
18 interview or diving into an interview deeper?

19 A. Of course.

20 Q. Okay. In the interviews that you conducted, were you able  
21 to act as an interpreter?

22 A. I mean, I -- I was always interviewing agent, but given  
23 the fact that I was speaking with the witnesses in -- in Arabic, I

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1 was doing translations to some of my colleagues who were in the room  
2 with me.

3 Q. And you are a native speaker, correct?

4 A. I am.

5 Q. Can you describe what your working relationship was with  
6 the PSO/MOI while you were over there?

7 A. Yeah. We -- we had -- we had a -- the relationship was a  
8 little bit unusual. They were not used to working with the FBI. It  
9 was their first time working with the FBI. So it took a while for us  
10 to -- to get to a -- a comfortable level where they -- they felt they  
11 could allow us to do what we need to do.

12 But even after that, there were some specific entities  
13 within each of the organizations that were more sympathetic to this  
14 investigation and trying to get resolution than others. Some of them  
15 didn't want us there, even after they were ordered to give us the  
16 assistance that -- that is needed. They -- they felt that we were,  
17 you know, impeding on their sovereignty. They just didn't like us.  
18 They were more sympathetic to the extremists than they were to -- to  
19 the west.

20 Some other factions were the opposite, and it was a balance  
21 that we had to strike while conducting the -- this investigation in  
22 dealing with them amongst some of the other security issues that we  
23 had to deal with on a daily basis.

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1           Q.     And in light of the, I guess you could say, obstacles that  
2     you were presented in conducting this investigation, is it your  
3     opinion as an investigator that you were still able to conduct an  
4     adequate investigation into the COLE bombing while there?

5           A.     Yes.

6           Q.     For the interviews that we're going to talk about today as  
7     we have, were the Barbara Bodine guidelines still in effect?

8           A.     They were.

9           Q.     And were they followed to the extent that you previously  
10    testified to?

11          A.     Yes.

12          Q.     After the 302 -- or after the interviews were conducted,  
13    when would you draft a 302 generally?

14          A.     It depended. I mean, if I'm not mistaken, the FBI ruled  
15    that it has to be drafted within -- I want to say within three days.  
16    I don't remember the exact rule, but it had to be drafted quickly so  
17    not to forget some of the important details.

18                 We were working in -- you know, under -- as I explained, we  
19    were working under some difficult circumstances where we had to  
20    conduct interviews, different type of hours of the day, keeping in  
21    mind our security and the security of -- of those who were  
22    transporting us back and forth. So it all depended.

23                 We tried to do them as quickly as possible, sometimes right

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1 after. Sometimes if we had other pending matters -- for example, I  
2 know for myself, I used to do interviews, but sometimes after the  
3 interviews, I had to go back out and meet with officials from the  
4 intelligence community or officials from the Yemeni government. So  
5 it all depended on when we drafted them, but I would say  
6 within -- within two days the interviews were drafted.

7 Q. And as you just stated, you weren't always there to draft.  
8 Did you always have an opportunity to review the 302s in which you  
9 assisted in the interviews?

10 A. Yes.

11 Q. And would you be able to verify those for accuracy?

12 A. Yeah, of course.

13 Q. If you needed to make changes, were you able to do so?

14 A. Yes.

15 Q. In relation to something you mentioned earlier with  
16 conducting an investigation in a foreign land there, are -- were  
17 things done differently because you were not the lead investigation  
18 agency?

19 A. Yeah. I mean, it's -- it's just like any other  
20 investigations that we have worked overseas. You know, you have to  
21 abide by -- by rules and regulations of a sovereign country, and even  
22 though we still want to do and accomplish what we're there for, we  
23 had to keep in mind that it is a foreign nation, it is foreign land,

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1 and there was a lot of rules -- not just by the -- the foreign  
2 government, but there was a lot of rules by DoJ that are also put in  
3 place on how to operate when you're overseas, so ----

4 Q. And if we would flip that, in your -- in your knowledge  
5 and experience as an investigator, if a foreign country was doing an  
6 investigation here, would they have to abide by our rules and  
7 principles as well?

8 A. Of course.

9 Q. Whenever you were given -- how were you given names of  
10 witnesses, to your recollection?

11 A. I mean, some witnesses we came up with ourselves based on,  
12 again, intelligence that we were obtaining, based on interviews that  
13 we have conducted. And other witnesses who were given to us in, you  
14 know, as -- as PSO had felt they could potentially be of assistance.  
15 So it was a combination of -- of probably those three.

16 Q. And for that last point that you said they thought they  
17 could be of assistance, how would they have known that maybe they  
18 would be relevant to your investigation?

19 A. Some of the witnesses that we have interviewed were also  
20 interviewed by the Yemeni government. And I know I said PSO, but I  
21 meant the Yemeni government in general.

22 Q. And was that because they were conducting their own  
23 investigation?

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1 A. Yes.

2 Q. And so if I'm correct, when they talked to someone, would  
3 discovery if they're relevant, they would let you know, hey, here are  
4 these people we talked to that you may want to; is that correct?

5 A. Exactly. They -- they -- if they felt they were relevant,  
6 they used to bring them to our attention, but it didn't mean that we  
7 felt they were relevant. So sometimes we spoke to some they  
8 recommended, sometimes we did not.

9 Q. And if there were people outside of the list that they  
10 would recommend, you would also -- you would -- you would not be  
11 prohibited from requesting to speak to those people?

12 A. No.

13 Q. Okay. I want to get into the first statement that we  
14 have, number 101 of 319MM, which is Wadi Fadhl Salim.

15 Do you recall taking a statement of this individual on  
16 2 January 2001?

17 A. Yes.

18 Q. And where was this interview conducted?

19 A. At PSO headquarters.

20 Q. In the setting in which you conducted it, did you find it  
21 to be an intimidating setting?

22 A. No.

23 Q. Do you recall anything unusual about Mr. Salim when he



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1 entered the room?

2 A. No. He just came in and, you know, it was -- it was  
3 normal.

4 Q. Was he shackled?

5 A. No.

6 Q. Did you see any signs of abuse whenever you spoke with  
7 him?

8 A. No.

9 Q. If you had, would you have noted that in your 302?

10 A. Of course.

11 Q. And why would you have noted that in your 302? Why is  
12 that something of importance?

13 A. Obviously, it -- it's -- it leads to the credibility  
14 of -- of the witness, if -- if there was any signs of abuse or not.

15 Q. And were you guys introduced to the witness as to why you  
16 were there and who you were?

17 A. Yes.

18 Q. Did he make a prior statement to Yemeni authorities?

19 A. I believe he did.

20 Q. And were you able to hear his statement read to you prior  
21 to your interview?

22 A. Yes.

23 Q. And did he verify that as accurate?

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1 A. He did.

2 Q. Is there anything you recall about Mr. Salim, that he  
3 appeared to be scared or intimidated to talk to you guys?

4 A. No.

5 Q. And did he appear to be there -- excuse me -- of his own  
6 free will?

7 A. He was.

8 Q. Okay. He was employed as someone who was cutting fish  
9 near the Al-Burayqah bridge, correct?

10 A. Yes, that was his job.

11 Q. And where was the Al-Burayqah bridge, generally speaking?

12 A. It was -- Al-Burayqah bridge is a bridge that connected  
13 Little Aden to actually Aden itself. It was near an old dock that  
14 Mr. Salim used to cut fish. It was, like, an old metal dock,  
15 but -- and that -- that's -- I mean, I don't know how much specific  
16 you want me to go on with ----

17 Q. Nope, that's perfect. Thank you.

18 What was his schedule? Did he work every day at the bridge?

19 A. No. I believe he worked every other day.

20 Q. And was he cutting fish on 12 October 2000?

21 A. He was.

22 Q. And was he with anyone, that you can recall?

23 A. I believe he was with a couple other individuals, also

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1 cutting fish.

2 Q. Would that have been Mr. Nasser and Mr. Hadi?

3 A. Yes.

4 Q. And to your knowledge, those individuals, did you have an  
5 opportunity to speak to both of those individuals?

6 A. I did not, but I believe the FBI team did.

7 Q. Okay. The FBI was able to question them as part of the  
8 investigation ----

9 A. Correct.

10 Q. ---- as well?

11 Earlier when you mentioned that in interviews, when you  
12 would get information or names, it would, you know, possibly lead you  
13 to other evidence or witnesses, is this kind of a case of that, where  
14 someone can give you other names and then they can go and be  
15 interviewed as well?

16 A. Sure.

17 Q. What did Mr. Salim observe on the morning of 12 October by  
18 the bridge?

19 A. He saw a -- a yellow crane with the crane operators on the  
20 bridge. And even though he was a little bit of a distance  
21 from -- from them, he overheard one of the crane operators saying  
22 that it was his lucky day because he was going to be dropping a boat  
23 in the water and he was going to be making a sum of money

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1 that -- that day.

2 Q. Would it have been 10,000 rials? Does that sound correct?

3 A. 10,000 rials.

4 Q. Do you remember how many men he observed operating the  
5 crane?

6 A. Two individuals.

7 Q. And what was the crane next to? What building was the  
8 crane next to?

9 A. It was -- the crane was near the dock where -- next to the  
10 dock, al Rabash family has a small kiosk. And one -- I believe one  
11 of the Rabash sons was near the crane operators when -- when  
12 the -- when they arrived at the bridge.

13 Q. Would that have been Hani Rabash?

14 A. Yes.

15 Q. And to your knowledge, was he able to be interviewed as  
16 well by the authorities?

17 A. Yes.

18 Q. Did he also see the father, Fadel Rabash, there?

19 A. Yes. The father actually spoke to Mr. Salim until a white  
20 Nissan towing a boat arrived. That's when he had left and he went  
21 towards the crane operators and the white Nissan.

22 Q. And Mr. -- the father, Mr. Rabash, he was also  
23 interviewed, correct, by U.S. authorities?

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1 A. Yes.

2 Q. Did he see Mr. Rabash talk to anyone?

3 A. He saw Mr. Rabash talking to the individuals in the white  
4 Nissan and the crane operators, but he -- he did not hear the  
5 conversation.

6 Q. What kind of white vehicle did you say Mr. Salim saw?

7 A. It was a white Nissan saloon.

8 Q. And what is a saloon, if you can explain that.

9 A. It's an SUV type of vehicle.

10 Q. Was the saloon pulling anything?

11 A. It was pulling a white boat on a trailer.

12 Q. And had Mr. Salim seen this boat before?

13 A. He did not.

14 Q. Was he able to recall any of the details of the boat?

15 A. He just remembered that it had a -- a large-sized engine,  
16 black. It had a steering wheel and one seat.

17 Q. And did he observe any markings that were on the boat?

18 A. He did not.

19 Q. Once Mr. Salim observed the men get out of the car, what  
20 did he see them start doing with the crane?

21 A. He -- he observed one of the individuals using the straps  
22 to secure the boat, and then -- and then they lowered the boat in the  
23 water.

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1 Q. And would this have been around 10:15 a.m., to your  
2 recollection?

3 A. Yes.

4 Q. And you said that they lowered the boat into the water.  
5 Was that using the crane?

6 A. Yes.

7 Q. Did Mr. Salim have an opinion or an idea why they had to  
8 use a crane to lower the boat into the water?

9 A. He opined that it's -- you know, the two individuals  
10 seemed wealthy, so if they wanted to spend the money to lower the  
11 boat into the water, that's their prerogative. But he also said that  
12 it was probably difficult to put a boat in the water from the -- from  
13 the dock itself because it was an old metal dock and there was some  
14 metal bars, so it may make it somewhat challenging to do that.

15 Q. And did he recall the water to be deep in that area as  
16 well?

17 A. Yes.

18 Q. After they lowered the boat in the water, what did they do  
19 next, the men?

20 A. The two individuals that were driving the white Nissan  
21 towing the boat got into the boat, and they drove the boat toward  
22 Al-Tawahi area.

23 Q. And did Mr. Salim notice anything unusual about when the

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1 two men initially got into the boat and were preparing to leave?

2 A. He said that they did not seem as two individuals that  
3 were very familiar with the boat because it took them a while to get  
4 it started. But once -- once they started it, they -- they head out  
5 at a slow pace until they passed a certain point, and then  
6 they -- they went fast towards Al-Tawahi area.

7 Q. And was Mr. Salim able to provide a description of the two  
8 men in the Nissan and the boat?

9 A. He did.

10 Q. And we'll start with the first one, UNSUB 1, who drove the  
11 boat. Do you recall what his description was of that individual?

12 A. He said he was a Middle Eastern man in his 30s. He had a  
13 full, round face, thin beard, a little stocky.

14 Q. Did he recall what he was wearing?

15 A. He said he was wearing a shirt and a ma'wazz, and he also  
16 had a -- a gutra on his head, I believe it was a white -- white gutra  
17 on his head.

18 Q. And can you just explain for the court, what is that?

19 A. It's just a white -- it's a headdress.

20 Q. And what about the second man who helped lower the boat  
21 which would be UNSUB #2? What was the description given?

22 A. He was also a Middle Eastern man, also of a medium  
23 complexion. He had a long face, black hair. He did not remember

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1 if -- if he had a mustache. Definitely did not have a beard. He was  
2 also wearing a shirt and a ma'wazz, but no headdress, and he did not  
3 believe that UNSUB #2 wore glasses, neither did UNSUB #1. He did not  
4 remember if UNSUB #1 wore glasses or not.

5 Q. And when Mr. Salim talked to Mr. al Rabash, did he opine  
6 or tell him where they were from, these two individuals?

7 A. He said that Mr. al Rabash told him that they were  
8 foreigners from the Hadhramaut area.

9 Q. How long did Mr. Salim stay at the bridge after the boat  
10 left towards Al-Tawahi?

11 A. He stayed approximately 15 minutes, then he left to  
12 deliver the fish to the restaurant.

13 Q. So timeline, 10:15 when they got there, correct?

14 A. Correct.

15 Q. 10:30, around, whenever the boat was lowered?

16 A. Correct.

17 Q. And you said -- you just said 15 minutes later, so about  
18 10:45 when Mr. Salim left?

19 A. Correct.

20 Q. Okay. And did he hear or see the explosion soon after?

21 A. Yeah, he didn't see the explosion but he did hear it while  
22 he was at the restaurant delivering the fish. And he initially  
23 thought the explosion was inside of the restaurant, so, you know, he



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1 ran out quickly after he heard it.

2 Q. Was he aware of any American ships that were scheduled to  
3 come in?

4 A. No, he wasn't.

5 Q. Did you have an opportunity to show Mr. Salim the photo  
6 book?

7 A. I did.

8 Q. And was he able to pick anyone out?

9 A. He was not.

10 Q. At this point in your investigation, as investigators, had  
11 you guys spoke with other witnesses who had been in this area ----

12 A. Yes.

13 Q. ---- at the time?

14 Had -- did you as investigators have an idea of some of the  
15 commonly identified individuals as having been in the boat?

16 A. Yes.

17 Q. So were they in that photo book that you showed him?

18 A. Yes.

19 Q. Why didn't you then point out those specific pictures to  
20 the witness?

21 A. We -- it's -- it would be unethical to do that, number  
22 one. So, you know, we show the books to the witnesses, and if they  
23 picked someone and we had some follow-on questions, then we can do

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1 that. But it's prohibitive to show the witnesses the individuals  
2 that we believe were highlighted by other witnesses as being members  
3 of -- driving the vehicle or driving the boat or any -- anything to  
4 that matter.

5 Q. And why is that? What would that do to the investigation?

6 A. Just all taint the investigation.

7 Q. Was there a 302 drafted for this interview?

8 A. Of course.

9 Q. And was that done shortly after?

10 A. As I mentioned before, I don't recall if it was done,  
11 like, right after or within -- it -- all 302s were drafted within the  
12 FBI and DoJ guidelines, but I don't remember if it was drafted right  
13 after the interview or, you know, several hours after.

14 Q. And would you have been able to -- do you recall having  
15 the ability to review this 302 for accuracy?

16 A. Yes.

17 Q. And having reviewed these 302s recently, do you have any  
18 concern for the accuracy within them?

19 A. No.

20 Q. For Mr. Salim, in the 302 you gave a brief description of  
21 the individual. Do you recall that?

22 A. Of Mr. Salim?

23 Q. Uh-huh. Yes.

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1 A. I believe so.

2 Q. And would generally 27 years old have been around the age  
3 in which you observed him to be or he told you?

4 A. Yes.

5 Q. That 27 years old, where would you have gotten that  
6 information?

7 A. He -- he would have told us that information.

8 Q. And you also got an address from the witness, correct?

9 A. Correct.

10 Q. Would you have been able to go to that address at your own  
11 free will, if you wanted to?

12 A. Probably -- I mean, we could have driven by if we needed  
13 to, but we never felt that it's something we -- we need to do. And  
14 if it was something that it was a little bit more of interest, we  
15 could have asked our counterparts at the time, the Yemeni officials,  
16 to take us there.

17 So we could have went by ourselves to drive by or we could  
18 have asked the officials to take us there or allow us into the  
19 property if we felt the need to.

20 Q. Okay. Okay, Mr. Khoury. I want to move on to the next  
21 statement in the grouping, which is number 45 of 319MM, and that is  
22 Saleh Mohammed Qasim Tarhish.

23 Do you recall taking a statement from this individual?

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1 A. I do.

2 Q. And would that have been in January of 2001?

3 A. Yes.

4 Q. Was this interview conducted in the same location you  
5 previously testified?

6 A. Yes.

7 Q. And again, you didn't find this setting intimidating?

8 A. Not at all.

9 Q. Do you recall how Mr. Tarhish entered the room?

10 A. He was brought in by Yemeni officials into the room.

11 Q. Was he shackled, to your recollection?

12 A. He was not.

13 Q. Did you see any signs of abuse?

14 A. No.

15 Q. If you had, would you have noted it in your 302?

16 A. Yes.

17 Q. For the same reasons you just testified to?

18 A. Yes.

19 Q. And were you guys introduced to the witness?

20 A. We were.

21 Q. And had he made a prior statement to Yemeni authorities on  
22 14 October?

23 A. Yes, he did.

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1 Q. And was that read out loud so that you could hear?

2 A. It was.

3 Q. And you could -- you could hear and immediately translate  
4 that as it was being read, correct?

5 A. Correct.

6 Q. Did you translate that for your counterparts whenever it  
7 was read as well?

8 A. I summarized it ----

9 Q. Okay.

10 A. ---- as I did with all others. It was not word for word,  
11 but it was a summary of -- of the 302.

12 Q. And for ----

13 A. Or a summary -- not the 302. Summary of the statement.

14 Q. The prior statement?

15 A. Yes.

16 Q. The information that you got or heard from the prior  
17 statement, were you able to use that information in your interview?

18 A. If we needed to, sure.

19 Q. If you didn't find it to be relevant, were you forced to?

20 A. No.

21 Q. Were you given any required questions that you were  
22 required to ask by Yemeni authorities?

23 A. No.

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1 Q. Were you limited in any way as to what you could ask?

2 A. No.

3 Q. Did he verify that statement as accurate?

4 A. He did.

5 Q. And did he appear to be there on his own free will?

6 A. He did.

7 Q. This man, he was a police officer, correct?

8 A. Correct.

9 Q. And where was he a police officer?

10 A. He was a police officer at the Al-Burayqah bridge.

11 Q. And do you recall him being about 50 years old, 5'5", and  
12 140?

13 A. Yes.

14 Q. And you noted that in your 302?

15 A. I did.

16 Q. Do you recall how long he had been a guard at the bridge?

17 A. I believe he was a guard for a few years at the bridge,  
18 and he was assigned there because there were some threats to blow up  
19 the bridge, so the Yemeni government had put some police officers  
20 through as -- to guard the bridge.

21 Q. And do you recall what his shifts were?

22 A. He worked a 24-hour shift, from 7:00 a.m. to 7:00 a.m.

23 Q. Did Mr. Tarhish give any opinions or observations of the

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1 habits of visitors at the bridge? How long they would stay, for  
2 example?

3 A. He did. He said, you know, people often came to the  
4 bridge but they came in for a, you know, 15-, 20-minute period of  
5 times. The bridge is just some -- it's not a place where people can  
6 come and hang out, per se. There is no sandy beaches or -- or  
7 anything at all for people to come and -- and then spend time.

8 The only thing he noted was the kiosk of al Rabash where  
9 people sometime came and -- and spent some time there. But for the  
10 commoners, it was just they come, they spend a little bit of time,  
11 watch the water, watch what's going on and then leave.

12 Q. And you said he was familiar with the Rabash family?

13 A. He was.

14 Q. Did he have an opportunity to observe a white Nissan at  
15 any point?

16 A. Yeah, he did. He -- he observed a white Nissan saloon  
17 that used to frequent the bridge towing a white boat.

18 Q. And do you recall when he said the first time he noticed  
19 the white Nissan frequenting the bridge?

20 A. He said it was a couple of months before the -- before the  
21 explosion of -- of the USS COLE.

22 Q. So would have been around August time frame ----

23 A. Correct.

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1 Q. ---- probably?

2 And you said numerous times he had seen it. Do you recall  
3 how many or how often he saw it?

4 A. He said he saw it approximately a dozen times. He used to  
5 come in -- he used to see it every other week or sometimes, you know,  
6 on Thursdays or Fridays.

7 Q. And did he observe the Nissan hauling anything?

8 A. He did. He -- he said that the Nissan used to tow -- used  
9 to tow a white boat on a trailer.

10 Q. And was he able to give a description of the boat?

11 A. He also said that the boat seemed a foreign boat. It had  
12 a steering wheel and it also had a big engine. He estimated that the  
13 engine could be 85 horsepower because of the size. He said it had a  
14 seat and a steering wheel as well.

15 Q. Do you remember what material the boat was made out of?

16 A. Fiberglass.

17 Q. And the length of the boat, did he give an opinion on  
18 that?

19 A. He said it was five -- five meters.

20 Q. Why did this boat catch his eye?

21 A. Because it was unusual. It's not a boat that is commonly  
22 seen in the area. Most of the boats in the area are wooden boats  
23 that have, you know, a smaller engine in the back. And most of them



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1 don't have steering wheels; they're operated by, you know, just the  
2 maneuvering the engine from the back.

3 Q. How many people did he observe with the Nissan when they  
4 would frequent the bridge?

5 A. Two.

6 Q. Two?

7 And did he ever see them at the Rabash kiosk?

8 A. He did.

9 Q. What would he observe them doing when they would come to  
10 the bridge?

11 A. He -- he observed them park the car near the dock next to  
12 the al Rabash kiosk and then push the boat into the water, take it  
13 out for -- for about 30 minute towards Al-Tawahi area of Aden and  
14 then come back and then leave.

15 Q. Did he ever notice any numbers on the boat or on the  
16 engine?

17 A. He said he believed the engine was an 85-horsepower  
18 engine.

19 Q. He didn't recall seeing any identification numbers,  
20 though, on the engine?

21 A. I don't believe so.

22 Q. And to clarify -- I apologize if I missed it -- you said  
23 they would go towards what direction?

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1 A. Al-Tawahi area.

2 Q. Was he able to give any description of the men?

3 A. He didn't. He said that they were Middle Eastern men.

4 They seemed -- they -- they were to be well off. You know, very,

5 very little detail, you know, just, you know ----

6 Q. How far would, by your own -- have you visited the

7 Al-Burayqah bridge?

8 A. Yes.

9 Q. To your recollection, how far was the bridge from where  
10 the Nissan and the gentlemen would have been, if you can recall?

11 A. I would -- I would guesstimate between 500 and 800 yards,  
12 maybe.

13 Q. Okay. Turning to the day of the attack, was Mr. Tarhish  
14 working that day?

15 A. He was.

16 Q. And do you recall about what time he got to work?

17 A. He said he arrived at work at 7:00 ----

18 Q. And was he ----

19 A. ---- in the morning.

20 Q. ---- in the tower all morning?

21 A. No. He arrived at 7:00 in the morning, and then he ended  
22 up going for breakfast. Then he returned around 9:00 to sit in his  
23 small shack on -- on the bridge.

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1 Q. And what did he tell you about the visibility of the  
2 bridge and the -- the deck from where he sat?

3 A. He said that if he's sitting in his kiosk, he could see  
4 the bridge, but if he's standing, he could actually see the deck.

5 Q. And did he observe anything the morning of, as it related  
6 to the crane?

7 A. He did not observe a crane on that day.

8 Q. Did he see the white Nissan arrive that morning?

9 A. He did not.

10 Q. And you said that he described his visibility. Did you  
11 have an opportunity to observe the shack in which he worked out of?

12 A. I did.

13 Q. So according to his description, your recollection, would  
14 he have been able to see the deck if he had been sitting down during  
15 that period of 9:00 to 12:00?

16 A. No.

17 Q. Did he hear the explosion that day?

18 A. He did hear it.

19 Q. And was he in his shack whenever the explosion occurred?

20 A. Yes.

21 Q. What did he do after he heard the explosion?

22 A. He went to -- to check the area, and this is when he  
23 noticed that the white Nissan was at the dock.

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1 Q. When you said "check the area," did that include the deck?

2 A. Yes.

3 Q. And what did -- you said he saw the Nissan and the  
4 trailer. Did he see the men there?

5 A. No.

6 Q. Was the Nissan anywhere different than what he had  
7 normally observed?

8 A. No. He said it was in -- around the same area where he  
9 had seen it parked before.

10 Q. So would that have been -- you said the same area. Would  
11 that have been the Rabash kiosk desk -- deck area there?

12 A. Yes.

13 Q. Was he approached by Yemeni authorities about what he had  
14 seen?

15 A. Early in the morning, he was approached by someone from  
16 the Yemeni government.

17 Q. When you say early in the morning, would that have been  
18 the next morning, so the 13th?

19 A. Correct.

20 Q. And was he still working?

21 A. Yes, he was.

22 Q. Had he reported the -- the Nissan and the trailer to  
23 anyone prior to talking to PSO/MOI?

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1           A.     He reported the -- that the white car -- the white Nissan  
2 to -- to his -- his own channel in the -- within the police.

3           Q.     When PSO came and talked to him, did they go down and look  
4 at the deck?

5           A.     They did.

6           Q.     And did they look at the Nissan as well?

7           A.     Yes.

8           Q.     What did they find whenever they went and looked at the  
9 Nissan?

10          A.     They found it to be locked.

11          Q.     Did they have an opportunity to observe a license plate  
12 number?

13          A.     Yes, they did.

14          Q.     And are you able to recall the license plate number?

15          A.     I don't remember it exactly, but I know -- I know he had  
16 mentioned that it started with -- with the number 4.

17          Q.     Would it refresh your recollection to review your 302 as  
18 to the entire license plate number?

19          A.     Of course.

20                ATC [LT SCHWARTZ]: Your Honor, showing the witness page 590  
21 of 319MM.

22                MJ [COL ACOSTA]: You may proceed. You may do so, and you may  
23 move freely.

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

2           ATC [LT SCHWARTZ]: Retrieving the exhibit.

3           Q.     Agent Khoury, did that refresh your recollection?

4           A.     Yes.

5           Q.     And what was the license plate number?

6           A.     It was 4-12782.

7           Q.     In your investigation, did you, to your  
8 knowledge -- understanding there are many moving parts, did you get  
9 any other evidence or information as to that license plate?

10          A.     Yes, we did.

11          Q.     And what was that?

12          A.     It was -- many witnesses had told us that the license  
13 plate was -- started with -- with 4 on the white Nissan, which  
14 indicates the Hadhramaut area of Yemen.

15          Q.     And you said other witnesses. Would these witnesses have  
16 also been from this area, the Al-Burayqah bridge or other surrounding  
17 areas involved in the investigation?

18          A.     Yes. Both.

19          Q.     Okay. What eventually happened to the Nissan?

20          A.     It was -- it was towed by the Yemeni government.

21          Q.     And did you show Mr. Tarihish the photo book as well?

22          A.     Yes, I did.

23          Q.     Was he able to identify anyone?

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1 A. No, he wasn't.

2 Q. And similar to what we had just talked about, at this  
3 point did you have an idea of people who had already been identified  
4 as those with the boat ----

5 A. Yes.

6 Q. ---- from other witnesses?

7 A. Of course.

8 Q. And you -- but you didn't point out those photos  
9 specifically in the photo book?

10 A. No.

11 Q. And was that for fear of tainting the investigation?

12 A. Exactly.

13 Q. Was a 302 drafted?

14 A. Yes.

15 Q. And did you have the opportunity to review it after it was  
16 drafted?

17 A. Yes.

18 Q. Did you have the ability to change anything if necessary?

19 A. Yes.

20 Q. And in reviewing it recently, do you have any concerns  
21 about the accuracy of the information?

22 A. No.

23 Q. As an investigator, just generally speaking, if a witness

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1 gives more than one interview to individuals, if those -- if that  
2 information between those interviews is consistent, what does that  
3 tell you about the weight or credibility of someone who's speaking?

4 DC [MR. PADILLA]: Judge, I'm going to object to that.

5 MJ [COL ACOSTA]: Re-ask the question, please.

6 Q. How does someone giving numerous interviews with  
7 consistent information affect what they would assign as weight or  
8 credibility to a statement someone's giving?

9 MJ [COL ACOSTA]: Sustained.

10 Q. Whenever you were conducting your interviews with these  
11 witnesses, was there ever a point in which you wanted to ask a  
12 question or did and were cut off by Yemeni authorities?

13 A. No.

14 Q. And you were able to ask any question that you believed  
15 was pertinent to your investigation?

16 A. Yes.

17 ATC [LT SCHWARTZ]: Your Honor, if I may have just one moment,  
18 please?

19 MJ [COL ACOSTA]: You may.

20 **[Counsel conferred.]**

21 ATC [LT SCHWARTZ]: Thank you, Your Honor.

22 Q. Just a few more questions, Agent Khoury.

23 You stated that you had gotten an address from one of the



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1 witnesses. Why didn't you go to that individual's home? Was there  
2 any reason to?

3 A. It -- I mean, with witnesses, as I mentioned before, they  
4 were witnesses. They're not suspects. So if they'd given us their  
5 home address, there was no reason to go to their -- to their home.

6 Q. And for individuals who give consistent statements, how  
7 would that affect your investigation, if at all?

8 A. Witnesses -- in this investigation or others, witnesses  
9 that give consistent statements are considered credible witnesses.

10 Q. To your investigation, correct?

11 A. Of course.

12 ATC [LT SCHWARTZ]: Nothing further on these two statements,  
13 Your Honor.

14 MJ [COL ACOSTA]: All right. Defense, cross?

15 **RECROSS-EXAMINATION CONTINUED**

16 **Questions by the Defense Counsel [MR. PADILLA]:**

17 Q. Good morning.

18 A. Good morning.

19 Q. Good to see you again.

20 A. Same here.

21 Q. Let -- I want to -- to begin with some of the questions  
22 that the government asked you about in the beginning before we get  
23 into the two witness statements, okay?

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1           And I -- I think that -- or my memory is that we've  
2   discussed some of these things a lot in the last few months, but I  
3   do -- I do want to ask you some questions, again, just so that we're  
4   all clear about the investigation and how it happened and sort of the  
5   circumstances surrounding what you and the -- the other teams did,  
6   okay?

7           A.     Sure.

8           Q.     And the first thing that I want to ask you about is the  
9   translations of both the PSO statement, if you got one, and then the  
10  actual interview process, okay?

11          A.     Okay.

12          Q.     So my first question is -- and again, I think that you've  
13  answered this more than once, I think. But again, when that initial  
14  PSO statement is read back to the witness, you are summarizing that  
15  back to the other agents in the room with you, correct?

16          A.     Correct.

17          Q.     All right. Now, you can understand the translation. Was  
18  that initial translation word for word from -- from the witness'  
19  statement?

20          A.     Are you -- I'm sorry. If you -- are you asking -- are you  
21  asking if the statement that the PSO was reading to the witness was  
22  word for word?

23          Q.     Correct. I'm sorry if I didn't ask it exactly like that,

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1 but yes. As far as -- if you -- if you know.

2 A. I believe it was read verbatim.

3 Q. Okay. And then you are summarizing for, again, the  
4 non-Arabic speakers in the room with you?

5 A. Correct.

6 Q. Okay. Now, as the actual formal interview process began,  
7 did you still summarize for the nonspeaking -- the non-Arabic  
8 speaking agents in the room or was that more of a verbatim  
9 translation?

10 A. It was -- it was more of back-and-forth verbatim.

11 Q. Okay. So again, and I -- you know, I think we've talked  
12 about this, but a question is asked, there's a response, and then you  
13 translate that back to the rest of the people?

14 A. There may be probably sometimes a question asked, a  
15 response, a follow-on question asked, a response. So not always a  
16 question/response being translated, but everything was translated  
17 before we move to, like, I want to call it a different topic.

18 But sometimes if I was doing the interview of the witness  
19 and I asked a question and the response necessitated me asking  
20 another question, I asked that question right away.

21 Q. Right. You wouldn't -- you wouldn't break it and then  
22 translate and then do the next question. You would just do it and  
23 then translate it back when you're done?

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1           A.     Correct.

2           Q.     All right.  And again, I think that we've talked about  
3 this quite a bit, and I don't want to go too far with this.  But I  
4 think that we've mentioned some -- you've mentioned some challenges,  
5 difficulties, whatever word you want to use, when conducting your  
6 investigation in Aden, correct?

7           A.     Correct.

8           Q.     And that's relating to the constraints placed on you guys  
9 either through the PSO or MOI or through even the memorandum of  
10 understanding between Yemen and the U.S. Government?

11          A.     There was definitely some constraints from all of these,  
12 yes.

13          Q.     All of those things.  Okay.

14                 And again, on top of all that -- and again, you mentioned,  
15 again, and I know that we had, I think, a long conversation about  
16 this during the last session, and again, you mentioned it here this  
17 morning.

18                 But then you sort of add on top of that what you learn are  
19 people at -- some people at high levels of the PSO -- I can't  
20 remember if MOI was included in that but certainly PSO -- who are  
21 sympathetic to extremist causes and groups?

22          A.     Correct.

23          Q.     All right.  So you have all those things sort of adding to

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1 all this that is happening while you guys are trying to conduct an  
2 investigation, correct?

3 A. Yes.

4 Q. Okay. And again, I think the government has asked this a  
5 couple times, I think, of you, but certainly some other witnesses,  
6 about what that meant ultimately for the investigation that was done  
7 regarding the USS COLE. And I think that the word that the  
8 government used was, was it adequate, right? Do you remember that?

9 A. I don't remember if that's the word they used, but I trust  
10 you if -- if that's what they said.

11 Q. Okay. I wrote it down, so I think that that's what you  
12 used.

13 You know, I'm just trying to get a -- I mean, you know, what  
14 does that mean? You -- I -- adequate? You know, I -- and again, we  
15 understand you're in a foreign country, right? U.S. investigators in  
16 a foreign country investigating a crime for prosecution, okay?  
17 Challenges, no matter where you are in the world. And again, then  
18 adding in all the things that you had specifically in this case. All  
19 right?

20 So what does adequate mean? What does that mean?

21 A. I can tell you from -- from my own perspective -- if the  
22 word "adequate" was used or not, but I can tell you from my own  
23 perspective that the situation on the ground in Yemen was definitely

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1 more challenging than some of the other investigations that I have  
2 worked prior to the USS COLE overseas.

3 Q. You've done all sorts of investigations, high-level, big  
4 cases before this one, right?

5 A. Correct. So definitely the one in Yemen was more  
6 challenging. However, from -- from -- again, from personal  
7 experience and results that shows, we were able to do, in my opinion,  
8 more than adequate job to be able to get enough witnesses to identify  
9 suspects, to lead the investigation or to provide us leads into the  
10 investigation, where we were able to obtain the end result that we  
11 wanted, as the FBI, to obtain. So with that challenges, I believe we  
12 were able to accomplish the mission as we initially wanted when we  
13 landed in Yemen.

14 Q. All right. Would you -- understanding that -- that  
15 answer, would you agree that the scope, the breadth, the detail of  
16 this investigation would have looked a lot different had you been  
17 able to do all the things potentially that you wanted to do or all of  
18 the things that are normally required of an FBI investigation, based  
19 on your policies and protocols?

20 A. I don't know if it would look different, but it definitely  
21 would have saved me not spending as much time in Yemen as I did. I  
22 think it was -- it prolonged the process because of the challenges,  
23 again, all of them that you mentioned, security, difficulties dealing

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1 with the Yemenis, movement around.

2           So I don't know if it would have looked different because,  
3 as I mentioned, I think we believe -- I believe we were able to  
4 accomplish what we wanted to, but maybe we would have accomplished  
5 that in a much quicker fashion than the lengthy investigation that  
6 we -- that we conducted.

7           Q.     All right. The government asked you some questions about  
8 being limited in any way in terms of the questioning of -- of the  
9 witnesses that you talked to. Do you remember that?

10          A.     Sure.

11          Q.     And I think your answer was no, you weren't limited.

12                 What -- what about things like -- and I think you mentioned  
13 also -- you know, some of the witnesses gave you addresses, and  
14 again, I -- we -- I think we've gone through this, but it's different  
15 there than it is here, but not impossible to find an address, right?

16          A.     To find an address in Yemen?

17          Q.     Yeah. Someone gives you an address of a home or  
18 business ----

19          A.     Yeah, of course.

20          Q.     Maybe -- again, maybe a little bit more time consuming,  
21 but those things can be found ----

22          A.     Right.

23          Q.     ---- located.

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1           Did -- can you recall any circumstances where you wanted to  
2 go to a location and -- and either -- and the PSO or MOI said no, you  
3 can't do that, we're not going to allow you to do that?

4           A.     I recall that some of the places that we wanted to go to  
5 we went to right away, and some of the places that we wanted to go to  
6 ended up maybe asking, you know, more than once to go to.

7           But I don't believe any of the places that we wanted to  
8 visit that -- again, I talk from my own experience. Remember, there  
9 was many teams ----

10          Q.     Right.

11          A.     ---- on the ground. But from my own experience, I don't  
12 remember asking to go to a place and I was told, no, you can't, and  
13 we never went there.

14          Q.     Okay. The places that you mentioned sort of early on, you  
15 talked about crime scenes, going to those, that -- those types of  
16 places early on?

17          A.     Correct.

18          Q.     Okay. What about -- again, same sort of question. Can  
19 you recall a time where, for whatever reason, you wanted to  
20 reinterview a witness and were prevented from doing that?

21          A.     I -- I can't recall myself.

22          Q.     You know, we've spent a lot of time talking about your  
23 witness interviews and the details of those. Was there ever a time



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1 that you wanted to record/videotape any of the interviews? Was that  
2 ever discussed early on about, you know, we should -- maybe the best  
3 way to do this would be to videotape it or audiotape, record it in  
4 some sort of way? Was that ever discussed?

5 A. No.

6 Q. Never discussed?

7 A. Not -- not that I can recall.

8 Q. Okay. And just a follow up on one thing about the  
9 government asking you about getting an address and then maybe not  
10 going out to check that for whatever reason. Do you remember that?

11 A. On the -- on the witness locations?

12 Q. Yeah.

13 A. Yeah, I remember.

14 Q. Okay. And I think your answer was that at this point  
15 these were just witnesses so there was no sort of real need to go  
16 check some of those things out. Is that ----

17 A. That's accurate.

18 Q. Okay. Did there ever come a time, while you were there in  
19 Aden doing the witness interviews, where there was a discussion  
20 either with the investigators or any of the legal representatives of  
21 the United States who were there, about an actual criminal  
22 prosecution at some point down the line? Was that ever discussed in  
23 any of the meetings that you would have attended?

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1           A.     Of course. The ultimate goal of the investigation is for  
2 prosecution. So yes, of course those were discussed.

3           Q.     Okay. Was there ever -- if you can remember, during those  
4 discussions, was there ever talk about if we're going to use -- if  
5 we're going to interview somebody and we're going to use or going to  
6 need that witness to testify, we're going to need to be able to  
7 locate, identify these people at some point in the future, right?  
8 Again, not maybe in the moment when you're interviewing them.  
9 Mr. Salim, I don't need to know where he lives today, okay?

10                 But let's say, for example, in June or August of 2001, when  
11 maybe things really begin to sort of maybe speed up a bit, was there  
12 a discussion about we know -- this is an example -- we know you  
13 interviewed Mr. Salim. We're going to make -- you need to make sure  
14 that we're going to be able to locate that person, identify him, so  
15 that if there is a prosecution at some point down the road, we can  
16 bring Mr. Salim or get Mr. Salim for trial?

17           A.     I mean, those discussions were always on the table. But  
18 if we were to locate someone or if we needed to obtain access to  
19 their homes or try to see where they are, this would have been worked  
20 through the Yemeni government. We wouldn't independently go and say,  
21 okay, now we need you to be a witness.

22                 So, you know, if we needed them to be a witness in person,  
23 that would have been worked through the Yemeni government.

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1           Q.     Can you recall if you had any -- you personally had any  
2     discussions with the Yemeni government about, hey, look, we think  
3     we're going to charge somebody. You know, there may be a trial.  
4     You're going to -- you know, we want you to keep tabs on people or,  
5     you know, go out and identify where they live or where they work so  
6     that we can get them sometime in the future. Do you ----

7           A.     I don't -- I don't recall -- I don't recall wording it the  
8     way you just worded it. But I -- I remember often speaking with the  
9     Yemeni government, saying that, you know, we may need to speak to  
10    this witness again, we may need to have access to that witness again.  
11    And, you know, the answer was always if you need to, we can  
12    accommodate.

13                But not specifically, well, we may need that witness for  
14    prosecution or we may need that witness for -- so I don't recall  
15    specifically that, but we did have discussions about potentially  
16    speaking with witnesses again and locating them if we need to.

17           Q.     Okay. And again, sort of -- generally sort of talking,  
18    right, not specific to witnesses. Again, I mentioned Salim, but, you  
19    know, again, there are a hundred here ----

20           A.     Sure.

21           Q.     ---- right?

22                You don't have a memory of -- no specific details about  
23    these 20 people we're definitely going to need? Nothing like that?

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1           A.     No, not that I -- not that I remember.

2           Q.     And again, was it -- is it your understanding that -- that  
3     neither the FBI or the Navy investigators wouldn't be tasked with  
4     locating people? That would be left up to the Yemeni government at  
5     some -- whoever they tasked it to, but it was going to be them and  
6     not U.S. parties?

7           A.     Exactly. Again, it's a sovereign country, so we wouldn't  
8     be just going and locating someone. We would have to work it through  
9     diplomatic channels and the Yemeni government to be able to locate  
10    someone and have them testify in person or via video through the  
11    embassy or -- just -- just like other investigations we have done.

12           DC [MR. PADILLA]: Judge, if you can give me one second here?

13           MJ [COL ACOSTA]: You may.

14   **[Counsel conferred.]**

15           Q.     I think you also were asked a couple questions about  
16    witnessing -- witnesses being brought in by the -- by the PSO  
17    to -- to -- to be interviewed by you. And I think you mentioned  
18    something about them maybe providing you with names of people who you  
19    may be interested in and you providing them names, sort of a -- you  
20    know, a two-way street in terms of, you know, you generated some  
21    leads on your own and PSO at the same time is generating leads and  
22    bringing people to you.

23           And I think that you mentioned that there were people that

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1 the PSO brought to you without prompting by -- by the investigators,  
2 right?

3 A. PSO used to -- they never brought us anyone without us  
4 agreeing to speak with that person. So it was never, oh, here's a  
5 person that you need to talk to. We always knew that we were going  
6 to be talking to someone if we wanted to. They didn't just bring  
7 somebody up, you know, out of the blue on that day for us to speak  
8 with.

9 Q. And I'm sorry if I -- if I confused you about that.

10 What I was asking about is they brought you people that you  
11 had not developed as leads as your -- on your own, correct?

12 A. Of course.

13 Q. Okay. And can you recall if there were ever interviews of  
14 people, witnesses, that were brought to you by the PSO that had no  
15 information about the case, didn't know anything, just were total  
16 dead-ends and why did the PSO even bring this person in? Did that  
17 ever happen?

18 A. I don't recall. I mean, I -- I believe that the people  
19 that I spoke with, if I remember correctly, all had -- I mean, some  
20 of them didn't have information about what happened but they -- they  
21 saw the explosion or they -- they witnessed something.

22 So people that we spoke with always had something to say.  
23 Some of it was much more beneficial than others, but some people

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1 were -- were not -- at least for us as investigators, we didn't feel  
2 that they were, you know -- they had enough information to follow up  
3 with or to say, oh, these are going to be great witnesses.

4 Q. Right. So -- and I -- right. And I think that that makes  
5 sense, right?

6 Not all of -- again, I'm going to make up a number. The PSO  
7 brings you 100 people. They're not all 100 critical witnesses,  
8 right?

9 A. Correct.

10 Q. They have varying degrees of what they know, what they  
11 saw, what they heard?

12 A. Of course.

13 Q. Okay. But your remember is that -- and again, I'm making  
14 up a number. The PSO brought you a hundred people, and there wasn't  
15 one single person who said I have no idea what you're talking about.  
16 That never happened?

17 A. No.

18 Q. Okay. Okay. Thanks for doing that. I think we've done  
19 that a bunch, but I want -- I did have some additional questions, so  
20 thank you.

21 So let's talk about Mr. ----

22 MJ [COL ACOSTA]: Counsel, before you move into that, let's  
23 take a recess at this time. We'll come back before you -- this is a

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1 natural breaking point in your cross-examination, so it's -- we've  
2 been going for about 85 minutes.

3 So what we'll do is we'll take a -- Agent Khoury, we're  
4 going to take a 20-minute recess. Don't discuss your testimony or  
5 your knowledge of the case with anyone other than counsel for either  
6 side while you're in this recess because you're still on the stand.  
7 When we come back in 20 minutes, I want you back on the stand.

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

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

11 **[The R.M.C. 803 session recessed at 1026, 22 February 2023.]**

12 **[The R.M.C. 803 session was called to order at 1047,**  
13 **22 February 2023.]**

14 MJ [COL ACOSTA]: The commission is called to order.

15 Government, all parties again present as before?

16 TC [MR. O'SULLIVAN]: Yes, Your Honor.

17 MJ [COL ACOSTA]: Defense?

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

19 **[The witness, Special Agent Andre Khoury, resumed the witness stand.]**

20 MJ [COL ACOSTA]: I remind you that you remain under oath.

21 Defense Counsel, you were getting to the declarants at this  
22 time.

23 DC [MR. PADILLA]: Thank you, Judge.

**RECROSS-EXAMINATION CONTINUED**

**Questions by the Defense Counsel [MR. PADILLA]:**

Q. So let's get into the first one, and that's Mr. Salim. Okay, Mr. Khoury?

A. Yes.

Q. Great. Before we get into what Mr. Salim told you, did you -- prior to preparing for this session with the commission, did you have an independent memory about Mr. Salim and what he told you during the interview process?

A. No.

Q. I'm going to ask you about -- I think we have seven witnesses set for today. I'm going to ask you the same thing about all of them, right? And I think I asked you about all the witnesses during your prior testimony. So just so you know, I'll be asking the question.

Is it fair to say then that your testimony here is a product of you reviewing the 302 in preparation for this set of hearings?

A. Yes.

Q. In addition to the 302, did you have access to either your notes of the interviews or any other agents' notes of the interviews?

A. I didn't -- I did not have access to -- to that, like written notes or anything like that.

Q. Okay. So you -- for all the seven that we have here



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1 today, you just reviewed the 302s?

2 A. Correct.

3 Q. Okay. And the government asked you about some of  
4 the -- some of the details in the 302 about what Mr. Salim looked  
5 like, I think his age, his address and things like that.

6 Prior to reviewing the 302, would you have any idea what  
7 Mr. Salim looked like, his age, where he lived, any of those fine  
8 details?

9 A. Probably not.

10 Q. And this is -- again, this is a person who was cutting  
11 fish on the day of the explosion, correct?

12 A. Correct.

13 Q. Now, does he -- maybe this doesn't really matter, but just  
14 to sort of get, maybe get a little bit more into this, did he -- he's  
15 cutting fish, right? That's what he -- he does. I don't -- you  
16 know, like every other day there on -- on that stretch of  
17 Al-Burayqah, correct?

18 A. Yes.

19 Q. Does he catch the fish and sell it to restaurants or does  
20 he work for the restaurant and that's where they cut the fish and  
21 take it to the restaurant?

22 A. I believe he -- he had a couple of restaurants -- and  
23 again, this is just recollection. I believe he had a couple of

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1 restaurants that, you know, he had an agreement with that he provided  
2 them with fish to sell.

3 Q. Okay. And again, this is -- the government asked you some  
4 questions about this exact location here in Al-Burayqah. And this  
5 is, again, just south of the bridge that connects Aden proper to the  
6 north and then Little Aden to the south, correct?

7 A. Yes.

8 Q. And if you're driving south across the bridge, the area  
9 that we're talking about would be on the left-hand side, correct?

10 A. Yes.

11 Q. All right. And as you turn off of the bridge and make  
12 that left, the water would be on the north side there to the left as  
13 you're facing sort of the deck area, and then the Rabash kiosk sort  
14 of places, correct?

15 A. Yeah.

16 Q. All right. Do you have -- did you go out to that  
17 location? Did ----

18 A. Yeah.

19 Q. Okay. I -- I thought maybe you had mentioned that, I  
20 think, in either October or December, that you had been out there.  
21 Okay.

22 Did you go out there more than once?

23 A. I believe so, yes.

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1 Q. During the times that you had gone out there, did you ever  
2 have access to any of the people that work there, live around in that  
3 area, or did you just go to -- to get a feel for what it looked like?

4 A. No, I -- I mean, I -- we went out there to -- to look. We  
5 didn't go out there to speak with people. However, I do remember  
6 that on a couple of occasions when we went, the Rabash family  
7 recognized us and they were like, hey, you know, we're here, hi, how  
8 are you, you know, so ----

9 Q. Okay, that was my memory too. I -- I -- I  
10 didn't -- couldn't remember if that was you or somebody else, but I  
11 remember that part. Okay.

12 And again, I think I asked you this when -- when you told me  
13 that the first time, but you didn't ask the Rabash family any -- any  
14 other questions about anything related to the USS COLE investigation?

15 A. No.

16 Q. All right. When you went out there, those couple of  
17 times, was the PSO always with you?

18 A. We -- I have been on -- on that bridge without Yemeni  
19 officials, so the answer is no. I -- I've been -- I've been there  
20 without Yemeni officials as well.

21 Q. All right. And this is -- this goes to -- to both this  
22 interview and also the next interview that we're going to talk about.  
23 There -- in the second interview that you -- that you talked about

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1 here this morning, this is a policeman who works on the bridge; is  
2 that right? His -- his -- I don't know what -- the best way to  
3 describe what he works in. A hut? A shack?

4 A. He's got a little -- like a little -- yeah, a little hut.

5 Q. Okay. In my mind, I'm envisioning something like a -- at  
6 a parking garage, right, the little hut that's when you go into a  
7 parking ----

8 A. Yeah.

9 Q. That's what I'm seeing, but it could be entirely different  
10 than that.

11 So is that physically located on the bridge or is it  
12 somewhere off the bridge?

13 A. If I remember correctly, there was a small section like  
14 almost like a walkway on the bridge that I believe that's where it  
15 was. I don't remember exactly where it was, but I remember the hut  
16 itself. But I believe there was a small section where -- where that  
17 shack was.

18 Q. Okay. Can you recall if that -- again, whatever we're  
19 calling it, a hut or a shack, with -- with the policeman, was that at  
20 the south end of the bridge, the middle of the bridge, the north end  
21 of the bridge? Do you have any idea where that was located?

22 A. I -- I don't remember exactly. I know -- I know it was  
23 not -- it was not smack in the middle of the bridge, but I don't

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1 remember how far was it -- I -- I don't remember. I can't -- I'm not  
2 going to make a statement on that.

3 Q. That's okay. And I know it's tough to remember these  
4 things after so much time.

5 What about -- again, I mentioned that the orientation of the  
6 bridge is north-south, correct?

7 A. I believe yes, you're correct.

8 Q. All right. Can you recall if the police hut or shack was  
9 on the east side of the bridge or on the west side of the bridge?

10 A. I believe the shack was on the side that -- I don't  
11 remember.

12 Q. Okay. So you talked to Mr. Salim, and he mentions to you,  
13 again, that he's at this location a lot, every other day cutting fish  
14 for the businesses that he provides fish to, correct?

15 A. Yes.

16 Q. He's there a lot, knows the people who frequent that area?

17 A. Yes.

18 Q. Knows the area fairly well, right? He's there almost  
19 every other day?

20 A. Correct.

21 Q. And in your interview, he mentions to you that he sees the  
22 boat for the first time on October 12th, correct?

23 A. Correct.

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1 Q. Never seen that boat before?

2 A. Correct.

3 Q. But he also mentions to you that he has seen those types  
4 of boats before in that general sort of area?

5 A. I don't know if he said specifically those types of boats.  
6 Because I remember him saying this boat was unusual since it had a  
7 steering wheel because he felt that boats with steering wheels were  
8 only military boats. So I don't know if he specifically said similar  
9 boats.

10 You know, he said he's seen boats like it maybe but I  
11 don't -- I don't know -- I don't remember exactly the way he worded  
12 it, but I do remember him saying that he was surprised because he  
13 thought that boats with steering wheels were only operated by the  
14 military.

15 Q. Do you recall in the interview that Mr. Salim told you  
16 that he had never seen the boat before but has seen similar smaller  
17 boats?

18 A. Yes.

19 Q. That's -- that's accurate, right?

20 A. Correct.

21 Q. Okay. And again -- again, he tells you that he believed  
22 that the engine was 85 horsepower?

23 A. Correct. He said it was -- it was a large black engine.

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1 Q. He also tells you that he couldn't see any markings on  
2 the -- on the boat?

3 A. Correct.

4 Q. Couldn't see any numbers on the boat?

5 A. That's true.

6 Q. He also details a conversation that he has with the Rabash  
7 family, correct?

8 A. Yes.

9 Q. Again, he's in that area all the time, so he obviously  
10 would know the Rabash family. And he tells you that he knows that  
11 the Rabash family owns a shack or a kiosk there, correct?

12 A. Yes.

13 Q. Let me ask you this, about the Rabash kiosk -- and I know  
14 you mentioned during direct that some of the witnesses mentioned that  
15 that's not a place where beach-goers would go to have a picnic or put  
16 up an umbrella or things like that, right?

17 A. Yes.

18 Q. Maybe people would go to -- to take a look at the ocean,  
19 stay for the little bit, and then leave, right?

20 And I think in there that you mentioned during direct,  
21 I -- I think, that there was at least one place where people could go  
22 to get things, and that was the Rabash kiosk, right?

23 A. To go get things?

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1 Q. Yeah, do you know what they did there?

2 A. At the Rabash? I mean, I -- I know it was just a small  
3 kiosk where people used to go hang out, that -- you know, people that  
4 knew the Rabash. It's not anybody that just can go and hang out.

5 Q. Okay. So the Rabash -- so from your understanding, the  
6 Rabash family had that just for their own personal use?

7 A. Yeah, them and their friends.

8 Q. Okay. They didn't sell anything out of there? There  
9 wasn't -- they weren't selling, you know, I don't know, drinks,  
10 lunch, food, nothing like that?

11 A. I don't -- I don't remember if, you know, they had  
12 a -- like a small cooler where they -- you know, somebody asked for a  
13 bottle of water. I don't remember that. But it wasn't like a shop.

14 Q. Okay. Besides the Rabash kiosk, were there other kiosks  
15 like that on that stretch of beach?

16 A. Not -- not in that vicinity.

17 Q. There were other kiosks but maybe not right there?

18 A. Yeah, not -- not in that vicinity. Maybe -- maybe like,  
19 you know, further north or further south or something. There may be,  
20 like, a small place to stop and get a bottle of water, but not in  
21 that vicinity.

22 Q. Okay. All right. So Mr. Salim, again, details a  
23 conversation that he has with Mr. Rabash, correct?



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1           A.     Yes.

2           Q.     And Mr. Rabash tells him that he had seen these same guys  
3 once before, correct?

4           A.     Yes.

5           Q.     He also details about the crane being put into the water,  
6 correct?

7           A.     The boat being put in the water by the -- yeah, with the  
8 crane.

9           Q.     Right. And he relays to you -- again, this is his  
10 perception of what he's seeing -- that the boat didn't look heavy,  
11 correct?

12          A.     Correct.

13          Q.     And again, I think you mentioned on -- on direct about why  
14 he thought that someone would have to use a crane on that particular  
15 stretch of beach, right?

16          A.     Yeah.

17          Q.     The way it was constructed, it was deep there, and  
18 there -- way the deck was, and there was maybe some barriers to  
19 people just backing in and putting a boat in, right?

20          A.     Yeah, he said it was difficult to do that.

21          Q.     He also mentions during the interview that he actually  
22 sees the boat drive off, correct?

23          A.     Correct.

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1 Q. At the time that the boat drives off, he sees that the  
2 crane is still there at that location, right?

3 A. I believe he said that the crane was still next to the  
4 vehicle when he left.

5 Q. Right. So the boat leaves. He's still there. The crane  
6 is still there. And then he leaves to go to the -- the restaurants,  
7 right?

8 A. Yes.

9 Q. Okay. Right. So -- but again, boat leaves, crane is  
10 still there, then he leaves, right?

11 A. Yes.

12 Q. Okay. And again, never mentions that he has seen the two  
13 people that he saw there that day on any other day, right, before  
14 that?

15 A. That's true.

16 Q. First time he saw them. Okay.

17 Your interview of Mr. Salim was conducted on the 2nd of  
18 January 2001, correct?

19 A. Yes.

20 Q. Did you have -- as typical with these interviews, did you  
21 get a sort of heads-up ahead of time that you -- that Mr. Salim would  
22 be made available to you?

23 A. Yes.

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1           Q.     And again, I -- you know, I think I've asked this question  
2     of -- of everybody that we've talked about, but prior to the Salim  
3     interview, did you have any idea how he was potentially connected to  
4     this case, what he saw, what he heard, anything like that? Any sort  
5     of details?

6           A.     I don't -- I don't recall if -- if one of our Rabash  
7     family members, you know, said that there were people also there that  
8     we need to speak with, or if the Yemeni government just told us that  
9     those -- those -- there were some individuals that may be of interest  
10    to speak with. I don't recall that specifically.

11          Q.     And usually -- that's my next question, right? The next  
12    question I have is: How was this person identified as a potential  
13    witness in this case, right?

14          A.     Yeah.

15          Q.     And you've talked a little bit on cross here, and then  
16    certainly on direct, about some other people who were at that  
17    location, including the Rabash family?

18          A.     Yes.

19          Q.     So that could have been possible. You don't have a memory  
20    of how that happened, though?

21          A.     I don't remember, yeah. I don't remember if -- if it was  
22    the Rabash family who told us that or if it was someone  
23    from -- within the Yemeni government or -- or it was somebody else

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1 that was also present there with Mr. Salim who says, oh, Mr. Salim  
2 was with us. I don't remember those details, how -- how we got to  
3 Mr. Salim specifically.

4 Q. You mentioned you had been to this location a couple  
5 times. Was there ever a time where you went to a location -- you  
6 know, maybe like using this as an example, where you went to a  
7 location, saw some people there and said maybe they saw something and  
8 asked the PSO, hey, can you see if those -- that person or people  
9 would be available to talk to us, if they heard anything, if they saw  
10 anything, anything -- do you remember anything like that ever  
11 happening?

12 A. No. Yeah, not -- not for -- not for random people that  
13 were in -- in the area that we saw, you know, walking or driving  
14 or ----

15 Q. Maybe this is -- maybe this location is a better sort of  
16 example, because, again, there were some people who were identified  
17 who were there, would have been maybe in a position to see something,  
18 maybe not -- maybe somewhere else.

19 But -- but that -- you don't remember something like that  
20 happening?

21 A. I -- I actually don't remember when I -- when we went to  
22 that areas, as an example. I don't remember if there was others that  
23 we -- we saw hanging out there, beside just seeing, you know, the

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1 Rabash family. So I don't -- I don't -- I don't recall that there  
2 was people actually around lingering when we were there. At least  
3 that's my recollection.

4 Q. Okay. Did you ever go to any of the crime scenes?

5 A. Yeah, of course.

6 Q. Okay. And maybe that another good example. You go to  
7 a -- one of the scenes -- let's say a house, for example, where maybe  
8 there would be some neighbors outside. You know, there's a  
9 residential neighborhood.

10 Did you ever, you know, knock on doors and ask if anybody  
11 had heard/saw anything, anything like that?

12 A. I -- I did not, no.

13 Q. Are you aware of anybody on -- from any of the U.S.  
14 investigative side who -- again, using the example of a residential  
15 neighborhood with a house and, you know, go -- you know, Agent Smith,  
16 go knock on that door next door and see if anybody heard or saw  
17 anything like that?

18 A. So I -- I don't remember. But I can tell you that the  
19 word was -- was known in Aden that the FBI was there to conduct an  
20 investigation. And I know that people in Yemen were intrigued by the  
21 FBI, not just normal residents. They were intrigued at the FBI.  
22 They wanted to know who the FBI -- how the FBI looks like, who they  
23 are.

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1           So I -- I don't remember in which location, but I remember  
2 in one of the locations somebody had approached us and says, oh, you  
3 know, I live right here, you know, something to that fact or -- and I  
4 believe there was a follow-up interview with that person asking  
5 the -- the Yemeni government can we speak with him, but I don't  
6 remember which location that was.

7           Q.     Okay.

8           A.     But when we went to some of these locations people were  
9 out because they were just -- they wanted to see ----

10          Q.     A bunch of handsome guys running around, yeah, absolutely.

11          A.     ---- who the FBI ----

12          Q.     Yeah. Absolutely.

13          A.     ---- how do they look like.

14          Q.     Okay. And Mr. Salim was previously interviewed by the  
15 PSO, I think you mentioned, correct?

16          A.     Correct.

17          Q.     I believe that was on 14 October of 2000.

18                 Do you know any of the circumstances surrounding that  
19 interview with Mr. Salim and the PSO?

20          A.     I don't.

21          Q.     Do you know where it happened?

22          A.     No.

23          Q.     How long it lasted?

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1           A.     No.

2           Q.     Whether he was in custody at the time that he was  
3 interviewed by the PSO?

4           A.     I don't know.

5           Q.     This is another question that I -- that I -- I think I  
6 always ask. Is that a question you would have asked a witness at the  
7 time that you were interviewing him?

8                   In other words, a witness is prevent -- presented to you.  
9 You know he's given a prior statement to the PSO. He's sitting in  
10 front of you and you say to Mr. Smith, were you in custody at the  
11 time that -- that the PSO interviewed you? How did they treat you?  
12 Anything like that?

13          A.     I wouldn't have asked that.

14          Q.     And that's because in the room while you're doing the  
15 interview is at least somebody from the PSO?

16          A.     Yeah, but I -- I don't know -- I would -- yes, you're  
17 right, but I don't think this is why, like, I wouldn't ask that  
18 question. Because to me, I -- he's a witness that's sitting in front  
19 of me to interview, and he was there voluntarily. He didn't have any  
20 sign of abuse. He was not shackled. You know, he was at free will.

21                   So to me there's no reason to say to him, oh, when you were  
22 interviewed by the PSO, were you in custody or were you not in  
23 custody? Like, that wouldn't add to my investigation. You know, we

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1 were focused on specifically what that person may provide  
2 information-wise to help us out. So I -- I wouldn't have asked that  
3 question, regardless.

4 Q. You know, I -- I understand your answer, and I think that  
5 I asked this question because, in my mind, I think it would be  
6 relevant to you at the time. And the reason I say that is because  
7 that's based on some of the information that either you or your  
8 colleagues have given us during this process.

9 And what I mean by that is that we know that the PSO did  
10 take people into custody ----

11 A. Sure.

12 Q. ---- right?

13 We know that the PSO didn't treat their own people maybe  
14 humanely, that there were maybe some abuses that the PSO dished out  
15 to their own people, right?

16 A. I have asked that question of people that I know were in  
17 custody at the time of our interviews. I've asked them that  
18 question, even with the PSO present. And I've asked that question  
19 when the PSO was not present -- or Yemeni officials, I should say.  
20 It's not always PSO.

21 So when I know that someone is in custody and I'm talking to  
22 them, then I ask them: Are you being treated well? Is there  
23 anything? But for a witness that I don't know if they were in



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1 custody or not at the time I'm talking to them, I -- I wouldn't ask  
2 that question.

3 Q. Okay. And again, I don't want to -- I don't want to press  
4 you on that, but I -- but again, as we're thinking about these  
5 interviews happening and people being brought in to you, again,  
6 understanding the PSO and how they operated -- and again, you know,  
7 you mentioned the word that they were there voluntarily and I think  
8 that that's what my question is getting to, right?

9 Were they -- you know, did they come on their own? Were  
10 they forced to -- to -- to be there? You know, what were the  
11 circumstances of them being identified and initially interviewed by  
12 the PSO?

13 So I -- I think that's where I'm going with that question.  
14 Now at the time I understand that you may have thought not really  
15 important for me right now, right? But I think sort of looking at  
16 the investigation ----

17 ATC [LT SCHWARTZ]: Objection. Your Honor, I'm sorry. Is  
18 there a question? At this point, I feel like counsel is testifying.

19 MJ [COL ACOSTA]: Defense counsel, response?

20 DC [MR. PADILLA]: I don't think I'm -- I'm trying to, I  
21 think, explain the basis for my question. Hopefully in a question.

22 MJ [COL ACOSTA]: Let's get to the question portion of your  
23 question.

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1 DC [MR. PADILLA]: Right.

2 Q. So that's why I -- I ask that question. And so, again, I  
3 think you've answered it. But at the point that you're doing it,  
4 again, understanding sort of how the PSO operated, you didn't feel it  
5 was important at that point to ask?

6 A. Correct.

7 Q. I think you also mentioned that the other reason may be  
8 because, again, the PSO is sitting in the room?

9 A. That -- that's not a reason because, as I mentioned  
10 earlier, I have asked that question of people who I know were in  
11 custody while PSO, MOI, and other Yemeni officials were in the room.

12 But with the witnesses, when they bring them in, they are  
13 not shackled. They're walking in freely. We've asked them, you  
14 know, are you here, you know, to talk to us? Yes. Will you be  
15 willing to talk to us again if we need to? Yes. There is no sign of  
16 abuse.

17 I had no indication they were in custody. That's why I  
18 never asked. If I had an indication they were in custody, it  
19 wouldn't have prevented me to ask them how they were treated, even  
20 with the PSO being there.

21 Q. Okay.

22 A. Or I keep saying PSO, but Yemeni officials. Because I've  
23 done it with others when I knew that they were in custody and we're

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1 talking to them.

2 Q. Okay. So -- so if I understand you right -- and  
3 I -- again, I don't want to go too far on this. We may have already  
4 passed that point.

5 But if you did either know that someone was in custody at  
6 the point that they were interviewed by the PSO or you suspected  
7 that, that's the point that you would have -- may have -- may have  
8 asked those questions about that?

9 A. Correct.

10 Q. Okay. Now we can move on.

11 Again, as it relates to Mr. Salim, you have no idea if he  
12 was forced, coerced, or threatened in any way to talk to the PSO?

13 A. No.

14 Q. Whether any of his family members were forced or coerced  
15 in any way ----

16 A. No.

17 Q. ---- for him to agree to talk to the PSO?

18 Whether he or any of his family members were promised  
19 anything by the PSO in order for him to -- to speak -- for him to  
20 speak to them?

21 A. No.

22 Q. Do you have any idea if during that PSO interview with  
23 Mr. Salim if he was shown photographs during that interview process?

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1           A.     I wouldn't know that.

2           Q.     You don't know whether he made -- if he was shown  
3 photographs if he made any identifications of anybody?

4           A.     I don't know.

5           Q.     And again, if he was shown any photographs, you don't know  
6 what photographs he may have been shown by the PSO?

7           A.     Correct.

8           Q.     Can you recall if Mr. Salim was brought in to be  
9 interviewed with any -- any other witnesses? And really, what I mean  
10 is some of the other people who would have been around on October the  
11 12th and would have seen the same things he did.

12                    You know, we've talked about Mr. Salim and a couple of his  
13 other friends who -- or coworkers who would have been there that same  
14 day, the Rabash family. Do you if -- can you recall if during your  
15 interview if those people -- any of those people came together to the  
16 interview?

17           A.     I don't remember.

18           Q.     You don't remember seeing Mr. Salim with, again, someone  
19 else who was there with him on October 12th in one of the other rooms  
20 or anything like that?

21           A.     I don't remember exactly Mr. Salim himself, but I think I  
22 had mentioned before that sometimes, like, walking into the room  
23 where we were going to be doing the interviews, I did see some people

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1 sitting around, you know, talking to each other. But I don't  
2 know -- I don't remember if Mr. Salim or it was another person, but I  
3 have seen them in -- you know, sitting in a room.

4 Q. Right. And that makes sense. I mean, we've talked about  
5 this for a while now, that you would schedule interviews and do, you  
6 know, four, five, six, seven, you know, sort of interviews back to  
7 back to back, right?

8 A. Correct.

9 Q. So it makes sense that maybe there would be -- again, I'm  
10 not saying that grouped together based on what maybe they saw, but  
11 certainly, you know, people being brought in around the same time to  
12 be interviewed?

13 A. Yeah. Exactly. I mean, I'm -- I'm guessing because  
14 you've got to remember that the people that used to -- you know, from  
15 the PSO or from MOI were also plainclothes, so when there was people  
16 in a room, I don't know if -- you know, I don't know if either they  
17 were witnesses or, you know, some of them were Yemeni officials with  
18 the witnesses. I don't remember, you know, if they were clumped  
19 together or if there was only one or two of them or I ----

20 Q. As it relates to Mr. Salim because I -- you know,  
21 he's -- he's someone that, again, was -- was with some other people  
22 at the same time doing the same thing and -- and perhaps would have  
23 seen or heard maybe some of the same stuff.

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1           Did you ever ask Mr. Salim or -- or witnesses sort of in his  
2 same situation if they had an -- and Mr. Salim was a great example,  
3 right: Did you talk to the other two guys who you were cutting fish  
4 with about what you saw or heard that day? Did you ever ask that  
5 sort of question?

6           A.     I don't -- I don't remember asking him that question.

7           Q.     Right. And again, Mr. Salim is a good example because  
8 this is a location that he goes to every other day with the same  
9 group of people, right?

10          A.     It could be with the same group people or -- or not. I  
11 mean, he said he was there that day with those two people. And I  
12 know that we have spoken to those two individuals. But I don't know  
13 if he went there every other day with them or with others.

14          Q.     But you don't recall if that was a question that you ever  
15 asked him: Did you talk to those guys about, you know, what you saw,  
16 what you heard?

17          A.     I -- I don't remember if we asked that question.

18          Q.     At the time that Mr. Salim was brought in to the interview  
19 room to be interviewed, did you have any idea who he was through a  
20 photograph or any sort of ID to -- to identify who this person was  
21 before he came in?

22          A.     No.

23          Q.     You didn't confirm his identity through a Yemeni ID or

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1 driver's license or passport or any other document?

2 A. Correct.

3 Q. He wasn't fingerprinted or photographed to -- to be able  
4 to identify him later, again, should you need him as a potential  
5 witness down the road?

6 A. No.

7 Q. Did you do any follow-up investigation to confirm anything  
8 about his identity or anything he told you about his version of  
9 events, in other words, his address -- I think you mentioned his  
10 address, place of work, anything like that?

11 A. No.

12 Q. Are you aware of any other law enforcement agency that did  
13 any of that?

14 A. I'm not aware.

15 Q. Never got a cellphone or a landline number for Mr. Salim  
16 to be able to contact him at any point?

17 A. No.

18 Q. You never gave him your contact information so that he  
19 could contact you should he need to?

20 A. No.

21 Q. You don't know if Mr. Salim -- again, this is during your  
22 interview of him -- whether Mr. Salim was promised anything to appear  
23 for your interview?

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1           A.     I'm not aware.

2           Q.     Or whether his family members were promised anything for  
3 him to agree to be interviewed by the FBI?

4           A.     Yeah, I'm not aware.

5           Q.     Don't know if he was forced, threatened, or coerced, or  
6 any family members forced, threatened, or coerced in any way for him  
7 to agree to be interviewed by the -- by the FBI?

8           A.     No.

9           Q.     You don't know if he or any family members were being held  
10 in jail at the time that he was interviewed by you?

11          A.     No.

12          Q.     It's fair to say that the 2 January 2001 interview that  
13 you did with Mr. Salim was the one and the only time that you had  
14 contact with him?

15          A.     That's true.

16          Q.     And you never made any attempts to locate Mr. Salim after  
17 that day to see if he would be available to testify or trial -- to  
18 testify at a hearing or trial in this case?

19          A.     Correct.

20          Q.     You're not aware of any other either U.S. or foreign  
21 agency or government that has made any attempts to locate Mr. Salim?

22          A.     No.

23          Q.     Let's talk about the second statement that you got, or the



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1 second statement that we've talked about this morning; that's  
2 Mr. Tarnish **[sic]**. This is the police officer that was stationed on  
3 the bridge, correct?

4 A. Correct.

5 Q. All right.

6 MJ [COL ACOSTA]: Counsel, just for clarity, and I'm not one  
7 to -- to get -- I get the names wrong all the time. I think it's  
8 Tarnish, right? Did you say Tarnish or -- I couldn't tell what you  
9 said. I just wanted to make sure that we're getting it clear on the  
10 record.

11 DC [MR. PADILLA]: I actually think said Tarnish.

12 MJ [COL ACOSTA]: Okay. That's fine. That's fine. I'm just  
13 trying to make sure that I'm tracking, you're tracking, and the  
14 witness is tracking. Go ahead.

15 DC [MR. PADILLA]: Yes. And I think you're right. I think  
16 it's Tarnish, but I got confused with the H and the N there. So yes.

17 MJ [COL ACOSTA]: Go ahead.

18 DC [MR. PADILLA]: But, yes, this is witness number 45.

19 MJ [COL ACOSTA]: Yes.

20 Q. I want to talk to you -- before we get into -- sort  
21 of -- of what -- of what he saw and what he told you, I want to ask  
22 you before then about his interaction with the PSO the night of the  
23 USS COLE bombing.

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1           You mentioned on direct that he told you that after the  
2 bombing he was still working, right?

3           A.     Yes.

4           Q.     That night?

5           A.     Well, not -- so he came in on -- at 7:00 in the morning on  
6 October 12th.

7           Q.     Correct.

8           A.     And then he works 12-hour shifts -- I'm sorry, 24-hour  
9 shifts, so he would have been there.

10          Q.     The whole night, 24 hours?

11          A.     Correct.

12          Q.     All right. And I think that you said that the PSO came to  
13 him 2:00 in the morning that night, right?

14          A.     On the 13th ----

15          Q.     Right.

16          A.     ---- 2:00 in the morning.

17          Q.     Right. It would have been past midnight, so it would have  
18 been now the 13th.

19          A.     Correct.

20          Q.     But still during that same shift?

21          A.     Correct.

22          Q.     Okay. So literally hours after the explosion the PSO  
23 shows up and wants to ask Mr. Tarhish if he knows anything, right?

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1           A.     Yes.

2           Q.     Okay.  Now ----

3           A.     I mean not hours, correct?  Because they showed up at 2:00  
4 in the morning.

5           Q.     Right.  So we have the COLE bombing about 11:18 a.m.  So  
6 some 12 hours later, maybe ----

7           A.     Yes.

8           Q.     ---- perhaps, right?  Okay.  Fair enough.

9                   And it wasn't sort of clear how it came out, but is it your  
10 understanding that the PSO came out to talk to him at that location  
11 based on him reporting something back to his headquarters?  Or did  
12 the PSO just come -- come out there that night because of their own  
13 investigative leads, whatever they may have had?

14           A.     I don't want to speculate, but if I had to guess, it would  
15 be because he had reported the incident to his police commander,  
16 police chief, and then they -- they reported it to the PSO, because  
17 this will be outside of their purview to -- to do anything.  You  
18 know, the police in -- the police in Yemen were -- didn't have any  
19 authority to do much at all.

20                   So, again, I don't want to speculate, but I would assume  
21 that he had reported to his chain of command that there was a car  
22 that's left there.  It's already past midnight.  He's seen that car  
23 before.  He's seen two people that used to drive it.  It was always

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1 about half an hour. And, you know, they contacted PSO and they said  
2 you might want to go check. Again, no speculation, but that's what I  
3 would guess.

4 Q. Right. And -- right. This is not the local Aden police  
5 department showing up because of that report, right? This is the PSO  
6 coming out now to investigate this, right?

7 A. Correct.

8 Q. All right. Big distinction, especially that night, right?

9 A. Correct.

10 Q. Did you ever ask him any details about -- again, it's been  
11 a long time, but did he place a call? Did that get -- did that make  
12 it into a formal report? Was anything written down? Did anybody  
13 track any of those documents down to see what he actually said in the  
14 report, when the report was filed, where that report went, how it got  
15 to the PSO, any of those details?

16 A. No.

17 Q. Again, you're speculating, but all we know is that at  
18 2:00 a.m. the PSO shows up.

19 A. True.

20 Q. During the interview he mentions to you that, again, he's  
21 a police officer, been there since 1994, right? Works 24 hours?  
22 Knows the area very well ----

23 A. Yeah.

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1 Q. ---- right?

2 Knows the people around that bridge area very well, correct?

3 A. True.

4 Q. Knows the Rabash family?

5 A. Yes.

6 Q. He mentions to you that he's seen boats launched from that  
7 deck area before, right?

8 A. Yes.

9 Q. I think he also mentions that, although he'd seen boats  
10 launch from -- from that location, never -- he'd never seen a crane  
11 there?

12 A. Correct.

13 Q. And he mentions to you that he had seen the -- I think  
14 what he said was the Nissan and the boat and the trailer once every  
15 couple weeks, right?

16 A. True.

17 Q. Maybe they would come on a Thursday or Friday, take the  
18 boat out and then come back, right?

19 A. Yes.

20 Q. And he says that he -- he begins to notice that -- I think  
21 the government said sort of two months before October the 12th, so  
22 maybe August sort of time frame, give or take, right?

23 A. Sure.

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1           Q.     And in that amount of time, he tells you not that -- not  
2     just that he's seen the boat before, right?  He tells you I've seen  
3     that boat 12 times?

4           A.     Approximately 12 times.

5           Q.     Okay.  And that the -- to him, that boat looked different  
6     than -- than the normal boats that he sees in the area.  That's what  
7     he tells you, right?

8           A.     Yes.

9           Q.     And he tells you that it was a foreign-made boat?

10          A.     Yes.

11          Q.     Did you ask him to explain what he meant by that?

12          A.     If it's not in the 302, we -- we didn't ask that question.

13          Q.     Okay.  Did you ask him how he was able to determine that  
14     the boat was fiberglass as opposed to wood or anything else?

15          A.     No.

16          Q.     So, again, he gives you sort of a general description of  
17     where he is in relation to the deck area and the Rabash kiosk, right?

18          A.     Yes.

19          Q.     And I think that you mentioned that it was quite a ways  
20     away from where he was stationed in his hut, right?

21          A.     Yeah, I would say somewhere between 500 and 800 yards.

22          Q.     He never -- is it fair to say that that is the only way in  
23     which he saw the boat?  In other words, he never got out of the shack

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1 and went and walked down there and had direct contact with the boat,  
2 right?

3 A. No.

4 Q. All of the times that he's telling you that he's seen the  
5 boat, it's at -- it's from that distance, right?

6 A. Correct.

7 Q. He mentions to you that the boat is about five meters in  
8 length?

9 A. Yes.

10 Q. Couldn't see if there was any numbers on the engine?

11 A. Correct.

12 Q. He mentions to you that he sees two people in the boat,  
13 right?

14 A. Correct.

15 Q. He mentions to you that he never saw those two people  
16 interact with anybody else there on the beach?

17 A. True.

18 Q. He even tells you that he never saw them interact with the  
19 Rabash family and only learned that the Rabash family had contact  
20 with them after the explosion, right?

21 A. He did say that he -- if I'm not mistaken, he did say they  
22 were at the Rabash kiosk, but what he meant is he didn't know that  
23 they knew the Rabash family.

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1 Q. He mentions to you that -- again, that he sees these two  
2 people. Now, he says that maybe they're the same, but he's not sure  
3 about it, right?

4 A. I'm sorry. Say that again.

5 Q. He mentions to you that he sees two people -- always sees  
6 two people with the boat, correct?

7 A. Correct.

8 Q. And that he thinks they're -- they may be the same people  
9 all the time but -- but he hadn't -- he's not real sure ----

10 A. Correct.

11 Q. ---- right?

12 It's a long ways away. He can't really see.

13 A. Correct.

14 Q. All he really knows is he sees two people?

15 A. Correct.

16 Q. As a matter of fact, he can't even give you a real  
17 description of either one of these two people, right, sort of medium  
18 height, medium build? That's -- that's it, right?

19 And he also tells you, again, he begins his shift on -- on  
20 the -- on October 12th at 7:00 a.m. Never sees the boat that  
21 morning, right?

22 A. He never saw the boat? I'm sorry.

23 Q. The morning of October the 12th?



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1 A. He did not -- he did not see it.

2 Q. Didn't see a crane on the morning of October the 12th?

3 A. He did not.

4 Q. After the explosion, he goes down and he  
5 sees -- ultimately he sees the truck and the trailer, right?

6 A. Correct.

7 Q. At that time, he doesn't see the crane there?

8 A. No.

9 Q. And he doesn't see the Rabash family, right?

10 A. No.

11 Q. He also mentioned that the truck and I believe the trailer  
12 were ultimately towed away, right?

13 A. Yes.

14 Q. That was done by the PSO?

15 A. He didn't say, but I believe that's who towed it.

16 Q. Okay. Can you recall -- I think you said -- I think you  
17 testified that Mr. Tarhish said that it got towed the next day or  
18 something along those lines; is that right? Shortly thereafter?

19 A. I don't remember specifically his words on -- on when it  
20 was towed, but I remember him saying he and the PSO officer went.  
21 They looked at the truck. It was locked. They realized the license  
22 plate. And then it was -- thereafter, it was towed.

23 Q. Okay. Can you recall if ----

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1 A. Because I remember him saying he watched it.

2 Q. For a bit that evening?

3 A. Until -- yeah, from 2:00 in the morning, he watched it  
4 until 5:30 that evening, so about an hour and a half before probably  
5 the end of his shift.

6 Q. Okay. Can you recall if -- when U.S. law enforcement was  
7 given access to that truck and the trailer?

8 A. Yeah, I don't -- I don't remember exactly when we had the  
9 access.

10 Q. Do you know that ultimately that did happen? They did get  
11 access to it?

12 A. I believe we did.

13 Q. Do you know what they may have found in the truck? Do you  
14 have any idea what, if anything, was located in the truck?

15 A. I don't -- I don't know because this was -- you know, the  
16 Evidence Response Team who went and -- and did the -- you know, the  
17 forensic on the truck, so that wasn't -- that wasn't part of ----

18 Q. You weren't a part of that. Okay.

19 And consistent with sort of how the interview process worked  
20 for you folks, at some point you were made aware that Mr. Tarhish  
21 would be available for you to be interviewed, correct?

22 A. Correct.

23 Q. Do you have any idea when that was, the day before, the

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1 day of?

2 A. I don't remember.

3 Q. Do you have a memory of being told that this was a police  
4 officer who may have seen or heard something that day before you  
5 interviewed him? Or was just a name provided to you, and that's it?

6 A. I don't recall if they told us you're going to be  
7 interviewing a police officer. Maybe they did. I don't remember.

8 Q. And again, I asked you this question earlier. Prior to  
9 your testimony here this week regarding Mr. Tarhish, did -- do you  
10 have -- if I would have told you these are the -- this is the person  
11 that we're going to be talking about, would you have any idea a  
12 couple weeks ago who this person was and how he was related to this  
13 case ----

14 A. No.

15 Q. ---- just based on the name? No idea.

16 As we sit here today, do you have a memory of talking to  
17 Mr. Tarhish, what he looked like, how he appeared?

18 A. I ----

19 Q. Beyond what's maybe noted in the 302?

20 A. No.

21 Q. Okay. So, again, your responses here today are based on  
22 your review of the 302 in anticipation of the -- of this session,  
23 correct?

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1 A. Correct.

2 Q. He was previously interviewed by the PSO, correct?

3 A. True.

4 Q. And you have no idea of the circumstances surrounding that  
5 interview?

6 A. I don't.

7 Q. Where it happened, how long it lasted?

8 A. No.

9 Q. Whether he was forced or threatened in any way to talk to  
10 the PSO?

11 A. No.

12 Q. Any family members forced or threatened, coerced in any  
13 way to talk to the PSO?

14 A. No.

15 Q. Whether either he or any of his family members were  
16 promised anything in order for him to agree to talk to the PSO?

17 A. No.

18 Q. Don't know if he was shown any photographs during that  
19 interview with the PSO?

20 A. I don't know.

21 Q. Don't know whether he made any identifications or -- or  
22 what actual photos may have been shown to him during that process?

23 A. True.

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1 Q. Can you recall if Mr. Tarhish was brought in with  
2 other -- any other witnesses prior to your interview of him?

3 A. I don't recall.

4 Q. At the time that you interviewed him, 1 January -- I'm  
5 sorry, 3 January 2001, you had no idea who this person was?

6 A. Correct.

7 Q. Never seen him? If you may have gone out to the scene,  
8 didn't see him before, talk to him, nothing like that?

9 A. No.

10 Q. When he was brought into the interview room and identified  
11 as a police officer, can you recall if he was wearing any sort of  
12 uniform or regular clothes?

13 A. I don't recall, but I want to say he was wearing his  
14 police uniform. But I don't -- I don't recall.

15 Q. You don't have a memory of that. Okay.

16 Can you recall if he showed you a police badge or you asked  
17 for a badge or anything like that?

18 A. No.

19 Q. Didn't ask for or didn't get any -- didn't confirm his  
20 identity through any Yemeni ID, driver's license, anything like that?

21 A. No. I want to say he was wearing his police uniform,  
22 again, just out of recollection. Because I -- I think part of the  
23 rapport building, I was talking about his hat because it had, like, a

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1 little bit of an insignia on it. So I -- that's why I want to say he  
2 was wearing his police uniform, but I don't -- I don't want to say  
3 for sure.

4 Q. Okay. He wasn't -- he wasn't photographed or  
5 fingerprinted to be able to identify him should you need him at  
6 sometime in the future?

7 A. No.

8 Q. And you never independently verified his identity, his  
9 address, none of those things?

10 A. Correct.

11 Q. You're not aware of any other team, investigative team,  
12 that verified any of those details?

13 A. Correct.

14 Q. Never got a cellphone number or landline or a work number  
15 for him so that you could contact him should you need him in the  
16 future?

17 A. Correct.

18 Q. You never provided him with your information so that he  
19 could contact you should he have any questions or concerns about ----

20 A. Correct.

21 Q. ---- his testimony?

22 At the time that he was interviewed by the FBI, you don't  
23 know if he was promised anything to appear for the interview?

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1           A.     Correct.

2           Q.     Whether any family members were promised anything to  
3 appear for -- so that he would appear for the interview?

4           A.     Yeah, no.

5           Q.     Whether he or any family members were forced, threatened,  
6 or coerced in order to get him to sit for your interview?

7           A.     No.

8           Q.     Whether any of his family members may have been held in  
9 jail in order for him to agree to your interview?

10          A.     I'm not aware.

11          Q.     Is it fair to say that on 3 January '21 **[sic]**, that  
12 your -- your interview of him on 3 January, that's the one and the  
13 only time that you had contact with him?

14          A.     To discuss that -- this matter, but I -- I also want to  
15 believe that I -- we did see him on the bridge another time. But,  
16 yeah, to your question, to discuss the USS COLE, that's the only time  
17 I spoke with him.

18          Q.     Right. And again, he's maybe in a different position  
19 maybe than some other people. He's on the bridge. You know there  
20 are witnesses out there. You've been to that location. Maybe you  
21 see him in passing, right?

22          A.     Yes.

23          Q.     But you don't have a memory, though, of stopping and

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1 saying, you know, I have a follow-up question for you, what -- you  
2 know, nothing like that?

3 A. No.

4 Q. And you have not made any attempts since then to locate  
5 Mr. Tarhish to see if he would be available for any future hearings  
6 or trial in this case?

7 A. Correct.

8 Q. And you're not aware of anybody else outside of ----

9 A. Correct.

10 Q. ---- besides you that's made any attempts to locate him?  
11 Okay.

12 DC [MR. PADILLA]: That's all I have, Judge.

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

14 Counsel, any redirect?

15 ATC [LT SCHWARTZ]: Very briefly, Your Honor.

16 **REDIRECT EXAMINATION CONTINUED**

17 **Questions by the Assistant Trial Counsel [LT SCHWARTZ]:**

18 Q. Agent Khoury, just a brief question.

19 Going back to what defense counsel was asking you about  
20 recording interviews, do you recall talking about that?

21 A. Yes.

22 Q. So back in the time frame, about 2000, as an investigator,  
23 for you was it common to record witness interviews, not suspect



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1 interviews or interrogations, but witness interviews? In your  
2 practice, was that common to record those?

3 A. Not common at all.

4 Q. And that's in the U.S.?

5 A. It was anywhere.

6 Q. Anywhere. Okay.

7 ATC [LT SCHWARTZ]: I have nothing further.

8 MJ [COL ACOSTA]: All right.

9 ATC [LT SCHWARTZ]: I don't know why I'm walking away, Your  
10 Honor. I wanted to ask. Our next grouping is two individuals.

11 MJ [COL ACOSTA]: Yep.

12 ATC [LT SCHWARTZ]: Do you want to go ahead and get started  
13 with those?

14 MJ [COL ACOSTA]: Nope. We're going to take a recess.

15 ATC [LT SCHWARTZ]: Copy that, sir.

16 MJ [COL ACOSTA]: All right. We're going to take lunch recess  
17 until 1300.

18 Agent Khoury, you remain under oath. You remain on the  
19 stand. Don't discuss your testimony with anyone other than counsel  
20 for either side, and be back on the stand when we come back at 1300.

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

23 MJ [COL ACOSTA]: The commission is in recess until 1300.

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1 **[The R.M.C. 803 session recessed at 1146, 22 February 2023.]**

2 **[The R.M.C. 803 session was called to order at 1301,**  
3 **22 February 2023.]**

4 MJ [COL ACOSTA]: The commission is called to order.

5 Government, all parties present as before?

6 TC [MR. O'SULLIVAN]: With the exception of Major Ross and  
7 Captain Danielczyk up north, Your Honor. They're getting tested.

8 MJ [COL ACOSTA]: Copy.

9 TC [MR. O'SULLIVAN]: And down here, Mr. Tavarez will be in  
10 shortly.

11 MJ [COL ACOSTA]: Thank you.

12 Defense?

13 LDC [MR. NATALE]: Your Honor, the -- everyone is the same  
14 except in the RHR. Lieutenant Colonel Nettinga and Mr. Bendernagel  
15 are still at Fort Belvoir getting testing.

16 MJ [COL ACOSTA]: Oh, they went to go ----

17 LDC [MR. NATALE]: They're the ones who went to be tested.

18 MJ [COL ACOSTA]: Tested as well. Okay. Thank you.

19 Before we get started, the waiver of appearance was  
20 improperly marked. It is actually -- just for the record, it's AE  
21 375V. AE 375U was previously used but not added in to the filing  
22 inventory, so it's 375V for today's waiver.

23 **[The witness, Special Agent Andre Khoury, resumed the witness stand.]**

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1 MJ [COL ACOSTA]: All right. Government?

2 ATC [LT SCHWARTZ]: Your Honor, first grouping we're going to  
3 do is number 82 and 81, and that is Zouheir and Eidarouss.

4 MJ [COL ACOSTA]: Okay. Are you going in that order?

5 ATC [LT SCHWARTZ]: Yes, sir. 82, 81.

6 MJ [COL ACOSTA]: Okay.

7 **REDIRECT EXAMINATION CONTINUED**

8 **Questions by the Assistant Trial Counsel [LT SCHWARTZ]:**

9 Q. Agent Khoury, I want to talk to you about the two  
10 statements that I just listed for the judge, the first being  
11 Mr. Najib Ali Zouheir. Do you recall taking a statement from him?

12 A. Yes.

13 Q. And do you recall recording a description of 5'9",  
14 160 pounds generally?

15 A. Yes.

16 Q. And was this interview done on the 15th of December 2000?

17 A. Yes.

18 Q. Where was this interview conducted?

19 A. It was at PSO headquarters in Aden.

20 Q. And did you find it intimidating in any way with this  
21 witness?

22 A. No.

23 Q. And how did Mr. Zouheir enter the room?

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1 A. He was brought in like all other witnesses.

2 Q. By PSO/MOI?

3 A. Yes.

4 Q. Was he shackled?

5 A. No.

6 Q. Did you notice anything out of the ordinary, such as signs  
7 of abuse?

8 A. No.

9 Q. If you had noticed it, would you have noted that in your  
10 302?

11 A. Yes.

12 Q. Did you have an opportunity to introduce yourselves?

13 A. Yes, we did.

14 Q. And did you tell them why you were there?

15 A. Yes.

16 Q. And did he make a prior statement to Yemeni authorities?

17 A. He did.

18 Q. And did he verify the accuracy of that?

19 A. Yes.

20 Q. Was that statement read for you to hear prior to your  
21 interview?

22 A. Yes.

23 Q. And was that read in Arabic?

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1 A. Yes.

2 Q. And did you translate that?

3 A. Yes.

4 Q. Did Mr. Zouheir appear to be scared or involuntarily  
5 present at the interview?

6 A. No.

7 Q. Okay. And Mr. Zouheir, he was a boat driver, correct?

8 A. He was.

9 Q. And for who?

10 A. For Al-Fara'a Company.

11 Q. Do you recall how long he had been a boat driver for them?

12 A. I believe he was a boat driver for not long, because I  
13 believe he started with Al-Fara'a Company as a guard, then he became  
14 an assistant boat driver, then he became a driver. So I want to say,  
15 like, maybe a year.

16 Q. Okay. And what generally were his responsibilities as a  
17 boat driver?

18 A. He was -- he was a boat driver to transport individuals  
19 back and forth between the dolphin dock and the port.

20 Q. And what is the dolphin dock, to your -- to your  
21 knowledge?

22 A. It's a dock that was used by U.S. ships for refueling.

23 Q. Thank you. And was Mr. Zouheir notified -- would he get

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1 notified when ships were scheduled to come into port?

2 A. Yes. He would get -- sometimes he would get notified on  
3 the day before for him to be ready and sometimes he was told when he  
4 came in in the morning what -- you know, what it is that he needed to  
5 do.

6 Q. And in relation to the COLE's arrival, was he notified  
7 before the COLE came into port?

8 A. I believe so.

9 Q. And would it have been the day before?

10 A. Yes.

11 Q. Who would have notified him or who did notify him?

12 A. Mr. Charlo, who is the manager for Al-Fara'a in Aden.

13 Q. Did Mr. Zouheir tell anyone else that he knew about the  
14 arrival of the COLE?

15 A. No.

16 Q. And had he serviced any U.S. ships before?

17 A. He had.

18 Q. I want to talk about the day of the attack specifically.  
19 Was he working that day?

20 A. Yes, he was.

21 Q. Can you walk us through what he told you about his  
22 morning, getting to work and so on?

23 A. He arrived in the morning after he had, you know, recorded

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1 his arrival time. He went to the boat that he was supposed to be  
2 using that day. You know, fueled it, ensured that it was -- you  
3 know, inspected it. Then he -- once that happened, he became -- he  
4 became -- he started his daily runs back and forth between the port  
5 and the dolphin dock.

6 Q. And did that start around 0800?

7 A. Yes.

8 Q. One question kind of going back a little bit. When he  
9 went and got his boat -- can you tell us, who is Caltex or what is  
10 Caltex?

11 A. Caltex is a company that owns the fueling contract with  
12 the U.S. military, and Al-Fara'a pretty much worked for Caltex as a  
13 subsidiary.

14 Q. On one of the trips -- I know you said around 0800 he was  
15 making trips. On one of these trips, did he take the military  
16 attaché to the dolphin area?

17 A. He did.

18 Q. And do you recall what time that would have been that  
19 morning?

20 A. He took him to the dolphin area -- to the dolphin fueling  
21 area, I want to say around 0900.

22 Q. Okay.

23 A. Somewhere around there.

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1 Q. Okay. And ----

2 A. Before the USS COLE had arrived.

3 Q. Okay. How long after that trip, when he took the military  
4 attaché -- do you recall about how long after that the COLE arrived?

5 A. It was -- I want to say it was, like, 15 minutes or half  
6 hour after, is when the USS COLE arrived.

7 Q. So after he took the military attaché to the dolphin area,  
8 the COLE arrived while he was -- while Mr. Zouheir -- was he still in  
9 the dolphin area when it arrived?

10 A. Yes, he was.

11 Q. Did he notice anything strange about the COLE when it was  
12 in port?

13 A. He stated that he believed that the USS COLE was docked  
14 differently than other ships he had serviced in which he said it was  
15 facing outwards instead of facing inwards.

16 Q. So after the COLE arrived, did Mr. Zouheir return to shore  
17 to take more people back and forth?

18 A. He did.

19 Q. And on that -- on the first trip from the dolphin -- and  
20 I'll try and keep these straight. There are a lot of trips that he  
21 took. On the first trip after the COLE arrived from the dolphin to  
22 shore, do you recall who was on that trip?

23 A. I believe he took -- I don't remember the names. I'm sure



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1 they are -- I'll be happy to look at them in -- you know, in the 302.  
2 I don't -- I don't remember exactly the individuals. I know, like,  
3 as you mentioned, there was many trips and many people that went back  
4 and forth.

5 Q. Would reviewing your 302 assist you in refreshing your  
6 recollection as to who was on the trip?

7 A. Yes.

8 ATC [LT SCHWARTZ]: Your Honor, showing the witness 319MM,  
9 page 1650, and I point the attention to the last paragraph on the  
10 page.

11 MJ [COL ACOSTA]: Okay.

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

13 ATC [LT SCHWARTZ]: Retrieving the document.

14 Q. Agent Khoury, did that refresh your recollection as to who  
15 Mr. Zouheir took on the trip back to the dolphin area?

16 A. Yes.

17 Q. And can you tell us who those people were?

18 A. He took Mr. Hussein, who was the brother of the owner of  
19 Al-Fara'a company, and Mr. Eidarouss, who is a security guard  
20 on -- at the dolphin dock.

21 Q. And after they arrived at the dolphin area, what did  
22 Mr. Zouheir do from there?

23 A. He ended up going into a small shed that they have there

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1 along with Mr. Hussein, and a couple other people, to eat.

2 Q. After they ate, did Mr. Zouheir take anything to shore to  
3 be tested?

4 A. He had retrieved a fuel sample and took it back to shore  
5 for testing, and I remember he indicated that this was separate than  
6 the fuel sample the U.S. ship tests themselves.

7 Q. And whenever he got done taking that fuel sample and  
8 returned to the dolphin area, did he -- was he asked to take another  
9 individual back to shore to your recollection?

10 A. He did.

11 Q. And was that Hasan bin Hasan?

12 A. Correct.

13 Q. And can you recall who that individual was?

14 A. I think he was a brother of -- of the owner.

15 Q. Did he return to the dolphin area after he dropped Hasan  
16 bin Hasan off?

17 A. He did.

18 Q. And just to keep it clear, this all happened prior to the  
19 attack; is that correct?

20 A. Correct.

21 Q. Where was Mr. Zouheir at around 10:30 that morning prior  
22 to the attack?

23 A. He was sitting in the shack with the three other

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1 individuals eating.

2 Q. And do you recall who those three individuals were?

3 A. I know Hussein was one of them but I don't remember the  
4 other two.

5 Q. Would reviewing your 302 assist you in refreshing your  
6 recollection?

7 A. Sure.

8 ATC [LT SCHWARTZ]: Your Honor, showing the witness page 1650  
9 of 319MM, and I'd point attention to the very last couple lines of  
10 the page.

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

12 ATC [LT SCHWARTZ]: Retrieving the exhibit.

13 Q. Agent Khoury, did that refresh your recollection?

14 A. Yes.

15 Q. And who were the individuals that were in the shed with  
16 him?

17 A. It was Hussein, Mustafa, and Akram.

18 Q. And was he there when he heard the explosion?

19 A. He was.

20 Q. What did they do after they heard the explosion?

21 A. Mr. Zouheir and Akram and Mustafa ran out after the  
22 explosion. Mr. Hussein got knocked down inside of the shed. So when  
23 they ran out towards the boat, Mr. Zouheir yelled for them to stop

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1 because he realized Mr. Hussein was still inside of the shed and he  
2 could potentially be injured. So they went and they got him -- they  
3 put in the boat and they took him back to -- to the port.

4 Q. And when you say "port," interchangeable with "shore,"  
5 yes?

6 A. Yes, true.

7 Q. Okay. Did he return to the dolphin area after he dropped  
8 them off?

9 A. Yes, he did.

10 Q. And when he returned, what happened when he pulled up to  
11 the dolphin area which was next to the COLE?

12 A. He had -- the U.S. military personnel on the ship pointed  
13 his guns at him, and he was -- he was told to not move the -- his  
14 boat anymore back and forth; otherwise, they will -- they may fire at  
15 him.

16 Q. Did anyone intervene to explain the situation?

17 A. Mr. Charlo intervened, and he told them that Mr. Zouheir  
18 works for him.

19 Q. Okay. So after this, was he requested to take more  
20 individuals from the dolphin area to shore?

21 A. He did.

22 Q. And was that Mr. Nasser and Sadiq?

23 A. Correct.

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1           Q.     When he returned from that trip to the dolphin area, did  
2 the military attaché come down and talk to them?

3           A.     He did. And he had asked them if they had a ladder so  
4 they can assist in removing some of the injured and the deceased.

5           Q.     And at that point, did Mr. Zouheir, did he assist in that  
6 in any way?

7           A.     He did. He assisted in the -- in bringing down the  
8 injured and the deceased from the -- from the USS COLE, down to  
9 the -- to the dolphin dock. And then an ambulance was called so they  
10 can be transported.

11          Q.     Was he requested to get any supplies for the COLE as well?

12          A.     He was. On one of the trips, he was asked by Mr. Charlo  
13 to bring -- to bring some drink -- you know, potable water, some  
14 drinking water.

15          Q.     Did Mr. Zouheir observe any of the Mansoub boats near the  
16 COLE prior to the explosion?

17          A.     He said he observed one of the boats that belonged to  
18 Al-Mansoub Company that was tied towards the aft of the boat, of the  
19 USS COLE.

20          Q.     And did he observe them being redirected at any point away  
21 from the dolphin area?

22          A.     Yes.

23          Q.     And where were they redirected to?

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1           A.     To the other side of the USS COLE.

2           Q.     Did Mr. Zouheir have an opportunity to observe the damage  
3 to the COLE close up that day?

4           A.     Yes, he did.

5           Q.     And how did that come about?

6           A.     He was asked to take some of the U.S. personnel around the  
7 boat so they can examine the damage.

8           Q.     Did he observe any other ships that were docked near the  
9 COLE that day?

10          A.     He said there was a cement ship that was docked there, or  
11 two cement ships that were docked there, but he said that those ships  
12 were there well before the USS COLE arrived.

13          Q.     Did he know of anyone that he could tell you guys that  
14 would have known of the COLE arriving, apart from the Al-Fara'a and  
15 the Mansoub Company?

16          A.     He -- he did not, no.

17          Q.     In the 302, you asked -- you stated in here about asking  
18 him about the Charlie Brown Company. Can you explain what the  
19 purpose of that was?

20          A.     The Charlie Brown Company, that was -- that was a lead  
21 that we were running down early on in our investigation. And it  
22 became clear to us that there was a company in Egypt called Charlie  
23 Brown that used to go on the ships -- on the military -- U.S.

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1 military ships while they are transiting through the Suez Canal to  
2 sell them some trinkets.

3 And we had obtained some information that they may have  
4 notified individuals in Yemen with the impending arrival of the  
5 USS COLE when she was transiting through the Suez Canal.

6 So we didn't know if he or some of the others witness -- you  
7 know, other individuals knew about it. He did not know, and then we  
8 ended up clearing that lead quickly through our counterparts in  
9 Egypt. It turned out to be not -- not something that we need to  
10 pursue any further.

11 Q. And that lead, was that a lead provided to you by Yemen  
12 authorities or was that something that you said you obtained in your  
13 own capacity?

14 A. No, that was through our own.

15 Q. Okay.

16 ATC [LT SCHWARTZ]: Your Honor, if I may have just one moment,  
17 please.

18 MJ [COL ACOSTA]: You may.

19 ATC [LT SCHWARTZ]: Thank you.

20 **[Counsel conferred.]**

21 Q. Okay, Agent Khoury. I want to move on to the next  
22 statement we have, which is Alawi Abdallah Eidarouss. Do you recall  
23 taking this statement on 15 December 2000?

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1 A. Yes.

2 Q. Oh, I'm sorry. Let me back up real quick. I apologize.

3 For Mr. Zouheir, was a 302 drafted ----

4 A. Yes.

5 Q. ---- for the interview?

6 And did you have an opportunity to review it for accuracy?

7 A. Yes.

8 Q. And in reviewing it in preparation for today, did you have  
9 any concerns as to the accuracy of the information within the 302?

10 A. No.

11 Q. Apologies.

12 For Mr. Eidarouss, that interview was 15 December 2000?

13 A. Correct.

14 Q. Okay. Where was that interview conducted?

15 A. At PSO headquarters in Aden.

16 Q. And not intimidating, as you previously testified?

17 A. No.

18 Q. Do you recall how he was brought into the room?

19 A. He was brought by Yemeni officials unshackled. Just  
20 walked in, was introduced to us.

21 Q. No signs of abuse?

22 A. No.

23 Q. If you had noticed it, you would have noted it in your



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1 302?

2 A. Of course.

3 Q. Did you introduce yourselves and tell him why you were  
4 there?

5 A. We did.

6 Q. And was -- he made a prior statement to MOI, correct?

7 A. He had.

8 Q. Was it read to you in the same capacity and manner which  
9 you previously testified to?

10 A. Yes.

11 Q. And you translated it, again, similarly to before?

12 A. Yes.

13 Q. Did he verify that statement as accurate?

14 A. He did.

15 Q. And did he appear to be there at his own free will?

16 A. He was.

17 Q. Mr. Eidarouss was a security guard, correct?

18 A. Correct.

19 Q. And who was he a security guard for?

20 A. He was a security guard for Al-Fara'a working on the  
21 dolphin dock.

22 Q. How long had he been a security guard?

23 A. I want to say a year.

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1 Q. And was he working on the day of the attack on 12 October?

2 A. Yes, he was.

3 Q. Do you recall what time he got to work?

4 A. He got to work around 7:00.

5 Q. And where did he go? Where did he report to whenever he  
6 got to work?

7 A. He got to -- you know, he arrived to work, and then he was  
8 transported from shore to the dolphin dock.

9 Q. And who transported him?

10 A. Mr. Zouheir.

11 Q. The individual we just spoke about?

12 A. Yes.

13 Q. And did he take over for the night guard at that point  
14 when he arrived?

15 A. He did.

16 Q. Did the night guard leave immediately after Mr. Eidarouss  
17 took over for him?

18 A. He did not, and that was -- it was -- you know,  
19 Mr. Eidarouss made a note of that, that it was unusual for the night  
20 guard not to leave, but he had stayed on that day.

21 Q. And he did eventually leave?

22 A. Yes.

23 Q. Did Mr. Eidarouss recall the COLE arriving around 0915?

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1 A. He did.

2 Q. And where was he when it came into port?

3 A. He was on the dock.

4 Q. In the dolphin area, correct?

5 A. Correct.

6 Q. Okay. Did he see the husbanding agent board the ship?

7 A. He did.

8 Q. And what did -- what first happened before the husbanding  
9 agent went aboard?

10 A. He had to wait for the U.S. military personnel to give  
11 them the approval or the order on when to board the ship.

12 Q. And after that happened, what started with the COLE?

13 A. Mr. Eidarouss said that he heard a loud explosion, which  
14 knocked him down and knocked his gun away from him. He attempted  
15 to -- to reach to grab his gun. U.S. personnel on the ship pointed  
16 his gun and asked him not to move; otherwise, they will shoot.

17 Mr. Charlo intervened and told them not to shoot because he  
18 is someone who works for him. Matter of fact, everybody on the dock  
19 is someone that works for Al-Fara'a, so not to shoot. He remained  
20 down until a period of time.

21 Then the military attaché returned back to the dolphin dock.  
22 He disassembled the weapon that Mr. Eidarouss had, and then they  
23 started tending to the injured and the deceased.

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1 Q. Did Mr. Eidarouss know ahead of time that the COLE was  
2 scheduled to come into port?

3 A. No.

4 Q. And so when did he find out?

5 A. When he saw it pulling in.

6 Q. When -- prior to the explosion, had they began refueling  
7 the COLE?

8 A. They had.

9 Q. Did Mr. Eidarouss recall seeing any other boats in the  
10 dolphin bay area around the time of the explosion?

11 A. He said that there was one of the Al-Mansoub boats tied,  
12 again, to -- towards the aft of the USS COLE.

13 Q. And what were they doing for the COLE again?

14 A. They were servicing the COLE.

15 Q. And would it have been to collect trash?

16 A. Collect trash, correct.

17 Q. Did he see any other ships docked near the COLE?

18 A. He also said that there is other ships that were -- they  
19 call them the cement ships that were in port well before the USS COLE  
20 arrived.

21 Q. Did Mr. Eidarouss see the black smoke after the explosion?

22 A. He did.

23 Q. Did he initially know what caused it?

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1           A.     He thought it was an internal explosion, but then he  
2     learned afterwards, when he was interviewed by the Yemeni officials,  
3     that actually it was a boat that caused the explosion on the  
4     USS COLE.

5           Q.     And that was three days later. Does that sound right?

6           A.     Yes.

7           Q.     After the explosion, did Mr. Eidarouss have an opportunity  
8     to assist any of the injured from the COLE?

9           A.     He did.

10          Q.     Was a 302 drafted recording this interview ----

11          A.     Yes.

12          Q.     ---- or summarizing this interview?

13                 Did you have an opportunity to review it for accuracy?

14          A.     I did.

15          Q.     And in reviewing it, were you able to make any edits or  
16     adjustments as necessary to make sure it was accurate?

17          A.     Yes.

18          Q.     In reviewing this 302 in preparation for today, was there  
19     anything in the 302 that made you believe it was inaccurate to any  
20     regard?

21          A.     No.

22                 ATC [LT SCHWARTZ]: Your Honor, I have no further questions  
23     for this grouping of two.

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

2 DC [MR. PADILLA]: Thank you, Judge.

3 **RECROSS-EXAMINATION CONTINUED**

4 **Questions by the Defense Counsel [MR. PADILLA]:**

5 Q. Mr. Khoury, beginning with the witness statement that you  
6 took from Mr. Zouheir, I'd like to ask you some questions about that,  
7 okay?

8 A. Yes.

9 Q. One of the things that you mentioned on direct was that,  
10 again, consistent with a lot of the people that you interviewed  
11 that -- maybe all of them, this witness was previously interviewed by  
12 the PSO, correct?

13 A. Correct.

14 Q. And in addition to that, the 302 mentions that a copy of  
15 that statement was provided to U.S. investigators. Do you remember  
16 that?

17 A. Yes.

18 Q. Now, this would have been one of the very early  
19 interviews, sort of mid-December time frame. Was it typical to get  
20 those witness statements provided you in hand the day of the  
21 interview?

22 A. Again, I speak of myself. I know that we had -- I had  
23 gotten some from them the day of the interview, and others I did not.

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1 Never asked -- I never asked for a copy, so if they gave me a copy,

2 I ----

3 Q. You took it?

4 A. ---- took it. But if they didn't give me a copy, I didn't  
5 ask for one.

6 Q. Okay. Now, once you got a copy like that in hand, where  
7 did that go? What happened to that? Do you know? Did it go to some  
8 collecting place where then it got shipped out to be translated or  
9 how did that work?

10 A. Again, I would assume if we had obtained a copy, we would  
11 have put it in a 1A envelope as, you know, just like we have -- we  
12 put our notes in a 1A envelopes, so that's what I believe would have  
13 happened with a copy.

14 Q. Would it have stayed then in that initial file or do you  
15 think that that was then copied or produced to anybody else on the  
16 team to have it translated? Do you have any idea?

17 A. We didn't have any translators on the ground with us, so I  
18 am sure a copy of it would have been sent to New York, the field  
19 office in New York, where that statement would have been translated  
20 to English.

21 Q. Is it fair to say that that's what also happened with all  
22 the 302s that you and the rest of the teams were generating during  
23 this time period, writing reports, sending them up to be distributed

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1 out?

2 A. I mean, of course. I mean, there is -- they all had to be  
3 put into the case file which was being held at the office of origin  
4 in New York. So our 302s were ultimately sent to New York.

5 But we did not have -- we didn't have a proper, secure way  
6 to transport documents as currently from embassies, so a lot of  
7 that -- a lot of them were being transported with people who ended up  
8 traveling back to New York during some of the rotations. So they  
9 used to take, you know, thumb drive or the like to be able to have it  
10 downloaded or ----

11 Q. Okay. Was it -- once it left your hands or the other  
12 agents in your team, whoever drafted the 302, was it your  
13 understanding that those 302s would be reviewed by somebody else?

14 A. I'm sure people read them that were working on the case,  
15 but I don't know who exactly would have, you know, reviewed them  
16 specifically. I'm sure the -- back in the states, they would have  
17 had briefings so some people had to see what was going on. Some  
18 people were getting ready to travel back to Yemen, so they probably  
19 looked at some of the 302s so they can get a better understanding on  
20 what's happening on the ground, how things are happening. So yeah,  
21 of course people would have looked at them once they arrived back in  
22 the States.

23 Q. Can you remember a time when anybody sort of above you in



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1 the chain, either an agent or a lawyer, reached out to you or a  
2 member of your team and said, I just read this 302. I'd like you to  
3 follow up on X, Y, Z. Or based on what we have, this is what we'd  
4 like you to do next?

5 A. I can't recall any specific instances, but to your fair  
6 point, I am sure at some point we had got a call and said somebody  
7 said hey, can you clarify this or what is this all about or -- yeah,  
8 I am sure.

9 Q. Okay. You just don't have a memory of that as we're here  
10 today?

11 A. I don't remember specifically on -- especially on witness  
12 interviews.

13 Q. Understood.

14 A. I'm sure it would have been even more -- or would have  
15 been done more when we were interviewing potential suspects.

16 Q. You also mentioned that Mr. Zouheir had found out about  
17 the COLE arriving the day before. Do you remember that?

18 A. Yes.

19 Q. Did you ask or did he tell you how he learned that? In  
20 other words, did a coworker tell him? Was it posted in the office?  
21 Can you -- do you remember any details about that?

22 A. I remember him explaining on how he used to be told and,  
23 if I'm not mistaken, he usually -- he used to be called by Mr. Charlo

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1 to tell him that the ship's coming. But also, Mr. Charlo used to  
2 post the arrival of the ships in the office. And I guess  
3 Mr. Zouheir, like others, sometimes stopped by the office in the  
4 afternoon to see if they were working the next day or what ships are  
5 coming.

6 Some of our witnesses told us that they actually liked when  
7 a U.S. ship was coming in because, you know, they said they make more  
8 money when they service one of those ships. So, you know, simple  
9 life in Aden. So they really -- they really looked forward to, you  
10 know, when -- when a U.S. ship arrived where they could make a couple  
11 extra bucks.

12 Q. Okay. But it was some way to notify not only him but  
13 maybe some other people in the company, right?

14 A. Yes.

15 Q. Okay. You mentioned this lead about Charlie Brown  
16 Company. Remember that?

17 A. Yes.

18 Q. And that was a lead that was developed in house by the  
19 FBI, correct?

20 A. It was -- it was by the FBI and/or the intelligence  
21 community.

22 Q. And I think what you said was that there was -- the lead  
23 was that people notified individuals in Yemen about the arrival of

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1 the COLE; is that right?

2 A. The lead was to determine if there were information that  
3 was passed to Yemen outside of the Mansoub Company, Al-Fara'a  
4 Company, or, you know, the port authorities about a U.S. military  
5 ship coming to Yemen. So early on, that was one of the things we  
6 were looking at.

7 Q. And when you mentioned -- you used the word "individuals"  
8 in Yemen that were -- that may have been notified. Would that have  
9 included individuals who worked for the Yemeni government?

10 A. What I meant by that is initially, when we were looking at  
11 it, we were looking at it as, you know, maybe some sympathizers to  
12 some factions of an extremist or terrorist organization in Yemen  
13 being notified by sympathizers who boarded the ship in Egypt.

14 Q. Okay. You mentioned before that there were certainly  
15 terrorist sympathizers working for the Yemeni government, right?

16 A. Sure.

17 Q. And so my question was: Was that part of the lead?  
18 Again, the word that you used was individuals. And again, my  
19 question is: Would that have included some of those sympathizers  
20 working in the Yemeni government who would maybe have known about or  
21 been interested in about the COLE arriving?

22 A. Could be, for sure.

23 Q. And with Mr. Zouheir's interview, I'm assuming it followed

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1 suit that you were notified either that day or shortly before that  
2 this is a person you were going to interview, correct?

3 A. Correct.

4 Q. You had no idea ahead of time who he was or how he may  
5 have been connected to the investigation?

6 A. No.

7 Q. And as we're sitting here this afternoon, in preparation  
8 for the hearings this session, if I would have mentioned  
9 Mr. Zouheir's name, you know, two or three weeks ago, would you have  
10 any idea who he was and how he was connected to this case?

11 A. No.

12 Q. And again, your testimony here today is based on your  
13 review of the 302?

14 A. Correct.

15 Q. Can you recall how Mr. Zouheir was identified as a  
16 potential witness? Let me explain a little bit.

17 It makes sense that you would go to interview people at the  
18 port, right?

19 A. Yes.

20 Q. So maybe that would have been a focus early on of the  
21 investigation. But also, PSO is still investigating from their end,  
22 right?

23 A. Yes.

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1           Q.     And it may have been that they generated this name as sort  
2 of a, these are all the 200 people working on the port today, right?

3           A.     Yes.

4           Q.     Can you recall how his name was generated as a possible  
5 witness? Was it generated from your end or from the PSO? Do you  
6 have any memory of that?

7           A.     I don't remember, but I'm sure, as you mentioned, we're  
8 interested in talking to people that were mainly in the vicinity of  
9 the USS COLE, to see if they can recollect anything.

10                 So I'm not sure if during some of our interviews of the  
11 husbanding agent or the manager of Al-Fara'a Company or others, you  
12 know, these names came up or, you know, if we had asked PSO or the  
13 Yemeni government, you know, who were the people that were working on  
14 the dolphin dock that day or -- I'm not really sure. But to your  
15 point, that would have been a point of interest.

16           Q.     Okay. And we talked about that he was previously  
17 interviewed by the PSO. You don't know the circumstances surrounding  
18 his interview with them?

19           A.     No.

20           Q.     Where it happened, how long it was, whether he was in  
21 custody at the time?

22           A.     No.

23           Q.     Whether he was in any way or any of his family members

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1 forced, coerced, or threatened to talk to the PSO?

2 A. No.

3 Q. Whether either he or any family members were promised  
4 anything in order for him to agree to talk to the PSO?

5 A. No.

6 Q. Prior to your interview of Mr. Zouheir, did you have any  
7 idea where he was just before he was brought in to ----

8 A. No.

9 Q. ---- for the interview?

10 Mr. Zouheir and Mr. Eidarouss were interviewed the same day,  
11 15 December 2000. Do you remember that these two people were  
12 interviewed the same day?

13 A. Yes, I do. I do remember.

14 Q. You have a memory of them being together -- and I mean  
15 together -- I don't mean in the room together, but sort of at the PSO  
16 headquarters that same day. Do you have a memory of that?

17 A. From reading my 302, I do ----

18 Q. Okay.

19 A. ---- remember, yes.

20 Q. Right. So you read it, it's the same day, okay, those  
21 guys were there the same day?

22 A. Yes.

23 Q. You don't have a specific memory of them being together?

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1 A. No.

2 Q. You don't have a memory of asking them if they spoke to  
3 each other about what they were saying or what they had said or  
4 anything like that?

5 A. No.

6 Q. Didn't see them together beforehand?

7 A. No.

8 Q. And at the time that he was brought in by the PSO for your  
9 interview, you had no idea who he was. Never seen him before, never  
10 met him before?

11 A. Correct.

12 Q. You didn't confirm his identity through a Yemeni ID,  
13 Yemeni driver's license. I believe that most of the people that  
14 worked at the port had to have ID cards. He didn't present one of  
15 those to you ----

16 A. No.

17 Q. ---- did he?

18 And you never independently verified an address that he may  
19 have provided to you?

20 A. I did not.

21 Q. You're not aware of anybody else who did?

22 A. I'm not sure.

23 Q. Never got a cellphone or a landline or any way to contact

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1 Mr. Zouheir in the future?

2 A. No.

3 Q. You didn't provide him with your contact information so  
4 that he could contact you?

5 A. No.

6 Q. You don't know if either he or any family members of his  
7 were promised anything in order to agree to your interview?

8 A. No.

9 Q. Whether he or any family members were forced or threatened  
10 or coerced in order to be interviewed by the FBI?

11 A. No.

12 Q. Whether any family members were being held somewhere in  
13 order for him to get -- to agree to speak to you?

14 A. No.

15 Q. You interviewed him on 15 December 2000. Fair to say  
16 that's the last time that you had contact with him?

17 A. Fair.

18 Q. And you did not make any attempts to locate him to see if  
19 he was available for trial or a future hearing in this case?

20 A. I did not.

21 Q. Are you aware of anybody that has attempted to make  
22 contact with Mr. Zouheir to see if he is available for a future  
23 hearing or trial in this case?



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1           A.     No.

2           Q.     Let's talk about the second statement, Mr. Eidarouss.  
3 This is the guard who was working on the dolphin?

4           A.     Correct.

5           Q.     Both -- in both of these 302s there are a couple mentions  
6 of military attaché. Do you remember that?

7           A.     Yes.

8           Q.     Is that a word that the witnesses used with you, or is  
9 that something that got translated by you based on what you were  
10 hearing? It's a very specific term, right?

11          A.     I mean, they would know of the military attaché because  
12 they have serviced other ships before, and they would know that this  
13 is the military person who is assigned at the U.S. embassy.

14          Q.     Okay. And did they -- I know that's what you're saying.  
15 Did they -- did you ask them how did you know who this person was or  
16 what he did as opposed to someone -- I'm assuming he's wearing, you  
17 know, a uniform of some sort as opposed to just being in the military  
18 versus military attaché?

19          A.     I mean, when someone is from the -- again, I'm guessing  
20 that he is a military person who works at the embassy and when he's  
21 down in Aden -- you know, he's up in Sana'a, so when he comes down to  
22 Aden, you know, people in the office will say this is the military  
23 person who is assigned to the embassy.

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1           So to your question, was the word "attaché" exactly used in  
2   Arabic or was it the military person assigned to the U.S. embassy, I  
3   can't recall. I know that -- for sure that people like Bakathir and  
4   others referred to him specifically as the military attaché. Would  
5   these witnesses? I honestly don't -- I am not sure.

6           Q.     And I -- that makes sense to me when I hear it. And  
7   again, the reason I ask is because when you read it on a 302, it's so  
8   specific, right? Okay. So maybe they didn't use those words,  
9   but ----

10          A.     Yeah, maybe they used the U.S. military, you know, from  
11   Sana'a at the embassy who came down, or maybe they did use the word  
12   "attaché" in Arabic. I don't remember. But ----

13          Q.     Okay.

14          A.     But we knew who they were talking about.

15          Q.     Right. Okay.

16                 And the government asked you about when Mr. Eidarouss  
17   arrives to begin his shift and he's replacing the guard who had  
18   worked I guess through the night. Remember that?

19          A.     Yes.

20          Q.     And you mentioned on direct that he said that the person  
21   he replaced didn't leave and stayed on the dolphin deck there, right?

22          A.     Correct.

23          Q.     And you mentioned that he noted to you that was unusual,

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1 right?

2 A. True.

3 Q. And not only was it unusual, what he told you was he'd  
4 been working there over a year and he'd never seen it happen, right?

5 A. True.

6 Q. And he gave you the name of that person as well, right?

7 A. Correct.

8 Q. Again, consistent with the other interviews, you would  
9 have learned about this witness being presented to you either the day  
10 of or perhaps shortly before the interview?

11 A. Yes.

12 Q. And do you have any idea how this witness was identified  
13 to you as someone that maybe you should speak to?

14 A. I don't recall.

15 Q. He was previously interviewed by the PSO also 14 October  
16 of 2000, correct?

17 A. Correct.

18 Q. A copy of his statement was also provided to you during  
19 the interview process?

20 A. Correct.

21 Q. You don't know any of the circumstances surrounding his  
22 statement that he gave to the PSO in October?

23 A. No.

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1 Q. Don't know where it happened, how long it lasted?

2 A. No.

3 Q. Whether he was in custody at the time of that interview?

4 A. No.

5 Q. Whether he was forced, coerced, or threatened in any way  
6 to talk to the PSO?

7 A. No.

8 Q. Whether he was promised anything to agree to be  
9 interviewed by the PSO?

10 A. No.

11 Q. Whether any family members were forced, threatened, or  
12 coerced, or promised anything in order for him to meet with the PSO?

13 A. No.

14 Q. As I mentioned before, in the last witness interview that  
15 these two witnesses were interviewed the same day by your team,  
16 correct?

17 A. Correct.

18 Q. You don't -- I think you mentioned the last time that you  
19 don't have a memory of seeing them together before the interviews?

20 A. I don't remember that.

21 Q. Don't know whether they had the ability to speak to each  
22 other either before, during, or after your interview of them?

23 A. No.

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1 Q. Don't know if at the time that Mr. Eidarouss was being  
2 interviewed by you, whether he was, in fact, in custody at the PSO?

3 A. No.

4 Q. At the time that he was brought in to be interviewed by  
5 you, you had no idea who he was before then?

6 A. No.

7 Q. You never confirmed his identity through a Yemeni ID,  
8 driver's license, passport, any document from the port?

9 A. No.

10 Q. He wasn't photographed or fingerprinted in order to  
11 identify him for any future hearings or trials?

12 A. No.

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

15 A. I did not.

16 Q. You're not aware of anybody else on your team or any other  
17 team doing that?

18 A. Not aware.

19 Q. You didn't get any contact information from him; you  
20 didn't provide any of your contact information to him so that you  
21 could potentially communicate in the future?

22 A. True.

23 Q. You don't know if he was promised anything or any family

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1 members promised anything in order for him to agree to meet with you?

2 A. No.

3 Q. Whether there -- he was threatened, forced, or coerced or  
4 any family members forced, threatened, or coerced to do anything in  
5 order for him to agree to meet with you?

6 A. No.

7 Q. 15 December 2000 is the last time that you have contact  
8 with this person?

9 A. Correct.

10 Q. And you have not made any attempt to locate him to see if  
11 he would be available for any future hearings or trial in this case?

12 A. No.

13 Q. Not aware of anybody else who has done that?

14 A. No.

15 DC [MR. PADILLA]: Judge, that's all I have.

16 MJ [COL ACOSTA]: All right.

17 Government, any redirect?

18 ATC [LT SCHWARTZ]: Not for these two, Your Honor.

19 MJ [COL ACOSTA]: All right. What's the size of the next  
20 grouping?

21 ATC [LT SCHWARTZ]: It is the last grouping, and it is three  
22 individuals, sir.

23 MJ [COL ACOSTA]: All right. Let's get started.

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1           Actually, let's take a brief -- I'm going to send  
2 Mr. -- Agent Khoury off. I have something else administratively that  
3 I want to talk to the parties about.

4           So, Agent Khoury, I'm going to temporarily excuse you.  
5 Don't discuss your testimony or your knowledge of the case with  
6 anyone for either side. This will give you a short break in between  
7 the two you just did and the three you're going to -- going to go  
8 into next, okay? Thank you.

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

11          MJ [COL ACOSTA]: All right. Counsel, I'd asked for an update  
12 on the discovery related to Sonnen by noon today.

13          ATC [LCDR SCHREIBER]: Yes, sir. This is Lieutenant Commander  
14 Schreiber. We've asked SC/DRT as early as this morning and, again, I  
15 think midmorning and did not -- did not have a reply of any from them  
16 in terms of any timeline that they could give us.

17          They affirmatively replied yesterday that they're working on  
18 it -- late yesterday that they were working on it, but as of any  
19 update this morning there was nothing additional although we did  
20 request and try.

21          So we will continue to try and get clear information from  
22 them. I know there's a meeting midday in which it will be raised,  
23 and we're hoping to have something after that. By midday, I mean

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1 like now I think that meeting is going on.

2 MJ [COL ACOSTA]: When was that provided to them? This has  
3 been on the calendar for quite some time, so that's what I'm trying  
4 to figure out is why we're still waiting on a resolution.

5 ATC [LCDR SCHREIBER]: Yes, sir. So I can speak from the  
6 beginning of that. This -- we received -- the prosecution received  
7 some of the documents from FBI a little bit late just because there  
8 was a miscommunication on this end that we thought we'd had them but  
9 we did -- or the FBI thought we had them and we did not. We  
10 processed those as quickly as we could, and then ----

11 MJ [COL ACOSTA]: Can you define "a little bit late?" That's  
12 an ----

13 ATC [LCDR SCHREIBER]: About, gosh ----

14 MJ [COL ACOSTA]: ----- amorphous term.

15 ATC [LCDR SCHREIBER]: Well, later than I would have wanted,  
16 is maybe the better question -- the better.

17 MJ [COL ACOSTA]: How about a date ----

18 ATC [LCDR SCHREIBER]: About three -- sir, I'd have to  
19 go -- you're putting me on the spot. I'd have to go to my e-mails to  
20 give you an exact date but I think we received the documents  
21 initially from FBI about two and a half, three weeks ago.

22 MJ [COL ACOSTA]: And when did you provide it to the SC/DRT?

23 ATC [LCDR SCHREIBER]: Again, I'd have to go to my e-mails or



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1 ask one of my paralegals, who will know the date better, but it's  
2 been about a week now. Maybe a little less than that. It was mid  
3 last week, I believe, or -- that they went to them.

4 MJ [COL ACOSTA]: But this -- all right.

5 That -- that's -- okay. Let's see.

6 Again, what I'm trying to understand is that agent's  
7 testifying on 319MM that has been on the docket every session for a  
8 long time, and we're just getting this done, especially when we're  
9 trying to get to -- wrap up towards the end. That's got to -- we've  
10 got to move a little faster. We've got to move a lot faster on that.

11 ATC [LCDR SCHREIBER]: I can just be clear too, Your Honor.  
12 Some of these documents that we're talking about from FBI were signed  
13 out in mid to late January, in fact. So we're not talking about  
14 things that existed for months. This is some new activity they've  
15 done in the past two, three months. So it's not like we haven't done  
16 anything.

17 MJ [COL ACOSTA]: Well, I understand.

18 ATC [LCDR SCHREIBER]: This is new stuff, so ----

19 MJ [COL ACOSTA]: This is new stuff that is new as in coming  
20 into existence. It did not exist before January of 2023?

21 ATC [LCDR SCHREIBER]: Yes, sir. I have some -- I have some  
22 pre-drafts with me of course because they -- we've been given this  
23 stuff. Dates on it include -- are, like, 1 January -- excuse me, 31

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1 January of '23. So we're not talking stuff that's been around  
2 forever.

3 MJ [COL ACOSTA]: It's not stuff that's -- okay.

4 ATC [LCDR SCHREIBER]: Yes, sir. So I apologize. On the  
5 stack on my table here I have stuff from November but -- from  
6 November, and that part is a little bit late. We would have liked to  
7 have that earlier, and we thought we did, but we didn't.

8 MJ [COL ACOSTA]: Okay.

9 ATC [LCDR SCHREIBER]: But then there's also documents from 31  
10 January of this year, so those are quite fresh in many ways.

11 MJ [COL ACOSTA]: Okay. I don't know how we're going to  
12 handle the -- we might have to swap out or move around some things  
13 that we're going to have to do regarding that. We'll have to talk  
14 about that at the end of the day.

15 ATC [LCDR SCHREIBER]: And to give you a data point on that,  
16 sir, unfortunately, Special Agent Sonnen is not available next week  
17 due to an unmovable personal commitment. It's not a vacation or  
18 anything. It's a personal commitment that she absolutely cannot move  
19 next week. So she is not available next week. She is available,  
20 however, Friday if needed, if we can ----

21 And again, we are leaning on SC/DRT to get this done because  
22 we want it releasable to the accused. That's the marking that's  
23 required for them. So that's what we're working toward.

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1 MJ [COL ACOSTA]: It needs to move. It needs to be -- get  
2 done. I don't know what -- you know, I'm sure the amorphous SC/DRT  
3 that does mysterious things in mysterious ways needs to focus on the  
4 hearing that's going on right now, and that's the only thing that  
5 needs to be getting reviewed.

6 The next -- the next issue was to discuss -- we need to  
7 address the motion to compel witnesses for -- and the -- that we're  
8 going to be doing -- that we need to have before -- what is  
9 it -- yeah, 534F. We have to have that hearing sometime.

10 If Agent Sonnen is not able to go tomorrow because we don't  
11 have discovery, that's what we will plug in there. So be prepared to  
12 discuss that tomorrow after we finish with Agent Khoury. Is that  
13 understood, parties?

14 MATC [MR. WELLS]: Yes, Your Honor.

15 DDC [LCDR PIETTE]: Yes, Your Honor.

16 MJ [COL ACOSTA]: Okay. All right. We're going to take a  
17 shorter 15-minute recess before we come back with Agent Khoury and  
18 restart the last three.

19 And this is the last three total for Agent Khoury, correct?

20 ATC [LT SCHWARTZ]: That is correct, Your Honor.

21 MJ [COL ACOSTA]: Okay. All right. Thank you. The  
22 commission is in recess for 15 minutes.

23 **[The R.M.C. 803 session recessed at 1359, 22 February 2023.]**

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1   **[The R.M.C. 803 session was called to order at 1417,**  
2   **22 February 2023.]**

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

5           TC [MR. O'SULLIVAN]: Yes, Your Honor, including now Captain  
6   Danielczyk, Major Ross, and Mr. Tavarez.

7           MJ [COL ACOSTA]: Defense?

8           LDC [MR. NATALE]: Your Honor, I think the situation remains  
9   as it was the last time; that the people have not returned. I can't  
10   see from ----

11          MJ [COL ACOSTA]: Yeah, I don't -- I do not see Lieutenant  
12   Colonel Nettinga.

13          DC [MR. PADILLA]: Judge, Joaquin Padilla from the RHR. They  
14   have not returned.

15          MJ [COL ACOSTA]: Okay. Thank you, sir.

16          LDC [MR. NATALE]: Everyone else is here.

17   **[The witness, Special Agent Andre Khoury, resumed the witness stand.]**

18          MJ [COL ACOSTA]: Thank you. The witness is back on the  
19   stand.

20           Agent Khoury, I'll remind you you remain under oath.

21           Government, you may proceed.

22          ATC [LT SCHWARTZ]: Thank you, Your Honor. For this grouping,  
23   Your Honor, there are the three remaining, which is 319MM Tab 60, 80,

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1 and 59 in that order.

2 MJ [COL ACOSTA]: 60, 80, and 59?

3 ATC [LT SCHWARTZ]: Yes, sir.

4 MJ [COL ACOSTA]: Okay. Thank you.

5 **REDIRECT EXAMINATION CONTINUED**

6 **Questions by the Assistant Trial Counsel [LT SCHWARTZ]:**

7 Q. Okay. Special Agent Khoury, I want to talk to you about a  
8 few of these -- three more statements. The first being Mr. Mohammed  
9 Ahmed al Dajeh. Do you recall doing an interview with this  
10 individual?

11 A. Yes.

12 Q. And was that on 15 December 2000?

13 A. Correct.

14 Q. And was this interview conducted in the same location as  
15 you have previously testified?

16 A. Yes.

17 Q. Was the setting the same in which you've previously  
18 testified as not intimidating?

19 A. Correct.

20 Q. Do you recall how Mr. Dajeh entered the room?

21 A. He was brought in by Yemeni officials.

22 Q. Was he shackled in any way?

23 A. No.

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1 Q. Did you notice any signs of abuse or anything that  
2 concerned you?

3 A. No.

4 Q. If you had, would you have noted that in your 302?

5 A. Yes.

6 Q. Did you introduce yourselves and explain why you were  
7 there?

8 A. Yes.

9 Q. And had he made a prior statement to Yemeni officials?

10 A. Yes, he did.

11 Q. Was that read out loud for you to hear?

12 A. Yes.

13 Q. Did you translate that as you had previously?

14 A. Yes.

15 Q. In observing Mr. Al Dajeh, did you have any reason to  
16 believe that he was there against his own free will?

17 A. No.

18 Q. And Mr. Dajeh, he was a mechanic for Al-Fara'a; is that  
19 correct?

20 A. Al-Fara'a, yes.

21 Q. And do you recall when he started working for Al-Fara'a?

22 A. He had been with them for a little over a year, I believe,  
23 after he left his job as a -- as a teacher at a technical school.

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1 Q. And then for his responsibilities here as a general  
2 mechanic, what were some of his core responsibilities?

3 A. To hook up the hoses to the ships for fuel and water and  
4 then turn on -- turn on the faucets.

5 Q. Was Mr. Dajeh informed of the COLE's pending arrival in  
6 port?

7 A. Yes.

8 Q. And when was he informed of that?

9 A. The day before.

10 Q. Do you recall who told him of the COLE's arrival?

11 A. Mr. Charlo did.

12 Q. And was that his manager?

13 A. Yes.

14 Q. Was he working on 12 October, the day of the attack?

15 A. He was.

16 Q. Where did he go whenever he arrived at work?

17 A. He was transferred from -- from the shore to the dolphin  
18 area.

19 Q. And when he arrived on -- arrived at the dolphin area,  
20 were there other employees present on the dolphin area -- in the  
21 dolphin area?

22 A. Yes, there were. There were other Al-Fara'a employees  
23 there with him.

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1 Q. Was he still in that area when the COLE pulled into port  
2 that morning?

3 A. Yes, he was.

4 Q. What was -- what did he have to do before refueling the  
5 COLE?

6 A. He had to wait for the USS COLE to give the okay for the  
7 refueling after they conduct a fuel test.

8 Q. And are you aware, did that fuel test occur?

9 A. It did.

10 Q. And what happened after they did the fuel test?

11 A. He connected -- the fuel hose and the water hose were  
12 connected because the USS COLE had asked for fuel and water, and he  
13 was given the order to turn on the faucet to start the refueling  
14 process.

15 Q. And now that you're mentioning that, did Mr. Al Dajeh make  
16 any kind of note or give an opinion on the COLE requesting water as  
17 well as fuel? Did he find that strange?

18 A. He said that he was not -- he wasn't told that it needed  
19 water or -- until the day or -- it was something to that effect.

20 Q. And so his part of assisting in the refueling -- I can't  
21 remember if you mentioned it -- what did he do specifically to assist  
22 with that?

23 A. His job was to hook up the hoses and then turn on the



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1 valves for the refueling process.

2 Q. And whenever the attack happened, where was Mr. Al Dajeh?

3 A. He was standing by the -- he was out standing on the  
4 dolphin dock by -- by the fueling station.

5 Q. And was he injured at the time of the attack?

6 A. He did fall down and hit his head on the hose that was  
7 attached to the USS COLE.

8 Q. Did he observe any smoke coming from the COLE after the  
9 attack?

10 A. He did. He saw black smoke coming.

11 Q. Did he continue the refueling process after the attack  
12 happened?

13 A. No. He had -- he was ordered to stop it for safety  
14 reasons.

15 Q. After he did stop the fueling process, what did he then  
16 do?

17 A. He was -- he remained on the dock, and he assisted with  
18 the injured and the deceased.

19 Q. How long did Mr. Dajeh stay around that area to help that  
20 day?

21 A. I believe he stayed until, like, early even before  
22 Mr. Charlo told him to go home.

23 Q. And after he left that evening, when did he go back to

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1 work?

2 A. The next day.

3 Q. That day, did anyone come and ask him questions about the  
4 attack?

5 A. Yemeni officials asked him questions about it.

6 Q. And was he told of -- who told him that Yemeni officials  
7 wanted to talk to him?

8 A. I believe Mr. Charlo told him that the Yemenis were coming  
9 to speak with him.

10 Q. Do you remember him saying that they came up and arrested  
11 him at the dolphin area or anything like that?

12 A. No.

13 Q. If he had, would you have put that in your 302?

14 A. Of course.

15 Q. How long did the Yemeni authorities keep him to question  
16 him? Do you recall?

17 A. I think they kept him one day and then he was released.

18 Q. Did Mr. Dajeh recall any other small boats around the COLE  
19 at the time of the attack or immediately leading up to?

20 A. He did mention the Al-Mansoub boat that was there to  
21 collect the trash.

22 Q. Did he have a clear view of the area from where he was  
23 standing?

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1 A. No, because the USS COLE hull was blocking his view.

2 Q. Was a 302 drafted after this interview was conducted?

3 A. Yes.

4 Q. And did you have an opportunity to review the 302 for  
5 accuracy?

6 A. Yes.

7 Q. And were you able to make any changes, if needed, in order  
8 to make the 302 as accurate as possible?

9 A. Yes.

10 Q. In reviewing the 302 in preparation for this hearing, in  
11 reviewing it, did you notice or believe any of it to be inaccurate?

12 A. No.

13 Q. Okay. I want to move on to the next individual  
14 for -- which is Mr. Abdallah Ali Ahmed al Tambo. Do you recall doing  
15 an interview with this individual?

16 A. Yes.

17 Q. And was that done on 15 December 2000?

18 A. Yes.

19 Q. Was it in the same setting that you previously testified  
20 to?

21 A. Yes.

22 Q. Do you recall how he was brought into the room?

23 A. Just like the others, by Yemeni officials.

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1 Q. Was he shackled, that you can recall?

2 A. No.

3 Q. And was there any sign of abuse, that you observed, on  
4 Mr. Tambo?

5 A. No.

6 Q. Did you introduce yourselves to him?

7 A. We did.

8 Q. And did you inform him why you were there?

9 A. We did.

10 Q. He made a prior statement to MOI ----

11 A. Yes.

12 Q. ---- correct?

13 And a copy of that, was that given to you?

14 A. Yes.

15 Q. And on that note, I know you had previously told defense  
16 this, but you were not given a copy of every previous statement a  
17 witness had made to Yemeni authorities, correct?

18 A. Correct.

19 Q. Were you only offered them with certain individuals?

20 A. As I mentioned before, if they offered us a copy, we would  
21 take it. If they didn't, we didn't ask.

22 Q. Did you believe in any way that not having a copy -- a  
23 written copy of a prior statement -- did you believe that negatively

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1 affected your interview or investigation?

2 A. No.

3 Q. Did it limit you in any way ----

4 A. No.

5 Q. ---- to what you could ask?

6 And that prior statement that Mr. Tambo made to Yemeni  
7 authority, that was read out loud for you to hear prior to your  
8 interview?

9 A. Correct.

10 Q. And did you translate that in the same fashion?

11 A. Yeah.

12 Q. The information that you gleaned from that interview  
13 and -- as we kind of discussed previously, you were able, if you  
14 wanted to, use that in your interview?

15 A. Correct.

16 Q. You were not required to, though?

17 A. No.

18 Q. Did he verify that prior statement as accurate?

19 A. Yes, he did.

20 Q. And did Mr. Tambo appear to be scared or intimidated in  
21 any way?

22 A. No.

23 Q. And did he appear to be there by his own free will?

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1 A. He did.

2 Q. Mr. Tambo was a boat driver; is that correct?

3 A. Correct.

4 Q. And who was his employer?

5 A. Al-Mansoub Company.

6 Q. How long had he been with the Al-Mansoub Company?

7 A. A couple of years.

8 Q. And as a boat driver, was there something specific that he  
9 assisted with?

10 A. He was responsible for the boat that removes the waste  
11 their from the ships.

12 Q. And was he working in that fashion on the day of the  
13 attack, 12 October?

14 A. He was.

15 Q. Did he know ahead of time that the COLE was coming into  
16 port?

17 A. I believe so.

18 Q. Would you know who it was that would have told him that?

19 A. If he was notified, it would be, you know, his boss,  
20 Mr. Bakathir, who would have told him.

21 Q. But -- I'm sorry. Did you say you weren't sure, though,  
22 if he was notified ahead of time?

23 A. I'm not sure if he was notified on the day before or when

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1 he arrived that morning he was told about the USS COLE.

2 Q. Would it assist you in refreshing your recollection if you  
3 could review your 302 ----

4 A. Sure.

5 Q. ---- from this interview?

6 ATC [LT SCHWARTZ]: Your Honor, showing the witness page 1638  
7 to 1640 of 319MM.

8 MJ [COL ACOSTA]: You may proceed.

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

10 ATC [LT SCHWARTZ]: Retrieving the exhibit.

11 Q. Did that refresh your recollection?

12 A. It did.

13 Q. And was he aware ahead of time that the COLE was coming  
14 into port?

15 A. No.

16 Q. When did he find out that the COLE was arriving?

17 A. The morning of October 12th when he arrived to work.

18 Q. Did he service the COLE on 12 October?

19 A. He did.

20 Q. And was it in the capacity that you just stated with waste  
21 removal?

22 A. He did, yes, correct.

23 Q. After he serviced the COLE, what did he do?

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1           A.     He returned back to shore, and then shortly after, he was  
2     returning back to the USS COLE, and that's -- that's when he heard  
3     the explosion. He was midway between shore and the dolphin dock when  
4     the explosion took place.

5           Q.     When he was returning to the COLE, what was he taking back  
6     to the COLE, if anything?

7           A.     I don't believe he was taking anything back.

8           Q.     Whenever he left to go back to the COLE, would that have  
9     been, to your recollection, between 11:00 and 11:30?

10          A.     Yes.

11          Q.     And as you just said, it was on that trip whenever he  
12     heard the explosion; is that right?

13          A.     Correct.

14          Q.     Do you recall how long that trip would normally take to go  
15     between the shore and the COLE?

16          A.     Eight to ten minutes.

17          Q.     What did he -- was he able to see the COLE whenever the  
18     explosion occurred?

19          A.     No. Because the bow of his boat -- usually when his boat  
20     is empty, the bow is usually up in the air blocking his view.

21          Q.     And after the explosion, did he have a better view of the  
22     COLE?

23          A.     He did because he stopped his boat, he stopped the engine



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1 and levelled the boat on the water, so he was able to see the  
2 USS COLE and the black smoke.

3 Q. Whenever he turned his boat off and had a better image,  
4 did he see any other boat near the COLE that he recognized?

5 A. He recognized another boat from Al-Mansoub Company that  
6 was -- that was still there.

7 Q. And would -- to your recollection, would that boat have  
8 belonged to Imad Mohammed Ali [sic]?

9 A. Yes.

10 Q. What did Mr. Tambo do after the explosion? After he  
11 turned his boat off, where did he go?

12 A. He ended up going towards -- he ended up going away from  
13 the dolphin dock, and he docked his boat near one of the ships that  
14 was -- that was in the port.

15 Q. Did he know -- whenever the attack first happened, did he  
16 know what the cause of the explosion was?

17 A. He did not know at the time.

18 Q. Whenever he docked, was he able to recall a ship that he  
19 docked near?

20 A. He said he docked next to a ship, like a green ship that  
21 was docked there.

22 Q. And did he have any experience in servicing U.S. ships?

23 A. He had done U.S. ships in the past.

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1 Q. And had he somewhat recently serviced a U.S. ship?

2 A. Yes.

3 Q. What was Dolphin Dock #7 designated for?

4 A. It was designated for fueling U.S. military ships.

5 Q. And as I previously asked you, it notes in here that you  
6 asked him about the Charlie Brown Company. Did you ask him that  
7 again to run that lead, as you said earlier?

8 A. Yes.

9 Q. And that lead was not provided to you by Yemen  
10 authorities?

11 A. Correct.

12 Q. Is it fair to say that whenever you were doing your  
13 investigation in talking to Mr. Al Tambo, for example, you were  
14 looking and exploring various other individuals and groups of who may  
15 have been responsible?

16 A. That's fair to say, sure.

17 Q. And the Charlie Brown Company, though, as you said, didn't  
18 result in any ----

19 A. No.

20 Q. Okay. Was a 302 drafted for this interview?

21 A. Yes.

22 Q. And in drafting that 302, did you have the ability to  
23 review it for accuracy?

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1 A. Yes.

2 Q. And in reviewing it for today, did you have any concerns  
3 that the information inside the 302 was inaccurate for any reason?

4 A. No.

5 Q. Okay. And last statement that I have is number 59, Imad  
6 Ali Mohammed. And do you recall taking a statement from this  
7 individual?

8 A. Yes, I do. Bless you.

9 Q. Excuse me. Thank you.

10 And was this statement taken on 16 December 2000?

11 A. Yes.

12 Q. Whenever you spoke with him, do you recall getting some  
13 information from him about where he lived?

14 A. Yes.

15 Q. And that information, did you ever visit his house that  
16 you noted in the 302?

17 A. No.

18 Q. Did you have any reason to?

19 A. No.

20 Q. If you felt as though you had a reason to or needed to,  
21 how would you have gone about that?

22 A. If we just needed to verify the residence, we could have  
23 driven by by ourselves. If we needed anything more than that, we

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1 probably would have asked the Yemeni authorities.

2 Q. And this interview, it was convened in the same location  
3 as you previously testified to?

4 A. Correct.

5 Q. And the setting as you said before, not intimidating?

6 A. No.

7 Q. Was he shackled whenever he entered the room?

8 A. No.

9 Q. Did you notice any signs of abuse on him?

10 A. No.

11 Q. If you had, would you have put it in your 302?

12 A. For sure.

13 Q. Did you introduce yourself and explain why you guys were  
14 there?

15 A. Yes.

16 Q. And did he make a prior statement to MOI as well?

17 A. Yes.

18 Q. And did you receive a copy of that statement?

19 A. I believe so.

20 Q. Did you verify the accuracy of it?

21 A. Yes.

22 Q. And that statement was read, again, out loud to you and  
23 other investigators in the room?

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1 A. Yes.

2 Q. And you translated it as you previously said?

3 A. Yes.

4 Q. Mr. Mohammed, he was also a boat driver; is that correct?

5 A. Correct.

6 Q. And who did he work for?

7 A. The Al-Mansoub Company.

8 Q. And this Imad Ali Mohammed, this is the individual who  
9 just came up in the last 302 that we just discussed, correct?

10 A. Correct.

11 Q. How many -- I'm sorry.

12 What kind of boat driver was he? What specifically did he  
13 do?

14 A. He drove the boat that collected the trash.

15 Q. And how many years had he been doing that?

16 A. A few years also.

17 Q. Did he inform you who his supervisor was that made a  
18 schedule and informed him of things?

19 A. Mr. Bakathir.

20 Q. Whenever he would be informed of his schedule, how would  
21 Mr. Bakathir go about doing that?

22 A. So he would either -- either he would come into the office  
23 to check or Mr. Bakathir would call his neighbor, because he did not

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1 have a house -- he did not have a house phone or a cellphone -- to  
2 inform him of his duties for the next day.

3 Q. Was that method used or was he informed of the COLE coming  
4 into port beforehand?

5 A. Yes.

6 Q. Did he say that he liked servicing U.S. ships?

7 A. Yes, he did.

8 Q. And when you said -- to revisit, when you said that he was  
9 informed beforehand, do you know how, if he was informed beforehand,  
10 how he was informed that the COLE was coming in ahead of time?

11 A. He was -- Mr. Bakathir called his neighbor as -- as I  
12 mentioned, and his neighbor usually calls him to tell him to come to  
13 the phone, and Mr. Bakathir tells him that a ship is coming in and  
14 for him to be there for -- to assist.

15 Q. Did he enjoy servicing U.S. ships?

16 A. Yes, he did.

17 Q. Why was that? I'm sorry. Why was that?

18 A. He said that, you know, when he -- when people serviced  
19 U.S. ships they made more money than when servicing other ships, so  
20 they looked forward to servicing U.S. ships.

21 Q. And he was scheduled the day of the attack to service the  
22 COLE; is that right?

23 A. That is true.

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1 Q. What happened when the COLE first pulled into port? What  
2 did Mr. Mohammed do?

3 A. When the COLE arrived, Mr. Mohammed tied his boat midway  
4 section of the ship, but then Mr. -- when Mr. -- and then  
5 Mr. Bakathir ended up boarding the USS COLE after he was given the  
6 permission.

7 Then he told Ms. Ali to move the boat to the aft of the ship  
8 so they can start collecting the trash and throwing it down to his  
9 boat. So he did so, and he tied up aft of the ship.

10 Q. And that small scenario, that small blink in time, was  
11 that also -- as we've discovered today or heard today, was that also  
12 given in another interview by another witness, that little scenario  
13 of redirecting ----

14 A. Yes.

15 Q. ---- the ship?

16 So whenever he went to -- around the ship as directed, what  
17 happened next?

18 A. He tied aft of the USS COLE, and U.S. personnel started  
19 throwing the trash down. Mr. Bakathir was on the -- on board of the  
20 USS COLE, and he was communicating with him, walking along the  
21 perimeter of the USS COLE.

22 He asked Mr. Bakathir if he could give him some water.  
23 Mr. Bakathir went and got him some juice, some red juice and some

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1 chocolate, and threw it down. And while he was eating the chocolate  
2 and drinking the juice, the explosion happened.

3 Q. And when he was doing that, was he still on his boat?

4 A. Well, he was on his boat towards the -- he was standing by  
5 the engine in the back of the boat.

6 Q. Did he initially know where the explosion came from?

7 A. He thought that his boat was the one that exploded because  
8 he was thrown overboard, and his boat went loose, so he had to swim  
9 to get back to his boat. But then once he got on his boat, he  
10 realized that it was the USS COLE that caused the explosion.

11 Q. Was he injured from that explosion?

12 A. He ruptured his eardrum, and he was bleeding from it.

13 Q. Did he see black smoke coming from the USS COLE after the  
14 attack?

15 A. He did.

16 Q. Why did he feel that it was an internal explosion from the  
17 COLE?

18 A. He said that he knows that boats, outside of the servicing  
19 boats, are not allowed near U.S. military ships, so that's why he  
20 thought it was an internal explosion, because there is no other way  
21 of something happening to the USS COLE.

22 Q. And after he got back -- after he got back on the ship  
23 after the explosion, did Mr. Bakathir give him any direction on where



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1 to go?

2 A. I believe after he got back and he -- he was asked for  
3 some -- if he needed any medical attention, which he refused, so he  
4 ended up going back to shore.

5 Q. Okay. Did Mohammed recall seeing anything out of the  
6 ordinary prior to the explosion, around the COLE?

7 A. He didn't see anything unusual. He said that there was  
8 some gray smoke that he witnessed from the stacks of the USS COLE,  
9 but he said it was very normal, before the explosion took place.

10 Q. And what did he say about the engine on his boat, if  
11 anything?

12 A. He said his engine is very loud. It's an older engine.  
13 So he usually turns it off so -- to avoid the noise, and that way he  
14 could communicate with Mr. Bakathir easier.

15 Q. And did he give an estimation as to how far away he was  
16 from the boat whenever the attack happened?

17 A. He said about 50 meters.

18 Q. What was he doing at the -- at the moment of the  
19 explosion, where was he looking or where was his attention?

20 A. He said he was looking at the ship. He was taken  
21 by -- mesmerized by the U.S. military women, the Navy women that were  
22 on the ship, so he was looking at them on the deck.

23 Q. And whenever the explosion happened, were people still

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1 throwing trash down onto his boat?

2 A. They were throwing trash as the explosion happened, yes.

3 Q. Did he recall anything unusual about the docking  
4 procedures that were used that day for the COLE?

5 A. No.

6 Q. Was a 302 drafted for this interview?

7 A. Yes.

8 Q. And did you have the opportunity to review the 302 for  
9 accuracy?

10 A. I did.

11 Q. Were you able to make any edits or changes, if needed, in  
12 drafting these 302s?

13 A. Yes.

14 Q. In reviewing them in preparation for today, did you have  
15 any concern for inaccuracies within the 302s?

16 A. No concerns.

17 ATC [LT SCHWARTZ]: Your Honor, if I may have one moment,  
18 please?

19 MJ [COL ACOSTA]: You may.

20 **[Counsel conferred.]**

21 ATC [LT SCHWARTZ]: Your Honor, that is all I have for these  
22 statements, and I will turn it over to defense.

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

**RECROSS-EXAMINATION CONTINUED**

**Questions by the Defense Counsel [MR. PADILLA]:**

Q. So let's talk about Mr. Al Dajeh first, okay?

A. Sure.

Q. Mr. Al Dajeh was a witness on October 12th, correct?

A. Yes.

Q. And I -- you mentioned that he worked for the Al-Fara'a Company, and he explained to you that that company had about a hundred employees, correct?

A. Yes.

Q. And this is the same company, Al-Fara'a Company, that employed Mr. Zouheir and Mr. Eidarouss, the last two people that we talked about?

A. Correct.

Q. Part of the same company?

A. Yes.

Q. So a lot of people associated with the Al-Fara'a company there in Aden?

A. Yes.

Q. And he also confirmed to you that he had learned about the COLE the day before the COLE entered the Port of Aden, right?

A. Yes.

Q. And he detailed for you his interaction with -- I think on

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1 direct you used the phrase police or law enforcement -- is that  
2 right? -- the day after the COLE?

3 A. Yes.

4 Q. Was it clear to you that that was the PSO and not local  
5 Aden police who came to ask him some questions?

6 A. It was clear.

7 Q. Right. Even if he used the word "the police came," you  
8 knew that to mean the PSO came to talk to him?

9 A. Of course, PSO or MOI.

10 Q. Right. Okay.

11 And Mr. Al Dajeh told you that he showed up for work, again,  
12 the following day, on the 13th, right?

13 A. Yes.

14 Q. Was told that, again, the police -- we know that to be  
15 really in reality the PSO -- wanted to talk to him, right?

16 A. Yes.

17 Q. And I think on direct, the government asked you if he was  
18 arrested on the deck or something like that, and I think you said no,  
19 right?

20 A. Yes.

21 Q. But what he did tell you was that he was taken by, again,  
22 the police to a police station where his statement was taken?

23 A. Correct.

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1           Q.     So, you know, we've talked about a lot of these witnesses  
2     being interviewed by the PSO, and I may have asked you at some point  
3     how did Mr. Smith get to the Aden PSO Headquarters to be interviewed,  
4     and I think you may have answered me I -- you know, I don't know how  
5     the witness got to be at the station, right?

6           A.     Correct.

7           Q.     So here we have a little -- it's a little different,  
8     right? We know, based on what he's telling you, the PSO shows up at  
9     his job, right?

10          A.     Yes.

11          Q.     They pick him up, they take him directly to the police  
12     station, correct?

13          A.     Yes.

14          Q.     All right. He's interviewed by the PSO that day, on the  
15     13th, right?

16          A.     Yes.

17          Q.     Was not released and not released until the next day, the  
18     14th, right?

19          A.     Yes.

20          Q.     Now, earlier we were talking about questions you may have  
21     asked people based on their custody status, right?

22          A.     Yes.

23          Q.     And I think you said something like you would have asked a

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1 question of a witness about his custody status and treatment if you  
2 knew or believed that the person was in custody at the time of the  
3 interview, right?

4 A. Yes.

5 Q. All right. So here you have a person, police show up at  
6 his place of work, take him from his work, take him to the police  
7 station, interview him, and then don't release him for another day,  
8 right?

9 A. Yes.

10 Q. So during your interview of Mr. Al Dajeh, did you ask any  
11 of those follow-up questions about his time in custody with the PSO  
12 while he was being interviewed?

13 A. I did not.

14 Q. Didn't ask him who it was who took him or showed up at his  
15 work?

16 A. No.

17 Q. Didn't ask him if he was handcuffed at the time that he  
18 was taken from work?

19 A. No.

20 Q. Didn't ask him if he was placed in a cell when he got to  
21 the police station?

22 A. No.

23 Q. Didn't ask him if he was threatened or his family members

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1 were threatened in order to get him to talk?

2 A. No.

3 Q. Didn't ask him if the PSO had promised him anything or  
4 promised his family anything in order to get him to talk?

5 A. No.

6 Q. You don't know if they had threatened him with further  
7 incarceration in order to get him to talk?

8 A. No.

9 Q. Didn't ask him if he was threatened to be charged with a  
10 crime in order to induce him to speak to you?

11 A. No.

12 Q. Didn't ask him about any mistreatment that he may have  
13 suffered at the hands of the PSO?

14 A. No.

15 Q. Did you ask him if he was able to have contact with his  
16 family during the time that he was in custody with the PSO?

17 A. No.

18 Q. Did you ask him if he had access to a lawyer or any  
19 mechanism to get him into court to see if he could get released?

20 A. No.

21 If I may, I don't believe Mr. Dajeh said that he was  
22 arrested. You know, he said he was held. So I just want to make  
23 that clear.

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1 Q. Yeah. And I don't -- and I don't think I said he was  
2 arrested. I think I said they came to his job, they picked him up,  
3 they took him to the police station, and then they didn't release  
4 him.

5 A. Correct.

6 Q. Now, sort of along those same lines, I think we've talked  
7 about this a couple of times as well, but during the course of the  
8 investigation it became part of the routine, let's say, or  
9 commonplace for U.S. law enforcement to have meetings with PSO, MOI,  
10 or other members of the Yemeni government?

11 A. True.

12 Q. And I think we've talked about meetings where things like  
13 the United States is asking for evidentiary sort of stuff to be, you  
14 know, released to them. I think we've talked about that, right?

15 A. Yeah.

16 Q. I think we've talked about at some point that there were  
17 discussions with the U.S. government and the Yemenis about the  
18 Yemenis wanting to be -- some witnesses wanted to be compensated,  
19 something about getting money for certain things. I think we talked  
20 about that at one point.

21 A. I remember that.

22 Q. And there may have been discussions with U.S. law  
23 enforcement and the Yemenis -- all of them, whatever, all the



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1 entities -- about just the status of the case. This is where we are.  
2 This is January and this is, you know, sort of where we are today  
3 sort of thing, right?

4 A. Correct.

5 Q. And as a part of that process, it was practice to draft  
6 reports, notes, or memos, whatever they may be, about those meetings  
7 and what happened and what was said, right?

8 A. Correct.

9 Q. And we have copies of those, and those are typed up and  
10 they're filed and they're kept in the case file as a normal course of  
11 the investigation, right?

12 A. True.

13 Q. And some of those memos we have, and they're drafted by  
14 you. You wrote them ----

15 A. Yes.

16 Q. ---- right?

17 I want to ask you if you recall a meeting that you attended  
18 on January 9th of 2001 to report the results of a meeting between the  
19 general -- and it's blacked out -- Ministry of the Interior, and  
20 Special Agent Andre Khoury. Actually, the report is dated 1/9/2001.  
21 It looks like the meeting may have been on the 8th, though, of  
22 January.

23 And in that report, you write this -- my question is if you

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1 recall this: During the interview of Ahmed Abdallah Omar Said  
2 al Masbahi, crane operator, al Masbahi identified photograph number 3  
3 in the photo book being showed to witnesses as an individual  
4 incarcerated with al --

5 ATC [LT SCHWARTZ]: Objection. Your Honor, I'm going to  
6 object to relevance here. He's already identifying -- this is not  
7 any of the statements we've talked about today with this agent.

8 MJ [COL ACOSTA]: Defense?

9 DC [MR. PADILLA]: Judge, we had a long conversation about  
10 this yesterday. I can't wait to read the transcript from my  
11 colleague about the relevance of these sorts of things, and you  
12 mentioned yesterday Khoury is going to be here tomorrow. Ask Khoury  
13 the question. So I think it is relevant.

14 ATC [LT SCHWARTZ]: Your Honor, if I may briefly.

15 MJ [COL ACOSTA]: It's not necessary. The objection is  
16 overruled. If counsel didn't get to this, I was getting to this. So  
17 go ahead.

18 DC [MR. PADILLA]: Thank you, Judge.

19 Q. Let me go back a little bit.

20 So, again, the meeting January 8th, report done January 9th,  
21 and in it you write: During the interview of Ahmed Abdallah Omar  
22 Said al Masbahi, crane operator, al Masbahi identified photograph  
23 number 3 in the photo book being showed to witnesses as an individual

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1 incarcerated with al Masbahi while being questioned by -- it's  
2 blacked out. Photograph number 3 in the photo book is of Mohammed  
3 Saleh Bin'Attash, brother of Khallad.

4 Special Agent Khoury inquired from General -- blacked out.  
5 If, in fact, this individual is presently in custody and the  
6 possibility of interviewing this individual. General -- blacked  
7 out -- advised that to his knowledge, Bin'Attash was in custody in  
8 Aden, however he believes this individual is currently in custody in  
9 Sana'a.

10 General -- again blacked out -- further advised  
11 Colonel -- blacked out -- to answer further questions regarding this  
12 arrest. Colonel -- blacked out again -- at first denied Bin'Attash  
13 was in custody, stating al Masbahi -- Masbahi probably met an  
14 individual who looks like Bin'Attash while in prison.

15 During a further discussion with Colonel -- blacked  
16 out -- advised he prefers that this matter be discussed with the  
17 general. Colonel -- blanked out -- advised he will be going to  
18 Sana'a this week for a few days to meet with -- blanked out/blacked  
19 out -- officials.

20 Do you remember that meeting and do you remember writing  
21 this report based on that meeting?

22 A. I remember it now that you -- yeah, that you read it.

23 Q. Okay. And again, here you have someone who -- let me back

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1 up. That's all in one paragraph. There's a lot going on there. So  
2 let me go through this a bit.

3 Do you recall being involved in the interview of that crane  
4 operator?

5 A. Yes.

6 Q. Okay. And so you have, again, another witness who  
7 mentions being in custody at the time of the interviews, right?

8 A. Yes.

9 Q. Okay. So my questions right now, again, relate to the  
10 disclosure by Mr. Al Masbahi to you that he was in custody at some  
11 point during the interview process, okay? So my questions are the  
12 same that I ----

13 MJ [COL ACOSTA]: Counsel, can you clarify just to eliminate  
14 any confusion when you say ----

15 DC [MR. PADILLA]: Ahmed ----

16 MJ [COL ACOSTA]: ---- in custody during the interviews, the  
17 interviews of -- that were conducted by the Yemenis, correct? I just  
18 want to make sure that's clear to myself and to Agent Khoury who  
19 you're asking the question to.

20 DC [MR. PADILLA]: Yes, Judge.

21 MJ [COL ACOSTA]: Okay.

22 DC [MR. PADILLA]: While being questioned by -- again, it's  
23 blacked out, I believe that's a PSO. But yes.

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1 MJ [COL ACOSTA]: Okay.

2 Q. So, again, my questions are, you have information -- so  
3 let me back up.

4 The interview of Mr. Masbahi's done on January 7th, 2001,  
5 the day before, the information that you have. So during the  
6 interview, did you ask Mr. Al Masbahi about his time in custody while  
7 being questioned by the PSO?

8 A. No.

9 Q. Did you ask him if he was -- did he understand that -- so  
10 you didn't ask him, then, if he understood that he was arrested at  
11 the time that he was being questioned by the PSO?

12 A. No.

13 Q. You didn't ask him questions like whether he was  
14 handcuffed and whether he was in a cell?

15 A. No.

16 Q. Whether he had been mistreated by the PSO while in  
17 custody?

18 A. No.

19 Q. Whether he had been forced in any way, because of his  
20 custody, to agree to talk to the PSO?

21 A. No.

22 Q. Whether any family members were forced or coerced or  
23 threatened in any way for him to agree to talk to the PSO?

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1 A. No.

2 Q. Again, I think I mentioned this, but you didn't go ask him  
3 any details about whether he had been mistreated while -- during his  
4 custody by the PSO?

5 A. You're correct.

6 Q. Didn't ask him if he had the ability to have contact with  
7 his family?

8 A. No.

9 Q. If he had the ability to have contact with a lawyer or to  
10 any sort of judicial process in Yemen?

11 A. No.

12 Q. The other part of what you wrote here deals with the  
13 Bin'Attash brothers, right?

14 A. Yes.

15 Q. And at some point in the investigation, you and the  
16 members of your team understood the importance of Mr. Bin'Attash and  
17 his brother as it relates to not just this case, but the 9/11 case as  
18 well, correct?

19 A. Correct.

20 Q. So these were not names of some random witnesses  
21 somewhere. These were two individuals heavily involved in this case  
22 and ultimately the 9/11 case?

23 A. When you say two individuals, who are you referring to?

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1 Q. The Bin'Attash brothers.

2 A. Oh, the brothers?

3 Q. Yes.

4 A. Yes.

5 Q. Yes. I'm sorry.

6 The last part of what I read to you was the interaction  
7 between a general and a colonel, right?

8 A. Yes.

9 Q. Without mentioning any names, do you know who those two  
10 people are?

11 A. Absolutely.

12 Q. Okay. There's a crosswalk there that's in front of you,  
13 and I want you to take a look at that, and I want you to see if the  
14 names of those two people are on the crosswalk. If yes, if you can  
15 just give us the numbers, the general and then the number, and then  
16 the colonel and a number, if you identify those two.

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

18 A. You want me to give you the number for the colonel?

19 Q. Yes.

20 A. That would be number 5.

21 Q. All right. What about the general?

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

23 A. If it's the general I'm thinking of, I don't -- I don't

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1 see the name here, unless I missed it.

2 Q. Okay.

3 A. If it is the general I'm thinking of, but ----

4 Q. Okay.

5 DC [MR. PADILLA]: Judge, could I have one second to consult  
6 with the government here?

7 MJ [COL ACOSTA]: You may. And, Defense, you have the  
8 crosswalk now, yes?

9 DC [MR. PADILLA]: Yes.

10 MJ [COL ACOSTA]: Yes. You can point him to it, if you want,  
11 and say is that ----

12 DC [MR. PADILLA]: No, I think I know where the confusion is,  
13 so let me just ----

14 MJ [COL ACOSTA]: Okay. Thank you.

15 **[Counsel conferred.]**

16 DC [MR. PADILLA]: Thank you, Judge.

17 MJ [COL ACOSTA]: Yes, Defense?

18 DC [MR. PADILLA]: Judge, thank you. I'm going to ask a  
19 couple of questions that I've cleared with the government, so we  
20 should be okay.

21 Q. Mr. Khoury, was the general that you're thinking about  
22 General Gamesh?

23 A. No.



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1 Q. Was it General Naji?

2 A. I believe so.

3 Q. Okay. And again, just to sort of recap here, your  
4 interview of Masbahi was on January 7th, the meeting that you had  
5 with PSO and MOI was on the 8th, and then the report was drafted on  
6 the 9th.

7 Can you recall if in the 302 that was drafted of al Masbahi,  
8 if the fact of his in-custody status while being interviewed by the  
9 PSO was included in your 302 report?

10 A. I don't recall.

11 Q. Would taking a look at the 302 refresh your memory about  
12 whether that fact was included in the 302?

13 A. Sure.

14 DC [MR. PADILLA]: Passing up AE 319MM at page 439.

15 WIT: You want me to read the whole thing?

16 MJ [COL ACOSTA]: Counsel, did you answer him? He asked if  
17 you wanted -- if you needed him to read the whole thing. I heard  
18 that portion, and I did not hear a response.

19 DC [MR. PADILLA]: Please.

20 MJ [COL ACOSTA]: Thank you.

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

22 WIT: It does not list in here, sorry.

23 DC [MR. PADILLA]: So I have the document back.

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1           Q.     Mr. Khoury, you've had a chance to review the  
2 four-page 302 that was drafted in -- as a result of the interview,  
3 correct?

4           A.     Correct.

5           Q.     And now that you've -- does that refresh your memory about  
6 whether that fact was included in the 302?

7           A.     It was not.

8           Q.     Not included? Okay.

9                     And the last section of that paragraph that I -- again, that  
10 I read to you from the memo that you drafted, it mentions that maybe  
11 there would be some further action on maybe trying to get some more  
12 interviews there.

13                    Was there any follow-up that you can remember about getting  
14 an interview with Khallad's brother?

15           A.     Yeah, I actually interviewed him.

16           Q.     Okay. Do you remember the time frame of when that was?

17                    So this is, you know, the beginning of January here. Was it  
18 shortly thereafter or was it a bit out, if you can remember?

19           A.     It was -- well, I remember interviewing him in Sana'a so  
20 it must have been -- it must have been a little while after that.

21           Q.     I'm not going to -- I'm not going to get into that  
22 statement a whole lot, but did you ask Khallad's brother about  
23 whether he was in Aden jail at some point? Were you able to confirm

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1 that?

2 A. I don't remember if I asked him that, but if I am not  
3 mistaken, I believe I had asked him about his treatment, if I'm not  
4 mistaken. But I don't have the document in front of me.

5 Q. Okay. And consistent with the other witness interviews  
6 that you've done in this case, is it fair to say that you were made  
7 aware of the interview with Mr. Al Dajeh either the day of or shortly  
8 before conducting the actual interview of him?

9 A. Yeah.

10 Q. And can you recall right now how Mr. Al Dajeh's name  
11 became known to you or the PSO about him being a potential witness?

12 A. I don't recall.

13 Q. I think I asked you these questions already as relates to  
14 questions you may have asked him about his time in PSO custody or  
15 during questioning or anything like that. You don't have any of  
16 those details, obviously?

17 A. Correct.

18 Q. At the time that you met him, you had no idea who he was  
19 prior to your interview, correct?

20 A. No.

21 Q. And you never during the interview process confirmed his  
22 identity through Yemeni ID, driver's license, any form of ID?

23 A. No.

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1 Q. He wasn't photographed or fingerprinted to be able to  
2 identify him in the future?

3 A. No.

4 Q. Never exchanged information with him to be able to contact  
5 this person at a later date?

6 A. No.

7 Q. You mentioned a couple times -- the government asked you  
8 questions -- and, you know, we sort of all ask the same sorts of  
9 things. But again, I think the questioning is something like he  
10 didn't appear to be in any distress or it didn't appear as though he  
11 was in custody. Remember that sort of questions that the government  
12 asks?

13 A. Yes.

14 Q. And again, you have no idea really, as this person is  
15 sitting in front of you, whether he's in custody at the time you're  
16 interviewing him, right?

17 A. No.

18 Q. This is -- you're looking at a guy that you've never seen  
19 before, right? And we're asking you now that question, you know,  
20 some 20 years later about whether you thought he was in custody at  
21 the time, right?

22 A. Correct.

23 Q. So you have no idea whether he was in custody or not at

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1 the time that you interviewed him?

2 A. Correct.

3 Q. Don't know if he was forced, threatened, or coerced in any  
4 way to agree to be interviewed by you?

5 A. I don't have any knowledge.

6 Q. You don't know if any family members were threatened or  
7 any promises made to family members in order to get him to agree to  
8 the interview with you?

9 A. No.

10 Q. He was interviewed in mid-December of 2000. That's the  
11 last -- the one and only time that you spoke to him?

12 A. Correct.

13 Q. And you have not made any attempts personally to locate  
14 Mr. Al Dajeh to see if he would be available for any future hearings  
15 or trial in this case, correct?

16 A. Correct.

17 Q. You're not aware of anybody else who has made any attempts  
18 to locate Mr. Al Dajeh?

19 A. Correct.

20 Q. Let's talk about the next witness interview. That's  
21 Mr. Al Tambo. Remember him?

22 A. Yep.

23 Q. He works for the Al-Mansoub Company with Mr. Bakathir?

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1 A. Correct.

2 Q. A waste removal boat driver, correct?

3 A. Yes.

4 Q. And he is actually driving -- he's working. He's driving  
5 back to the COLE, correct?

6 A. Correct.

7 Q. Back across what is Aden Harbor to the COLE and doesn't  
8 see anything at all?

9 A. True.

10 Q. Doesn't see any boats, doesn't see any traffic, nothing at  
11 all?

12 A. Correct.

13 Q. Doesn't hear anything. Just driving and, I guess, sees  
14 the explosion or feels the explosion?

15 A. Yeah. I believe he said he heard the explosion.

16 Q. Heard the explosion. Okay.

17 And beyond that, he can't give you any details about,  
18 especially as it relates to the explosion, how that may have happened  
19 or anybody associated with that, right?

20 A. True.

21 Q. He does at some point tell you that he sees Imad  
22 Mohammed's boat behind the COLE, correct?

23 A. Correct.

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1 Q. And again, you became aware that Mr. Tambo would be made  
2 available to you either the day of or shortly before his interview?

3 A. Correct.

4 Q. Can you recall how Mr. Al Tambo's name became known to  
5 either you or the PSO?

6 A. I don't recall.

7 Q. How his name was generated as a possible witness in this  
8 case?

9 A. I don't recall.

10 Q. He was also interviewed mid-October by the PSO, correct?

11 A. Correct.

12 Q. And you don't know the circumstances surrounding his  
13 interview with the PSO?

14 A. Correct.

15 Q. How it happened, how long it lasted, whether he was in  
16 custody at the time?

17 A. Correct.

18 Q. Whether either he or family members were forced,  
19 threatened, coerced in any way to get him to talk to the PSO?

20 A. No.

21 Q. Whether he or any family members were promised anything in  
22 order for him to agree to talk to the PSO?

23 A. No.

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1 Q. Prior to your interview of him in mid-December, you had no  
2 idea who this person was?

3 A. Correct.

4 Q. And during the interview process, you never confirmed his  
5 identity through Yemeni ID, Yemeni driver's license, a passport,  
6 a -- any documentation that he worked for the Al-Mansoub Company or  
7 the port?

8 A. True.

9 Q. You're not aware of anybody that independently verified  
10 his identity at any point during the investigation?

11 A. Correct.

12 Q. Neither you nor he exchanged information so that you could  
13 contact each other if you needed to?

14 A. Correct.

15 Q. You don't know if he was -- he or any family members were  
16 promised anything in order for them -- for him to agree to your  
17 interview of him?

18 A. No.

19 Q. You don't know and you didn't ask about whether any family  
20 members were promised anything or whether he was promised anything in  
21 order for him to agree to your interview of him?

22 A. No.

23 Q. The one and only time that you had contact with him was,



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1 again, 16 December 2000?

2 A. Yes.

3 Q. And you have not made any attempt to locate him to see if  
4 he would be available for any future hearing or trial in this case?

5 A. No.

6 Q. You're not aware of any other agency that's made any  
7 attempts to locate him to see if he would be available for any future  
8 hearing or trial in this case?

9 A. Correct.

10 Q. The last statement that we have is Mr. Imad Mohammed,  
11 another person who worked for the Al-Mansoub Company, correct?

12 A. Yes.

13 Q. Now, during Mr. Mohammed's interview, he actually told you  
14 that he worked with someone else, right? He worked with sort of like  
15 a partner, another person in the -- in the boat with him?

16 A. Yes.

17 Q. And I think that he told you during the interview that  
18 that person said he wasn't going to work, actually, on  
19 October the 12th, the day of the COLE attack, correct?

20 A. Correct.

21 Q. And that person stayed home, correct?

22 A. Yes.

23 Q. And now, along with some of the other people here,

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1 Mr. Mohammed worked for, again, the Al-Mansoub Company. And he  
2 mentioned to you that Mr. Bakathir, who we mentioned a bit during  
3 these hearings -- this and, I think, previous hearings -- was one of  
4 the supervisors for the Al-Mansoub Company there?

5 A. True.

6 Q. Husbanding agent, I think is how he's referred to?

7 A. Correct.

8 Q. And it's fair to say that Mr. Bakathir was the only local  
9 Yemeni actually on board the COLE at the time of the explosion?

10 A. Yeah, fair to say.

11 Q. And during the interview, Mr. Mohammed mentions to you  
12 that Mr. Bakathir is actually on the deck of the COLE, right, giving  
13 him instructions about where to position his boat as this stuff is  
14 happening, correct?

15 A. Yes.

16 Q. And at one point, he has -- Mr. Bakathir has Mr. Mohammed  
17 position his boat in the middle of the boat, in other words, in the  
18 middle of the COLE, correct?

19 A. Yes.

20 Q. And at some point, Mr. Bakathir motions for Mr. Mohammed  
21 to move his boat to the rear of the COLE, correct?

22 A. Correct.

23 Q. And then shortly thereafter is when the explosion

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1 happened, right?

2 A. True.

3 Q. And the location generally, sort of, of the explosion was  
4 the middle section of the boat, correct?

5 A. Yes.

6 Q. And Mr. Mohammed is in his boat at the time of the  
7 explosion, correct?

8 A. True.

9 Q. Again, he doesn't see anything. He doesn't hear anything  
10 prior to the explosion of the COLE?

11 A. Correct.

12 Q. Doesn't see any other boats. Doesn't see anything like  
13 that?

14 A. No.

15 Q. As we're sitting here today, do you have -- and let me go  
16 back and ask about the last two witnesses too.

17 With Mr. Mohammed, Mr. Al Tambo, Mr. Al Dajeh, had we given  
18 you the names of those three people, you know, a month ago, would you  
19 have any independent memory of who they were and how they were  
20 connected to this case?

21 A. No.

22 Q. And in answering the questions here this afternoon, that  
23 is based on a review of your 302 in preparation for the hearings here

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1 today, correct?

2 A. True.

3 Q. As we're sitting here today, do you have any specific  
4 memory about either of these three people about how they appeared,  
5 how they talked, anything that stands out in your mind that would  
6 allow you to identify them?

7 A. No.

8 Q. Do you have any idea how Mr. Mohammed was identified by  
9 either anybody on your team or the PSO as a potential witness?

10 A. No.

11 Q. He was also interviewed by the PSO in mid-October of 2000,  
12 correct?

13 A. Correct.

14 Q. Now, you don't have any details about the circumstances  
15 surrounding his interview with the PSO?

16 A. Correct.

17 Q. You don't know where that took place?

18 A. I don't.

19 Q. Whether he was in custody at the time?

20 A. I don't.

21 Q. How long that interview may have lasted?

22 A. I don't.

23 Q. Whether he or any family members were forced, coerced, or

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1 threatened in any way to get them to talk to the PSO?

2 A. I don't.

3 Q. Whether he or family members were promised anything in  
4 order to get him to talk to the PSO?

5 A. No.

6 Q. Prior to your interview of him, 18 December 2000, did you  
7 have any idea who this person was prior to the interview?

8 A. No.

9 Q. Never seen him before?

10 A. Nope.

11 Q. You never confirmed his identity through a Yemeni ID, a  
12 driver's license, passport, anything from work or for the port?

13 A. No.

14 Q. He wasn't photographed or ID'd or fingerprinted in any way  
15 so that his true identity could be known at some point if it needed  
16 to be?

17 A. No.

18 Q. Neither you nor anybody else on your team ever  
19 independently verified his identity through any follow-up  
20 investigation?

21 A. Correct.

22 Q. You didn't exchange information with him so that either he  
23 or you could contact one another?

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1 A. No.

2 Q. Again, during your interview of him, you don't know if he  
3 was promised anything by anybody, or family members, in order to get  
4 him to agree to your interview?

5 A. No.

6 Q. Whether he or family members were forced or coerced or  
7 threatened in any way to agree to be interviewed by the FBI?

8 A. I don't know.

9 Q. Fair to say that that was the one and the only time that  
10 you had contact with Mr. Imad Mohammed?

11 A. Yes.

12 Q. And you haven't made any attempts to locate him since  
13 December 2000 to see if he would be available for any future hearings  
14 or trials?

15 A. No.

16 Q. You're not aware of any other agency that's made any  
17 attempt to locate Mr. Mohammed to see if he would be, in fact,  
18 available to testify in this case?

19 A. No.

20 DC [MR. PADILLA]: That's it, Judge. Thank you.

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

22 Government, any redirect?

23 ATC [LT SCHWARTZ]: Briefly, Your Honor.

**REDIRECT EXAMINATION CONTINUED**

**Questions by the Assistant Trial Counsel [LT SCHWARTZ]:**

Q. Special Agent Khoury, I just want to kind of clarify a few things to even make sure that I am keeping it straight.

For the document you were shown, do you recall the meeting on 8 January of 2001 with this General?

A. I do.

Q. Okay. In the report that you reviewed, in one of the paragraphs, there is an excerpt that says: This individual is presently in custody in Sana'a.

Do you recall seeing that when you reviewed it?

A. Yes.

Q. Who is this individual?

A. He is Khallad's brother.

Q. So it is not Masbahi?

A. No.

Q. And Masbahi was interviewed before this meeting took place back in Aden by you guys, correct?

A. Correct.

Q. And at the time you interviewed him, you had no reason to believe that he was in custody at that time?

A. Correct.

Q. Whenever he was interviewed initially by Yemeni

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1 authorities, do you recall that being on 14 October -- or would it  
2 surprise you if it was 14 October 2001 -- or 2000?

3 A. It wouldn't surprise me.

4 Q. And so had -- it having being immediately after the attack  
5 on the COLE, had it been common for Yemeni authorities to gather  
6 groups of people that they wanted to talk to and interview them  
7 immediately after the attack?

8 A. Of course.

9 Q. Can you talk to us -- and I know you've done it before,  
10 but humor me.

11 Can you talk to us what protective custody is and how that  
12 was used in Yemen in your experience with witnesses.

13 A. I mean, as far as I know, witnesses were being treated as  
14 witnesses. So they were brought in and they were asked questions  
15 about what they know and how they associated with the perpetrators  
16 who conducted the attack. So they were treated just as witnesses,  
17 not as suspects.

18 And to me, when -- you know, when I was speaking with Yemeni  
19 officials about witnesses, they said, you know, these witnesses were  
20 interviewed and they were cleared. So to me, that tells me that they  
21 were witnesses. That's really all it is, so ----

22 Q. So if they were held, you know, for a day or overnight  
23 while they were being questioned, in your opinion, did it seem to you



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1 that that made them a suspect?

2 A. No, I don't believe so.

3 Q. Okay.

4 ATC [LT SCHWARTZ]: Your Honor, if I might have one moment,  
5 please?

6 MJ [COL ACOSTA]: You may.

7 **[Counsel conferred.]**

8 ATC [LT SCHWARTZ]: Your Honor, I do not have anything else  
9 for this witness at this time. Thank you.

10 MJ [COL ACOSTA]: All right. Agent Khoury, I have a couple  
11 questions for you.

12 **EXAMINATION BY THE MILITARY COMMISSION**

13 **Questions by the Military Judge [COL ACOSTA]:**

14 Q. What trial counsel was just asking you about, it sounds  
15 like a -- the question was about gathering groups of people that they  
16 believed to be associated or have information about this. I  
17 don't -- I don't mean to be flippant, but was this a  
18 rounding-up-the-usual-suspects type of situation of grabbing a group  
19 of people in an area that the Yemenis would then hold for  
20 questioning?

21 A. I don't believe -- let me rephrase, Judge.

22 It could potentially be the case, but in this specific case,  
23 I don't believe this was the rounding up of usual suspects because we

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1 knew that those individuals were actually involved in assisting with  
2 the boat to be put in the water.

3           So I don't -- I think those were specific individuals that  
4 they determined, yes, they had a crane. I don't know how many people  
5 had cranes in Yemen. So when somebody had said, yeah, there was a  
6 crane that dropped the boat in the water, the Yemenis probably right  
7 away knew who these people would be because I can't imagine there was  
8 that many of them.

9           Q.     Okay.

10          A.     I don't know if that makes it clear, but ----

11          Q.     No, it does.

12                So the Yemenis went in -- the Yemeni government officials,  
13 the investigators, in mid-October, in the immediate aftermath of the  
14 event, correct, then went and gathered up individuals associated with  
15 the crane, the Masbahis particularly, correct?

16          A.     Correct.

17          Q.     Do you know how long the Masbahis were held?

18          A.     I don't know.

19          Q.     And do you believe that they were being held as suspects  
20 or as witnesses?

21          A.     Again, I believe that they were held initially for  
22 questioning, and based on my interviews of them where it was very  
23 clear that they were only witnesses and not suspects ----

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1 Q. Is that ----

2 A. ---- I believe ----

3 Q. ---- during your questioning of them or during the  
4 Yemenis' questioning of them?

5 A. No, I'm trying to make the correlation. So what I'm  
6 saying is, you know, we questioned them as witnesses, and I would  
7 guess that the Yemenis would have done the same thing. So they would  
8 have quickly determined that they are not involved in the preparation  
9 and the conduction of the attack. They were more of helping out to  
10 make money.

11 Q. Okay. Did you ask -- there were several Masbahis, but  
12 this particular Masbahi said that he had -- that he recognized  
13 Khallad's brother, Bin'Attash, from being -- when he was held in  
14 Aden, from when he was -- you know, the word in the report that you  
15 drafted said incarcerated.

16 So did you ask Mr. Masbahi about his treatment during his  
17 time being held in Aden?

18 A. I did not.

19 Q. You previously discussed -- you've discussed many of these  
20 witnesses that you -- these individuals that you interviewed as  
21 witnesses, and there were many.

22 You also interviewed people that were being held as  
23 subjects, correct?

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1           A.     Correct.

2           Q.     Do you have an estimate of the number of those that you  
3 interviewed?

4           A.     As suspects or as ----

5           Q.     Subjects or suspects. Within -- during the -- the same  
6 time period, this -- you know, from when you were there in early  
7 December, right, through this early January time period,  
8 investigative period.

9           A.     During that initial period, I don't think -- honestly,  
10 Judge, I don't remember. I know I interviewed suspects in Aden, and  
11 I know I interviewed suspects in Sana'a, but I don't remember the  
12 exact timing of those interviews.

13          Q.     Okay. So -- but you recall that you'd interviewed both,  
14 so this is my question for you.

15                 Were there any differences between the conditions of those  
16 interviews ----

17          A.     Yes.

18          Q.     ---- between a witness interview and a subject interview?

19          A.     Yes, there were.

20          Q.     Can you describe that to me?

21          A.     Usually, the witness interviews, we used to go into the  
22 room, as I've explained, and then they'd bring in the witnesses for  
23 us to talk to in a very cordial way where we're sitting around, you

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1 know, talking and -- in a room that overlooked the water, so it was  
2 clear that those were just witnesses that we were talking to.

3 The interviews of the suspects was a little bit different  
4 because they were conducted in different rooms at their headquarters  
5 where they had some type of a -- I want to call it a barrier, but not  
6 necessarily a barrier, where we used to sit on one side, they used to  
7 sit on another side -- and when I say they, I talking about the  
8 suspects. At least in Aden.

9 In Sana'a was a little bit different, where they allowed us  
10 to become much closer to them, but in Aden we were not allowed to be  
11 as close to these individuals that were considered suspects. So it  
12 was a totally different set of circumstances doing the interviews.

13 Q. Were the individuals that you interviewed as suspects or  
14 subjects, were they dressed differently than the witnesses that were  
15 witness interviews?

16 A. No.

17 Q. They were all in civilian clothes?

18 A. Correct.

19 Q. Were the subject or suspect interviews -- the interviewees  
20 handcuffed or shackled in any way?

21 A. I believe, Judge, that on a couple of them they were  
22 shackled, and I remember asking, you know, to remove the handcuffs  
23 when we talked to them. But I don't want to generalize it for

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1 everybody. But I do believe a couple that I interviewed, if my  
2 memory serves me right, they were handcuffed in the front.

3 Q. In all of the witness interviews that we've talked about,  
4 the non-subject interviews, there were always multiple members of the  
5 Yemeni investigative services in the room with you. Was that the  
6 same or different during your interviews of suspects and subjects?

7 A. There were not as many when we were interviewing suspects.  
8 It was much more limited from their side as well. So there could be,  
9 you know, two of them in the room instead of having, you know, four  
10 or five, as we have witnessed during the witness interviews.

11 Q. So you had fewer Yemeni law enforcement or investigators  
12 or security services during the subject interviews than you did  
13 during the witness interviews?

14 A. Correct.

15 Q. Okay. In addition to those individuals, were there  
16 additional -- but were there guards present in those subject or  
17 suspect interviews that were not present during the witness  
18 interviews, or no?

19 A. I believe in some of them, they had -- they had a guard at  
20 the door of the room when we went in to do the interviews.

21 Q. When the individuals were brought in for those subject or  
22 suspect interviews, were you informed that they were -- that they  
23 were in custody at the time of your interview?

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1 A. Yes.

2 Q. Was that done every time?

3 A. In most cases, yes, they were -- we knew they were in  
4 custody, and they told us they were in custody.

5 Q. Okay.

6 MJ [COL ACOSTA]: All right. Government, any questions based  
7 upon mine?

8 ATC [LT SCHWARTZ]: No, Your Honor. Thank you.

9 MJ [COL ACOSTA]: Defense?

10 DC [MR. PADILLA]: No, Judge. Thank you.

11 MJ [COL ACOSTA]: All right. All right. Agent Khoury, I'm  
12 going to ask you -- I'm going to give you the warning that I always  
13 give you at the close of these. I know you have to testify on  
14 another topic. I'm going to discuss that with the parties right now,  
15 but I'm going to ask you to leave the room when I do this.

16 So don't discuss your testimony or your knowledge of this  
17 case with anyone other than counsel for either side. You can step  
18 down. And I ask that you stay relatively near the door so that -- in  
19 case we want to have you come back in or somebody needs to inform you  
20 of something. And I know that they have some weird security rules  
21 over there about whether or not you can stand close to the door or  
22 not. I just ask that you remain available to the government so they  
23 can inform you of what your next scheduled event will be. Okay?

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1           WIT: Thank you, Judge.

2           MJ [COL ACOSTA]: All right.

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

5           MJ [COL ACOSTA]: All right, Government -- parties, we're  
6 going to talk logistics very briefly on the record.

7           Agent Khoury is still needed for AE 461; that's the next  
8 event. I don't know how long that's anticipated to take.  
9 Government, do you have an estimate on how long your  
10 question -- or ----

11          ATC [MAJ ROMEO]: Yes, Your Honor. Major Romeo at the RHR.  
12 I'll be covering it for the government. My direct, I'm expecting it  
13 be 20 to 30 minutes.

14          MJ [COL ACOSTA]: All right. Defense, do you have a -- in any  
15 way an informed estimate on how long you have?

16          DC [MR. PADILLA]: Judge, Joaquin Padilla up here in the RHR.  
17 I have no idea. I really don't.

18          MJ [COL ACOSTA]: Okay.

19          DC [MR. PADILLA]: I don't know. I -- I don't know what's  
20 going to be covered, so I can't answer. I really don't know.

21          MJ [COL ACOSTA]: All right. That's -- that is a completely  
22 great answer when it's true.

23          The -- government, do you have any update on the Sonnen



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1 discovery? I know -- I know I just asked you a couple hours ago.  
2 Have you gotten anything since? I know that there was -- I believe  
3 you stated to me there's a meeting that happened today -- and I don't  
4 mean to use air quotes in court. That's inappropriate. I'm sorry.  
5 But you said there was a meeting to occur.

6 ATC [LCDR SCHREIBER]: Sir, if you could stand by so I can  
7 speak with Mr. Wells or Mr. Wells could make the comment himself. I  
8 think he has the most up-to-date information.

9 MJ [COL ACOSTA]: All right. Mr. Wells, this isn't a witness,  
10 so you can trade off as much as you want, as long as I'm getting the  
11 right information.

12 MATC [MR. WELLS]: Yes, sir. The documents have been reviewed  
13 by SC/DRT. There's one question about the documents that we're  
14 working through.

15 The plan is that -- and the request is we want to produce  
16 all the documents but the one page. We would ask that that be  
17 produced in a classified manner. So we hope to resolve that today,  
18 and then we will report this evening with an e-mail to you and also  
19 be prepared in the morning to report where we are.

20 MJ [COL ACOSTA]: All right. So this -- how many statements  
21 is Agent Sonnen the proponent for?

22 ATC [LCDR SCHREIBER]: Sir, she's not the proponent for any  
23 statements. She ----

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1 MJ [COL ACOSTA]: I'm sorry. You know, I'm looking at the  
2 schedule, it says 319 right below her, so I apologize about that.

3 ATC [LCDR SCHREIBER]: Yes, sir.

4 MJ [COL ACOSTA]: So -- sorry. That's -- what I can  
5 do -- this is what I intend to do, then, for tomorrow. You get  
6 the -- get the discovery to the defense tonight. That's not enough  
7 time for -- to go tomorrow. So what I want to do is I'm going  
8 to -- I'm going to invert Thursday and Friday.

9 We'll hear Agent Khoury on 461. I'll hear from Dr. Crosby  
10 as well tomorrow, Defense. And then to the extent that I need  
11 updates or to hear argument on 534F, the motion to compel witnesses,  
12 I want to hear that tomorrow. And I will speak to you about 529 and  
13 532 as well.

14 So that's what I want to do. I want, to the greatest extent  
15 possible, flip those. That will give you, Defense, time -- or  
16 tomorrow to review the information that they're going to receive  
17 today on Sonnen, and we will go -- so we'll take everything else up  
18 except -- everything that's on Friday, to the extent that we can,  
19 except for 444; I'll leave that for Friday as well. And we'll go  
20 from there.

21 ADC [MS. MORGAN]: Judge, if I can be heard on 444?

22 MJ [COL ACOSTA]: Uh-huh.

23 ADC [MS. MORGAN]: It is a 660-page filing.

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1 MJ [COL ACOSTA]: Oh, I'm not saying that we're taking 444. I  
2 said except for 444.

3 ADC [MS. MORGAN]: Okay.

4 MJ [COL ACOSTA]: I'm not taking up 444 until I -- I've got to  
5 look at it too. You know, I want to see what's there.

6 ADC [MS. MORGAN]: And, Judge ----

7 MJ [COL ACOSTA]: I haven't ----

8 ADC [MS. MORGAN]: And I hope -- I understand last hearing,  
9 Judge, you said that you watch counsel. Sitting here reading it, I  
10 am not confident that the defense will be prepared to take it up  
11 this -- I can actually say the defense is confident we will not be  
12 prepared to take it up this hearing.

13 MJ [COL ACOSTA]: We'll discuss that by Friday. I'll -- we'll  
14 have that discussed by Friday. Keep working on it. We'll talk on  
15 Friday ----

16 ADC [MS. MORGAN]: Okay.

17 MJ [COL ACOSTA]: ---- and we'll go from there. The -- I'm  
18 not saying I'm taking it up on Friday, but we'll talk more about it  
19 on Friday. All right.

20 Do the parties understand my intent? We're going to take up  
21 Agent Khoury first thing, 534F tomorrow, and then Dr. Crosby tomorrow  
22 as well. Understood?

23 Government?

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1 TC [MR. O'SULLIVAN]: Just so I'm clear, Your Honor, what  
2 about 529 and 532?

3 MJ [COL ACOSTA]: Yeah, I talked about those as well. If I  
4 didn't say it, I was thinking it in my head.

5 TC [MR. O'SULLIVAN]: No, you did say it. Is it tomorrow or  
6 Friday?

7 MJ [COL ACOSTA]: Tomorrow. If I can fit it in tomorrow, I'm  
8 fitting it in tomorrow.

9 TC [MR. O'SULLIVAN]: Roger.

10 MJ [COL ACOSTA]: I'm trying to front-load everything on to  
11 Thursday to leave Friday with as much room as possible for Sonnen.  
12 Because if I only have one day with Sonnen, I want to get it -- leave  
13 as much time as possible to get that complete, and then I don't -- so  
14 that we can get a -- I'm just trying to front-load the rest of the  
15 week into tomorrow -- into Thursday, so that -- I don't want to push  
16 up against the -- although I've yet -- there's only one time where we  
17 were running out of time here with the schedules you've given me.

18 I've -- I've always finished -- been able to  
19 complete -- we've always been able to complete what we've  
20 done -- what we needed to according to the schedule. So I'm going to  
21 make sure that that continues. And that means that everything that's  
22 on Friday that's not 444 is going to be tomorrow. Understood? I'm  
23 getting nodding heads.

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

2 MJ [COL ACOSTA]: I'll take that as yes.

3 LDC [MR. NATALE]: And could we also have an update on 535? I  
4 think the government was supposed to get back to us on that one.

5 MJ [COL ACOSTA]: Yes. Government, I asked for end-of-the-day  
6 update. Thank you. I asked you to give me a date certain by which  
7 you could comply or -- or answer, right?

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

9 MJ [COL ACOSTA]: Okay.

10 MATC [MR. WELLS]: All right.

11 MJ [COL ACOSTA]: And again, an answer can be ----

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

13 MJ [COL ACOSTA]: And I'm not trying to -- and I'm not trying  
14 to tell you how to do it. But you've already gotten the order of  
15 events is you got a request for discovery on 4 October, and there's  
16 some e-mails exchanged, but there's no formal answer.

17 You state but didn't -- isn't that what we did on -- in  
18 January?

19 No, that is not what you did. What you responded to in  
20 January was a motion to compel. Answering a motion to compel  
21 discovery and answering a request for discovery are not the same  
22 thing. The -- especially when you're saying deny the motion to  
23 compel.

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1           The -- and then you got another request from the defense,  
2   not a motion to compel, on the 31st of January, and you've not  
3   opposed their time -- and it's all related to an underlying motion.  
4   You've not opposed their request for additional time to reply in  
5   order so that you can respond apparently to the 31 January one.

6           Have I correctly summarized everything?

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

8           MJ [COL ACOSTA]: Okay.

9           MATC [MR. WELLS]: And I also think the 4 October. They want  
10   both of those responded.

11          MJ [COL ACOSTA]: Yes, yes.

12          MATC [MR. WELLS]: The information is what we're trying to get  
13   to for both parties and the commission. I know that. But we will  
14   provide a written response and -- to each item. I think I can do  
15   both the 4 October and the 31 January by 1 March, because under your  
16   order, we're supposed to provide a written response by 31  
17   January ----

18          MJ [COL ACOSTA]: Yeah, just kind of the rules that we do in  
19   litigation is you write written responses. I don't mean to be flip,  
20   but that's how you respond to requests, right?

21          So, yes, if you get them a written response by 1 March,  
22   that's acceptable.

23          MATC [MR. WELLS]: Yes, sir. And then I -- looking forward,

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1    though, for their request for additional time on whatever response we  
2    have in discovery, we may provide -- and discovery we may provide is  
3    a different circumstance. But they asked until 21 March to reply.

4           I would propose for the parties -- and I apologize, I  
5    haven't produced -- circulated this to the defense, but would 31  
6    March be acceptable to the defense and the commission for them to  
7    file a reply? I think that would tee ----

8           MJ [COL ACOSTA]: They only asked until the 21st, and you want  
9    me to give them ten more days. I'm sure that Mr. Natale is falling  
10   over his -- himself to run to the microphone and agree with you that  
11   you should take -- that they should get the ten more days.

12          I don't know that they're going to need the ten more days,  
13   and here's why I'll -- what I'll tell you why you don't need  
14   it -- well, why you probably don't need it is because you have the  
15   things you -- you tell me that you large -- Mr. Natale, that you have  
16   the things that you -- that you need on some of this motion, and  
17   they're just going to give you what they -- you know, they're going  
18   to answer.

19          Do you need more than three weeks to draft your  
20   response -- your reply? I'm going to -- I'm going to tell you that  
21   you don't. You're going to reply -- you know, I'll -- you're -- you  
22   don't need it.

23          If you're -- if you're -- Government, you've got until

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1 1 March to answer the -- the 4 October and the 31 January  
2 requests -- requests for discovery.

3 Defense, you've got -- that will give you three weeks to get  
4 me your reply. And that will give you your three weeks.

5 So that -- so essentially your motion to -- your -- your  
6 motion for the extension of time to the 21st is essentially -- is  
7 then granted because that's what you asked for, and I'll give it to  
8 you.

9 And then we're going to hear the baseline -- that -- so that  
10 portion of your motion is moot now because now you're getting your  
11 motion -- your -- the motion to compel discovery is -- they're  
12 answering it.

13 That leaves the second half, the relief, for the  
14 alleged -- for the alleged Brady violation, Brady/Giglio violation,  
15 to be heard in the April session, and that's what we're going to do  
16 first thing when we get that.

17 Am I incorrect?

18 LDC [MR. NATALE]: Your Honor, Lieutenant Colonel is going to  
19 be responding to this.

20 MJ [COL ACOSTA]: It appeared to be news to him because ----

21 LDC [MR. NATALE]: Well, this is what he's been arguing, but  
22 if not, I'll take it.

23 MJ [COL ACOSTA]: Can't hear you.



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1 DC [Lt Col NETTINGA]: Do I have to do something?

2 MJ [COL ACOSTA]: There you got it, now I can hear you now.

3 DC [Lt Col NETTINGA]: Just stand up here and do this? Yes,  
4 Your Honor.

5 So understood what the court is saying, and I don't think  
6 there will be any issue taking it up in April. We don't have any  
7 quarrel with that.

8 I guess the only thing that I would say is depending on the  
9 government's response which they're going to produce on the 1st of  
10 March, and whether that is substantive in nature or perfunctory in  
11 nature or, hey, we're going to get that to you, that may change some  
12 of the calculus. We'll obviously keep the court apprised if there's  
13 anything we need.

14 I'm not asking for more time. I'm not anticipating more  
15 time. But when you say that the motion to compel discovery, that  
16 part of the motion is settled, I would say let's just wait and see.

17 MJ [COL ACOSTA]: I understand. Well, it's settled to the  
18 fact that they said they're going to finally answer you, so ----

19 DC [Lt Col NETTINGA]: We appreciate that, sir.

20 MJ [COL ACOSTA]: ---- that's what we're going to answer. An  
21 answer that I don't -- that they don't have something is an answer,  
22 right? If they said look, we looked, we don't have something, right?

23 DC [Lt Col NETTINGA]: Absolutely.

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1 MJ [COL ACOSTA]: Okay.

2 DC [Lt Col NETTINGA]: I'm more concerned with the idea that  
3 they say, hey, we might have this, we are looking for it -- yeah.

4 MJ [COL ACOSTA]: Oh, I understand. They're going to answer  
5 if there's more to be gotten there. But I'll tell you this, your  
6 reply is due on the 21st.

7 DC [Lt Col NETTINGA]: Absolutely, sir. No problem.

8 MATC [MR. WELLS]: The 31st.

9 MJ [COL ACOSTA]: I do not anticipate granting more time than  
10 the 21st ----

11 MATC [MR. WELLS]: Okay.

12 MJ [COL ACOSTA]: ---- because we need to be able to resolve  
13 this in April, okay? Do you understand?

14 DC [Lt Col NETTINGA]: 21st is good with us, sir.

15 MJ [COL ACOSTA]: Yeah. It should. Right, that's what you  
16 asked for. You got it.

17 DC [Lt Col NETTINGA]: Yes, sir.

18 MJ [COL ACOSTA]: Yes. The request for the extension until  
19 the 21st is granted, so that portion is complete.

20 LDC [MR. NATALE]: I understand ----

21 MJ [COL ACOSTA]: As far as -- the government says they're  
22 going to give you an answer, if it's -- you can argue whether or not  
23 it was good enough or bad enough when we come -- in your reply, and

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1 you can argue whether -- and you can -- and then we'll hear about it  
2 when we're back together in April.

3 LDC [MR. NATALE]: Very well. Hopefully we'll also get some  
4 discovery and things to look at and not just a cursory statement.

5 MJ [COL ACOSTA]: But things -- I understand. You know  
6 what -- you know what responses look like. Sometimes they say here's  
7 this -- here's Tabs A, B, and C, and sometimes it's I don't have  
8 something here, okay? And if you have something that disproves that,  
9 guess where you need to put it. In the reply. And be able to  
10 present evidence on it. Okay?

11 MATC [MR. WELLS]: All right, sir. Thank you.

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

13 You can tell Agent Khoury we'll see him tomorrow morning.  
14 We're not going to take up -- with an unknown time period, we're not  
15 going to take up 461 with him today. We'll recess unless -- absent  
16 objection, we'll recess until 0900 tomorrow.

17 Government, any other -- anything else?

18 TC [MR. O'SULLIVAN]: No, Your Honor.

19 MJ [COL ACOSTA]: Defense, anything else?

20 LDC [MR. NATALE]: No, Your Honor.

21 MJ [COL ACOSTA]: All right. Thank you. The commission is in  
22 recess until 0900.

23 **[The R.M.C. 803 session recessed at 1559, 22 February 2023.]**