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1 [The R.M.C. 803 session was called to order at 0901,
2 24 February 2023.]

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

4 Government, good morning.

5 TC [MR. O'SULLIVAN]: [No audio feed.] These proceedings are
6 being transmitted via CCTV to public viewing locations in the
7 United States pursuant to the commission's order in AE 028M dated 22
8 November 2019.

9 All of the following government personnel have the requisite
10 clearances for being in the courtroom and the Remote Hearing Room:

11 Present at Guantanamo Bay are myself, Michael O'Sullivan;
12 Mr. John Wells; Lieutenant Commander Cherie Jolly; Major James
13 Garrett; Mr. Pascual Tavaréz-Patin; Staff Sergeant Maria Young;
14 Mr. Forrest Parker Smith; Mr. Louie Marmo; Ms. Joleen Sanders, and a
15 representative from the JTF SJA's office.

16 Present in the Remote Hearing Room in northern Virginia are
17 Lieutenant Commander Keven Schreiber, Major Michael Ross,
18 Major Stephen Romeo, Lieutenant Tess Schwartz, Captain Jonathan
19 Danielczyk, Master Sergeant Laura Speranza, Ms. Paige McLachlan,
20 Special Agent Paul Rude from the Transregional Criminal Investigation
21 Unit, Supervisory Special Agent Mary Sonnen, Staff Operations
22 Specialist Nicholas Chang, Staff Operations Specialist Jennifer
23 Drummond, and -- are all from the FBI. And from the FBI Office of

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1 General Counsel, Ms. Katherine Eisenreich.

2 Staff Sergeant Jaune Daniels will be in and out also.

3 MJ [COL ACOSTA]: Okay. All right.

4 Good morning, Defense.

5 LDC [MR. NATALE]: Good morning, Your Honor. I apologize. My
6 allergies seem to be kicking up, so I may have to, like, cough a
7 little. I apologize.

8 MJ [COL ACOSTA]: No worries.

9 LDC [MR. NATALE]: I feel healthy, so there's no COVID.
10 There's nothing. We're good.

11 Good morning, Your Honor. Anthony Natale on behalf of
12 Mr. Nashiri, who is not present today, and I understand executed a
13 waiver which I'm sure you'll deal with later. Also here is
14 Ms. Morgan, Lieutenant Commander Piette, Mr. Dolphin, and Ms. Carmon.
15 And LN Wood is not presently in but will be coming back and forth.

16 In the RHR, there's Mr. Padilla, there's Lieutenant Colonel
17 Nettinga, there is Mr. Roosevelt Roy, there is Mr. David Bendernagel.
18 And I believe who will be -- people who will be coming in would be
19 Staff Sergeant McGuire and Ms. Manice Brown.

20 All of these individuals have the necessary clearance in
21 order to be present for all of these sessions.

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

23 Government?

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

2 MJ [COL ACOSTA]: Good morning.

3 ATC [MAJ GARRETT]: Government calls a representative from the
4 JTF Legal Support Section. Please raise your right hand.

5 **COMMANDER, U.S. Navy, was called as a witness for the prosecution,**
6 **was sworn, and testified as follows:**

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

8 **DIRECT EXAMINATION**

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

10 Q. Commander, do you work at the Office of the Staff Judge
11 Advocate for Joint Task Force-Guantanamo Bay?

12 A. I do.

13 Q. And did you have an opportunity this morning to meet and
14 speak with the accused, Mr. al Nashiri, regarding his rights to
15 attend this hearing?

16 A. Yes.

17 Q. And did Mr. al Nashiri indicate whether he would attend
18 today's proceedings?

19 A. Yes, he did.

20 Q. What did he communicate with you?

21 A. That he was declining to attend today.

22 Q. Did he say anything to you?

23 A. He did. He wanted me to make sure the court knew that he

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1 was not attending because he was tired and that the van ride made him
2 feel ill.

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

5 MJ [COL ACOSTA]: You may, and you may move freely.

6 Q. Commander, I have in front of me a Statement of
7 Understanding of Right to be Present at Commission Proceedings
8 executed today, 24 February 2023, which has been marked as Appellate
9 Exhibit 375W. A copy has been provided to the defense.

10 ATC [MAJ GARRETT]: May I approach the witness, Your Honor?

11 MJ [COL ACOSTA]: You may.

12 Q. Commander, I've presented to you what has been marked as
13 Appellate Exhibit 375W. Do you recognize this form?

14 A. I do.

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

17 A. Yes.

18 Q. And what was his election whether to attend today?

19 A. Not to attend.

20 Q. Did he communicate anything else to you?

21 A. Other than what I mentioned previously, no.

22 ATC [MAJ GARRETT]: Your Honor, I have nothing further.

23 MJ [COL ACOSTA]: All right. Retrieve the document.

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1 ATC [MAJ GARRETT]: Retrieving the document.

2 MJ [COL ACOSTA]: Defense, any questions?

3 **CROSS-EXAMINATION**

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

5 Q. Sir, what you reported he said was this -- were those his
6 exact words or that's the gist of what he said?

7 A. Those were exact words.

8 LDC [MR. NATALE]: Okay. Thank you.

9 MJ [COL ACOSTA]: Any redirect, Government?

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

11 MJ [COL ACOSTA]: All right. You may step down, and you're
12 excused.

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

14 MJ [COL ACOSTA]: Government, anything else?

15 ATC [MAJ GARRETT]: Your Honor, we'd just ask that you make a
16 finding that the accused made a knowing and voluntarily waive of his
17 right to attend these proceedings today.

18 MJ [COL ACOSTA]: Defense?

19 LDC [MR. NATALE]: No objection.

20 MJ [COL ACOSTA]: All right. The commission finds that
21 Mr. Nashiri's voluntarily waived his right to be present today.

22 Government?

23 ATC [LCDR SCHREIBER]: Yes, Your Honor. We're prepared to

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1 call Ms. -- Special Agent Sonnen, if you're ready to go.

2 MJ [COL ACOSTA]: Yes, I am.

3 ATC [LCDR SCHREIBER]: Outstanding, sir. The government calls
4 Supervisory Special Agent Mary Sonnen.

5 If you'd go ahead and stand right there and raise your right
6 hand.

7 **SUPERVISORY SPECIAL AGENT MARY SONNEN, civilian, was called as a**
8 **witness for the prosecution, was sworn, and testified as follows:**

9 ATC [LCDR SCHREIBER]: Please have a seat.

10 **DIRECT EXAMINATION**

11 **Questions by the Assistant Trial Counsel [LCDR SCHREIBER]:**

12 Q. And you are Supervisory Special Agent Mary Sonnen, right?

13 A. Yes.

14 Q. So in our discussion today, I don't intend to elicit any
15 classified information. I don't think we're going to need a closed
16 session. But if there's anything that either I or defense counsel
17 asks you that might elicit a classified answer, just let us know and
18 we'll deal with it then.

19 A. Okay.

20 Q. And ----

21 ATC [LCDR SCHREIBER]: Sir, we're having a microphone problem,
22 so he's going to fix this right now.

23 WIT: Okay. Yes.

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1 ATC [LCDR SCHREIBER]: Great. That's better.

2 Q. Okay. Special Agent Sonnen, what is your present
3 employment? Who is your employer?

4 A. The FBI.

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

6 A. Since June 1st, 2004. About 18 and a half years.

7 Q. And are you the case agent currently assigned to the
8 U.S. v. Nashiri case?

9 A. I am.

10 Q. And how long have you served in that capacity?

11 A. Since August of 2022.

12 Q. All right. I just want to briefly cover your background.
13 What's your educational background?

14 A. I have a bachelor's degree in biology and a master's
15 degree in curriculum and instruction from Penn State University.

16 Q. And before you joined the FBI, did you work for anybody
17 else?

18 A. I did.

19 Q. What did you do?

20 A. I was a school teacher. I taught high school biology.

21 Q. So then why the shift from teaching high school biology to
22 joining the FBI?

23 A. I had been teaching for about ten years, and my boss at

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1 the time, the vice principal at the school, had been an FBI agent.
2 And he told me that he thought I would do well in that position and
3 recommended that I consider it. It was after 9/11, and I was
4 inspired, like many, to make a career change, and I applied to the
5 FBI and was accepted.

6 Q. All right. So like every other FBI agent, you did some
7 training out at Quantico, right?

8 A. I did.

9 Q. Can you give the judge just the wavetops of your FBI
10 career, then, after training up to this point.

11 A. Sure. My first office of assignment was in Pittsburgh,
12 Pennsylvania, where I was assigned in 2005 to the Joint Terrorism
13 Task Force. I was employed there for three years, investigating
14 counterterrorism matters and also as a member of the Evidence
15 Response Team.

16 I was transferred to the Philadelphia division, Williamsport
17 Resident Agency, in approximately 2008. There it was a smaller
18 office, only eight agents, and I worked criminal matters, to include
19 investigations of crimes against children, as well as
20 counterterrorism matters and general criminal violations.

21 Following that, in 2011 I transferred to the Washington
22 Field Office where I worked on the Attorney General's protection
23 detail. I was promoted in 2012 to supervisory special agent and

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1 transferred to Quantico, Virginia, where I was instructor at the
2 FBI Academy in interviewing and interrogation for new agent trainees
3 as well as the National Academy Chiefs of Police from around the
4 world.

5 In 2015 I transferred to the national Joint Terrorism Task
6 Force in the Counterterrorism Division at headquarters for the FBI.
7 I was promoted again in 2018 to GS-15 watch commander at the 24-hour
8 Counterterrorism Watch Center and briefly detailed back as the chief
9 of the national Joint Terrorism Task Force.

10 I remained at C-T Watch, the Counterterrorism Watch Center,
11 until August of 2022, when I transferred to the Military Commissions
12 Prosecution Unit where I am now.

13 Q. On -- at one point, you talked about being an instructor
14 in interrogation and crime scene procedures and things like that.
15 You said you gave training at the academy. Did you give anywhere
16 else to any other entities and folks, specifically foreign training?

17 A. I did. I taught internationally in Amman, Jordan; Kabul,
18 Afghanistan; Rwanda, Ethiopia, a variety of international locations
19 to police in those countries.

20 Q. Now, in your role as the case agent for this case, what do
21 you do?

22 A. I support the prosecution. I work on any investigative
23 leads that we might have. I organize documents and evidence. I'm

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1 responsible for those. I look for FBI equities in documents for
2 discovery. And generally support the prosecution's needs, serving
3 subpoenas and the like.

4 Q. Now, is it just you or do you have a team that works with
5 you?

6 A. We have a team.

7 Q. And in this role as the case agent, do you have
8 the -- access to the full resources of the FBI to do the things you
9 need to do?

10 A. I do.

11 Q. Okay. As part of your work for this case, were you asked
12 to locate Yemeni persons who were interviewed as part of this
13 investigation back in the 2000-2001 time frame?

14 A. Yes.

15 ATC [LCDR SCHREIBER]: Your Honor, I'd like to show the
16 witness what has been previously marked Appellate Exhibit 319DDD.

17 MJ [COL ACOSTA]: You may.

18 ATC [LCDR SCHREIBER]: I've handed the document to the
19 witness. And, Your Honor, I don't intend to publish on the ELMO.
20 The team down there should have a copy for you if you'd like it. The
21 court reporters already have it as well. We didn't clear it through
22 the CISO, but we have a copy for you if you'd like?

23 MJ [COL ACOSTA]: For display, you mean? You didn't clear it

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1 for display?

2 ATC [LCDR SCHREIBER]: Correct, didn't clear for display. I
3 could put it on the ELMO for nondisplay, but we have a copy for you.

4 MJ [COL ACOSTA]: Okay. The -- go ahead. I'm going to let
5 your partner down here bring it up to me.

6 ATC [LCDR SCHREIBER]: We'll have one other document that in
7 the same situation, that we have a hard copy for you.

8 MJ [COL ACOSTA]: Thank you.

9 Q. Special Agent Sonnen, referring to that Appellate Exhibit
10 319DDD that you have in front of you, do you recognize that?

11 A. I do.

12 Q. What is it?

13 A. It's a list of Yemeni witnesses that were interviewed by
14 the FBI in 2000 and 2001.

15 Q. Okay. So you've seen that list before?

16 A. I have.

17 Q. Okay. Does that list represent the Yemeni individuals
18 that you've been seeking?

19 A. Yes.

20 Q. Now, to start off with, were you given that entire list
21 right off the bat when you started doing your investigation?

22 A. I received groups of names at different points.

23 Q. Okay. But does that list represent the entirety of the

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1 list of folks you'd been searching for?

2 A. It does.

3 Q. And we're going to refer to that a little bit, again,
4 later, so if you could just push that to the side, and we'll leave
5 that there in front of you.

6 A. Sure.

7 Q. So, in fact, before you took -- before you started this
8 process looking for these folks, it was actually Special Agent
9 Kellerman who did some work on it, right?

10 A. Yes.

11 Q. When he was the case agent?

12 A. Yes.

13 Q. Did you review the work that he did?

14 A. I did.

15 Q. And did you review his prior testimony about the -- about
16 this issue?

17 A. Yes.

18 Q. How about other sort of older actions to try and
19 find -- or find Yemeni persons or get cooperation from Yemenis? Did
20 you review historical documents that were on point for this -- this
21 matter?

22 A. I did.

23 Q. Okay. So when you were first assigned as case agent and

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1 tasked to track down some of these Yemeni persons, what's the first
2 thing that you did when you got the list of names?

3 A. I reviewed the FD-302 report of the interview that the FBI
4 conducted at the time for any sort of identifying data, biographical
5 data about the individual, to include variations on the name, a date
6 of birth, a year of birth, an address, or any other identifiers that
7 were notated in the FD-302s.

8 Q. Okay. How about potentially, like, Yemeni ID numbers or
9 anything like that? Did you gather some of those as well?

10 A. I was able to gather those from the case file, yes.

11 Q. Okay. For some individuals?

12 A. For some, not all.

13 Q. So after your review of the 302, gathering the -- any
14 biographical data that might be present in the 302 or other
15 documents, what did you first -- what are the steps you took with
16 that initial bit of information?

17 A. So we organized that in groups, as you had said before,
18 and provided it to representatives from the Customs and Border
19 Protection and the Department of State, who are members of the FBI's
20 National Joint Terrorism Task Force, to see if they could do some
21 general searches as to whether any of these individuals were in their
22 databases.

23 Q. Okay. So I want to talk about each one of those briefly.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Okay.

2 First, you said that you gave the list of names and partial
3 biographical information -- or whatever you had, anyway -- to Customs
4 and Border Protection. What kinds of things can they check for you?

5 A. They can check for border crossings into or out of the
6 United States as well as potentially the name matching something on a
7 cargo shipment entering the United States.

8 Q. So, like, anytime you come into the United States with a
9 passport, they're tracking that. They've got those names and that
10 information?

11 A. Yes.

12 Q. Going off of that initial list of just names and the
13 biographical information you could uncover at the beginning, was the
14 Customs and Border Protection folks that you talked to, were they
15 able to find any of those names, any potential hits?

16 A. No.

17 Q. Okay. You said you reached out to the State Department
18 with the similar -- the same list and partial biographical
19 information, whatever we had, right?

20 A. Yes.

21 Q. And what kinds of things can the State Department check
22 for you?

23 A. The State Department can check for visa applications,

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1 either B-1 visitor visas or diversity visas to see if any of these
2 individuals might have made an application to enter the United States
3 on the visa.

4 Q. And that might tell us also, not necessarily that they
5 were in the United States, but from where they applied, right?

6 A. Yes.

7 Q. Just going off of that initial list of names with the
8 initial biographical data, was the State Department able to find
9 anybody or have any potential hits?

10 A. No.

11 Q. Now, we've heard in past testimony from Special
12 Agent Kellerman this concept of, like, a formal versus an informal
13 request to the State Department for this kind of assistance. Can you
14 talk about that and whether you pursued one of those avenues or the
15 other?

16 A. Yes. So this request that I made to the State Department
17 was an informal request in the sense that it was a preview, a look at
18 whether there were any potential positive matches in State Department
19 databases, and it -- there were none.

20 If there had been something found, even a potential match,
21 we could have submitted a formal request to the State Department for
22 an official record of whatever that visa application might have been.

23 Q. So it's not like they were doing different searching, it's

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1 just the formal request would give you back formal documents and
2 things?

3 A. Yes.

4 Q. Okay. So if there's no potential hits, is there a reason
5 to do a formal request for documents?

6 A. No, there would be nothing to request, nothing for them to
7 provide.

8 Q. Okay. So we've talked about that you took that initial
9 information and you talked to Customs and Border Protection, State
10 Department. What else did you do with those initial list of names
11 and biographical information?

12 A. So we also looked through public source and open source
13 databases.

14 Q. Yeah. So I want pause you there. Can you describe the
15 difference between public source and open source searches?

16 A. Sure. A public source database would be a paid-for,
17 commercially available service. These are companies that aggregate
18 available data through public records, including driver's licenses,
19 real estate transaction records, things of that nature.

20 Open source, on the other hand, would be your traditional
21 Google or Bing-type search, just on the open Internet that's free and
22 available to anyone to search.

23 Q. So separating those two, did you take that initial list of

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1 names and basic biographical information and do some open-source
2 checking to see if you could find any of these folks?

3 A. Yes.

4 Q. So that's just Google searches and the like?

5 A. Yes.

6 Q. Did you also use that same list and try public-source
7 database searches?

8 A. We did.

9 Q. Using those two tools, did you have any possible hits?

10 A. We did. We had some partial matches to names and
11 variations of the names.

12 Q. Okay. I'm sorry. So did you have -- you have any -- I'm
13 sorry.

14 You said you had hits on variations of the names. Was there
15 other information attached to those names that you found?

16 A. Yes. Sometimes there was an address in the United States
17 or a partial address, even a U.S. phone number associated with those
18 matches, or a more complete date of birth. If we entered the year of
19 birth, it might give us the month and the date.

20 Q. Now, once you had done some public and open-source
21 searches and found some of these potential hits with additional
22 information, did you resubmit those potential hits to Customs and
23 Border Protection and the State Department?

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1 A. We did.

2 Q. Okay. Using the now maybe additional information, has
3 Customs and Border Patrol or the Department of State -- or Border
4 Protection, excuse me, or the Department of State, had any success in
5 locating any of these individuals?

6 A. No. They still came up with negative results.

7 Q. Now, you noted earlier that you found some Yemeni ID
8 numbers for some of the declarants in some of the documents you
9 looked at.

10 A. Yes.

11 Q. What did you do with those?

12 A. So very little that we can do with those besides Googling
13 them, a string of numbers. And it was not productive. It didn't
14 come up with any other hits.

15 Q. Okay. So you don't have access to, like, a Yemeni ID
16 database or anything like that, right?

17 A. I don't.

18 Q. Right. Because that would be in their country?

19 A. Certainly.

20 Q. How about enlisting the help of a native Arabic speaker to
21 search some of these names? Have you done that?

22 A. I did.

23 Q. And was that -- what kinds of things was that person able

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1 to search with their specialty in the Arabic language?

2 A. So she was able to transliterate the name into Arabic and
3 search on Arabic-language websites, either through an Arabic version
4 of Google or any foreign-language newspapers or open sources, using
5 the name variants and whatever partial identifiers we had, but in
6 Arabic.

7 Q. Okay. And was she able to find any potential matches,
8 potential hits in her searches?

9 A. She did. She found some partial name matches to people
10 who were similar to the names on our list.

11 Q. So for the instances in which you've had some hits, some
12 of these potential open-source -- an address or a phone number or
13 things like that on the foreign language, are you and your team
14 continuing to run those down to see if those lead to one of these
15 individuals?

16 A. We are.

17 Q. Okay. I want to talk about just a couple of them as
18 examples of the work that you guys have done and are doing. The
19 first one I want to touch on is just actually an odd one from the
20 documents. Did you -- do you remember -- excuse me.

21 Are you familiar with the name Hassan Ali al Mansour?

22 A. Yes.

23 Q. Okay. Is that somebody that you all initially did some

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 searches for?

2 A. We did.

3 Q. Are you going to be doing any more searches for that
4 person?

5 A. We are not.

6 Q. Okay. Why did you do the searches initially?

7 A. You asked us to. His name was on a list of potential
8 declarants to be offered for this hearing.

9 Q. All right. Is it your understanding that person is
10 not -- the statement is not being offered?

11 A. Right.

12 Q. Okay.

13 A. True.

14 Q. So you won't be searching for him anymore?

15 A. We will not.

16 Q. Okay. There were, though, some things that you found by
17 that name, right?

18 A. Yes.

19 Q. Okay. Let's talk about one of the folks that is one of
20 the declarants the government's offered. Are you familiar with
21 Mohammad Abdallah Ismaiel al Najjar?

22 A. Yes.

23 Q. What kinds of things did you find for that declarant

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1 on -- in your searches?

2 A. So an address, a full date of birth that was similar to
3 the year of birth that I believe we had, an expired driver's license
4 in California, I believe.

5 Q. Again, though, no Customs and Border Protection or State
6 Department hits though, right?

7 A. No.

8 Q. Given that you -- you just said you had an address in
9 California or a -- excuse me, an indication he was in California, are
10 you planning to just go knock on the door?

11 A. No. You know, the techniques that we use in the FBI for
12 investigations, we generally work from least intrusive to most
13 intrusive techniques. It would be very intrusive to go knock on a
14 door when I don't have solid information that that person is
15 identifiable with the individual that I'm seeking. So we'll do
16 further work to try to validate whether that person could possibly be
17 him before we would escalate to a more intrusive technique on -- on
18 someone's privacy.

19 Q. Now, you did say, though, that you found a phone number
20 for this -- or a phone number attached to this name through
21 open-source searching, right?

22 A. Yes.

23 Q. Excuse me. Open or public source.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Right.

2 Q. How many phone numbers did you find in the United States
3 that might potentially be attached to these names?

4 A. About 16.

5 Q. Have you called those numbers? Are you going to call
6 those numbers?

7 A. Our team did call those numbers.

8 Q. How recently did they call the phone numbers?

9 A. Last Friday.

10 Q. Were any of the phone numbers that you tracked down -- did
11 you determine that those were attached to these individuals?

12 A. No.

13 Q. Were there any -- what was -- let me just ask the question
14 this way.

15 What happened when you called some of those numbers? I
16 mean, did they answer? Anything at all?

17 A. The majority of the numbers that the team called were
18 either disconnected or this number is no longer in service. On the
19 occasion when someone did answer the telephone, it was wrong number.

20 Q. All right. So for the foreign language work, looking on
21 foreign websites and using Arabic -- an Arabic-language expert or
22 native speaker, what kinds of information has she been able to find?
23 Just in terms of, like, contact information, potentially.

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1 A. So she found some open-source news articles, some
2 references to a person's occupation, and that person matched the name
3 of the person we were looking at, things of that nature.

4 Q. We're going to talk in specific about a few of those, but
5 how about phone numbers? Did she find any phone numbers attached to
6 any of these names?

7 A. Yes, she did.

8 Q. Okay. And are you going to be calling those phone
9 numbers?

10 A. We will, certainly.

11 Q. Will you be calling from the United States? How do you
12 intend to do that?

13 A. No, I -- my best thought on how to do that is through the
14 assistant legal attaché office in Riyadh where there's more likely to
15 be a native speaker and where the call would be more local, from
16 Saudi Arabia to Yemen. So it might be more likely that someone would
17 pick up if that phone were to be a valid phone number and the
18 connection were to be made.

19 Q. I want to talk about just a couple of these folks, a few
20 person -- folks where the foreign-language efforts found the name of
21 the declarant in some of these open sources.

22 Are you familiar with what was found about Atiq Said Saleh?

23 A. Yes.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And what was found in the foreign-language searching for
2 that name?

3 A. I can't remember exactly what was found. I believe it was
4 an occupation, but I don't remember what his occupation was.

5 Q. Would it help you to review the notes of that to remember
6 what was found about him?

7 A. It would.

8 ATC [LCDR SCHREIBER]: Your Honor, permission to show the
9 witness what's been previously marked Appellate Exhibit 319FFF,
10 page 96.

11 MJ [COL ACOSTA]: You may.

12 Q. I'd direct your attention to the fourth paragraph from the
13 bottom.

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

15 ATC [LCDR SCHREIBER]: Retrieving the document.

16 Q. Did that refresh your memory about what was found out
17 about Atiq Said Saleh?

18 A. Yes, it did.

19 Q. And what was found?

20 A. There was an article or some kind of an open-source
21 listing with his occupation as the general manager of a municipality
22 in Yemen.

23 Q. Same question in term -- for a Mr. Aabed Mohammad Mohammad

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 al Thawr. Do you remember what was found about him?

2 A. Yes. This -- this same name matched a possible hit on a
3 brigadier general in the Yemeni Army.

4 MJ [COL ACOSTA]: Can I get the name again, Counsel?

5 ATC [LCDR SCHREIBER]: Yes, sir. It's declarant number 102,
6 Aabed Mohammad Mohammad al Thawr.

7 LDC [MR. NATALE]: Excuse me, Your Honor. Would it be
8 possible that we could get the numbers so we can track them?

9 MJ [COL ACOSTA]: Yes, I -- that would be helpful.

10 Government, can you ----

11 ATC [LCDR SCHREIBER]: Aye, sir. Yes, sir. Yes, sir.

12 MJ [COL ACOSTA]: ---- Mr. Saleh, what was his number?

13 ATC [LCDR SCHREIBER]: Yes, sir. Let me -- in fact, let me
14 just back up, then I can cover these for the record real quick.

15 MJ [COL ACOSTA]: The first was Hassan Ali al Mansour.

16 ATC [LCDR SCHREIBER]: Yes. And so he's not a numbered person
17 but he's ----

18 MJ [COL ACOSTA]: Right.

19 ATC [LCDR SCHREIBER]: ---- in the discovery so I wanted to
20 make sure we mentioned him.

21 MJ [COL ACOSTA]: Right. Thank you. I just went back to the
22 first name in my notes.

23 ATC [LCDR SCHREIBER]: Yes, sir. The next one is number 33,

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1 Mohammad Abdallah Ismaiel al Najar.

2 Then we just -- number 69, Atiq Said Saleh. And then
3 number 102.

4 And we've got one more.

5 MJ [COL ACOSTA]: Right. So Atiq Said Saleh was listed as a
6 municipal manager -- municipal manager for ----

7 ATC [LCDR SCHREIBER]: Yes, sir.

8 MJ [COL ACOSTA]: ---- a district?

9 ATC [LCDR SCHREIBER]: Correct.

10 MJ [COL ACOSTA]: A province in -- was it a district?

11 ATC [LCDR SCHREIBER]: It's indicated as a municipality,
12 right?

13 WIT: Yes.

14 MJ [COL ACOSTA]: Municipality.

15 ATC [LCDR SCHREIBER]: Yeah. Good to go, sir?

16 MJ [COL ACOSTA]: Yes.

17 Q. And then the last one I wanted to ask you about as an
18 example, number 17, Mohammad Nagi Fadel. Are you familiar with what
19 was found related to that name in some of the open-source searches?

20 A. Yes. The linguist found an article or an obituary-type
21 reference indicating he was deceased.

22 Q. Okay. So somebody by that name is deceased; not
23 necessarily this guy, but somebody by that name?

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1 A. Correct.

2 Q. So in terms of these -- these are just a sampling of some
3 of the hits, but in terms of these hits that you've made in searching
4 foreign-language, Arabic open source, are you going to attempt to
5 close those loops as well, run down those leads, if it's possible?

6 A. Yes.

7 Q. And we talked a lot about sort of online and database
8 work, picking up the phone, things like that. Have you inquired with
9 the government about just going to Yemen and going on the ground and
10 trying to find these people?

11 A. I have.

12 Q. Who did you reach out to?

13 A. So I reached out through the assistant legal attaché for
14 the FBI in Riyadh who contacted the regional security officer for the
15 State Department at the embassy in Riyadh, inquiring about what it
16 might take to travel to Yemen.

17 Q. And what did you learn from -- in terms of the approval
18 process for State Department?

19 A. I learned that it would be a very lengthy approval
20 process. It would require the approval of at least an Under
21 Secretary of State level. I learned that it would have to match or
22 align with a high-priority U.S. Government policy requirement. I
23 also learned that the request would be denied outright if there was

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1 any sort of combat or hostility, conflict in the area where I was
2 requesting to travel.

3 Q. Okay. Is there currently a U.S. embassy in Yemen?

4 A. No.

5 Q. So it sounds like it's possible, theoretically, to travel
6 to Yemen, in theory, right?

7 A. Yes.

8 Q. In your opinion, in terms of the investigation you're
9 conducting, is that a practical step to take?

10 A. I don't believe it's a practical step to take, in my
11 opinion.

12 Q. Okay. So if we're not going to go to Yemen, has the FBI
13 tried to reach out to the government of Yemen for their assistance?

14 A. We have.

15 Q. And so how does that work? What is the -- what does it
16 mean to reach out to the government of Yemen?

17 A. Well, we're reaching out through, again, the assistant
18 legal attaché and the legal attaché in Riyadh for any Yemeni
19 government official who may be detailed or assigned or seated somehow
20 at the U.S. embassy in Riyadh.

21 Q. Now, this has been an ongoing effort -- right? -- to try
22 and ----

23 A. Yes.

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1 Q. ---- get in touch with the Yemeni government, have them
2 help us?

3 A. Yes.

4 Q. Did you review some of the historical efforts?

5 A. I did.

6 Q. About how -- how long back does our -- do our efforts go,
7 sort of in recent times, anyway, to try and get them to help us with
8 the investigation?

9 A. Since at least 2015.

10 Q. Okay. And specifically with regard to this list and this
11 testimony that we've been doing the past few weeks, how long have the
12 efforts specific to this been going on?

13 A. For this list specifically, since 2019.

14 Q. Okay. Has your team ever received an official reply from
15 anybody in the government of Yemen about your request for assistance?

16 A. We did receive an official reply.

17 ATC [LCDR SCHREIBER]: Your Honor, I'm going to show the
18 witness Appellate Exhibit 319CCC.

19 MJ [COL ACOSTA]: You may. And you may move freely, Counsel,
20 if I didn't say it before. Just let me -- just narrate your actions
21 is all.

22 ATC [LCDR SCHREIBER]: Yes, sir.

23 MJ [COL ACOSTA]: Thank you.

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1 ATC [LCDR SCHREIBER]: Yes, sir.

2 MJ [COL ACOSTA]: This is 319CCC?

3 ATC [LCDR SCHREIBER]: That's correct, sir.

4 Q. Special Agent Sonnen, do you recognize that document?

5 A. I do.

6 Q. And what is that?

7 A. So this is a memorandum from the Republic of Yemen

8 Ministry of Interior.

9 ATC [LCDR SCHREIBER]: And, Your Honor, I think we had a copy
10 of that for you as well if you don't already have it ----

11 MJ [COL ACOSTA]: **[Indicated]**.

12 ATC [LCDR SCHREIBER]: ---- in front of you. Great.

13 Q. So what did the Ministry of the Interior tell us in that
14 letter?

15 A. Essentially they tell us that they cannot help us with our
16 investigation because all of the documents are in the control of the
17 terrorist Houthi militia.

18 Q. Is that the only official response we've received so far
19 from the government of Yemen?

20 A. It is.

21 Q. With regard to this matter, anyway?

22 A. Yes.

23 Q. So without being specific in this setting about specific

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1 countries or specific government agencies -- that is, foreign
2 government agencies -- has the FBI reached out to foreign government
3 agencies to try and get their assistance with finding these
4 individuals?

5 A. We have.

6 Q. Have any of those efforts been fruitful?

7 A. No.

8 Q. In fact, have a lot of those countries just refused to do
9 anything?

10 A. Yes.

11 Q. And would you -- in your review of the records, would you
12 describe those attempts to reach out to foreign government agencies
13 as, like, something you've done very recently or that's a more
14 historical effort of the FBI team?

15 A. More historic.

16 Q. Okay. So going back to that list that you still have in
17 front of you, the 319DDD, has the FBI taken these efforts that you've
18 described to locate those individuals?

19 A. Yes.

20 Q. And when seeking those individuals, have you had the full
21 resources of the FBI at your disposal?

22 A. Yes.

23 Q. That said, have you had access to the full biographical

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1 and identifying information that you might have if you were trying to
2 find somebody, a U.S. citizen in the United States?

3 A. No.

4 Q. So would it have been helpful to have additional
5 biographical information like a solid address or fingerprints or a
6 photo, those sorts of things?

7 A. Yes.

8 Q. Would it have been helpful if those things had been
9 collected at the time these interviews were conducted with these
10 individuals?

11 A. Yes.

12 Q. Okay. Is it your understanding that that was possible?

13 A. It was not possible.

14 Q. Okay. Again, looking at that list, 319DDD, we've talked
15 about the fact that there were a few potential hits, like, some more
16 information. Are you and your team going to try and run those down
17 and see if they lead to any of those individuals?

18 A. Yes.

19 Q. This is an ongoing effort, right?

20 A. It is.

21 Q. And it's going to continue until you've done all the
22 practical logical steps, right?

23 A. Yes.

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1 Q. Is your intent to find these people?

2 A. Of course.

3 Q. So up to today -- just to put a nail in it, has the FBI up
4 to today been able to find positively any of the people on that list?

5 A. No.

6 ATC [LCDR SCHREIBER]: Your Honor, that's all I have.

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

8 LDC [MR. NATALE]: Yes.

9 MJ [COL ACOSTA]: Hold on a second, he's going to
10 come -- you'll see him on your screen when he speaks. It's going to
11 be from down here. Go ahead.

12 **CROSS-EXAMINATION**

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

14 Q. Special Agent Sonnen, I am not going to ask you any
15 questions that I think could elicit classified information; however,
16 if the truthful and honest answer to a question I ask would require
17 that, please let us know and not answer that question in this public
18 setting.

19 Does that make sense to you?

20 A. Yes, sir.

21 Q. Now, I'd like to go through -- one of the things you
22 mentioned is that you're an instructor in interviewing and collecting
23 evidence; is that correct?

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1 A. Yes.

2 Q. And that would be for criminal prosecution, correct?

3 A. Yes.

4 Q. And that the FBI is oftentimes involved in criminal
5 prosecutions?

6 A. Yes.

7 Q. And that there are -- that there are certain protocols
8 that -- actually, you have a form. I think it's called a 302?

9 A. Yes.

10 Q. And they have -- that's where reports are made, correct?

11 A. Yes.

12 Q. And when you're doing an interview, it would be important
13 to confirm the identity of the person that you're talking to?

14 A. Yes, it's important.

15 Q. And it would be important to gather information that would
16 allow you to confirm whether what they say or who they say they are
17 actually is?

18 A. Yes, that's also important.

19 By the way, I can't see you. I don't know if I'm supposed
20 to see you.

21 MJ [COL ACOSTA]: It would be -- it would be -- no, no, it
22 would -- it is supposed to happen that way, so let's just pause for a
23 second until the technical folks make that happen for us, please.

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1 WIT: I can see.

2 MJ [COL ACOSTA]: Okay. Good to go.

3 Q. I think I ended with it would be important to have the
4 manner and means to confirm who the person was.

5 A. Yes, sir.

6 Q. And the reason for that, in part, would be if this person
7 later was -- excuse me -- to be called as a witness?

8 A. Yes.

9 Q. And that oftentimes, one may not know if or when someone
10 would be called as a witness?

11 A. Yes.

12 Q. And that as a result, that and other identifying
13 information is essential to have recorded at the time?

14 A. Yes.

15 Q. And that -- and oftentimes ----

16 LDC [MR. NATALE]: Oh, thank you.

17 Q. Oftentimes -- and I think you said, the best practice
18 would be when you were doing it -- doing the interview?

19 A. Yes.

20 Q. Now, in this case, you were not in Yemen?

21 A. No.

22 Q. You were not present for any of these interviews?

23 A. No.

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1 Q. And did you interview each of the individual interrogators
2 or investigators in this case?

3 A. I wouldn't say I interviewed them, no.

4 Q. Did you speak with them?

5 A. I have spoken with some of them as they've been witnesses
6 for this case.

7 Q. Have you read any of their testimony?

8 A. I have.

9 Q. And when you said that they were not allowed to get
10 certain information, that is based on what they told you, correct?

11 A. Yes, and the restrictions in the Bodine memorandum.

12 Q. Okay. Well, as far as the restrictions, are you saying
13 that the restrictions in the Bodine memorandum specifically said you
14 cannot get the identification of the person you're interviewing?

15 A. No, I'm not saying that.

16 Q. Are you saying that the Bodine memorandum said that you
17 couldn't get the address or date of birth of the person you're
18 interviewing?

19 A. No.

20 Q. Are you saying that all of the normal things that one
21 would want -- the address of the person, that that is something that
22 they were prohibited from asking because of the Bodine memorandum?

23 A. No.

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1 Q. As it relates to identifying information in the present
2 and for future purposes, is there anything in the Bodine memorandum
3 that prevented the investigators in this case from collecting that
4 information?

5 A. I don't know precisely, but I do know that it placed
6 limitations on the nature of the interview and how it would be
7 conducted, which seems to have prohibited the agents from collecting
8 all the information they might have wanted to collect at the time.

9 Q. That's not my question.

10 A. I'm sorry.

11 Q. My question is: Did the Bodine memorandum expressly
12 prevent them from collecting the identifying information that I've
13 been asking you about?

14 A. I don't know.

15 Q. Did you ever inquire to these people you interviewed if
16 the Bodine memorandum expressly prohibited the collection of this
17 information?

18 A. No.

19 Q. At any time, did you ask these individuals, look, when you
20 were doing this, how did you expect that we could call them as a
21 witness in the future? Did you ever ask them that?

22 A. No.

23 Q. And when you spoke to them, it was part of your task to

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1 try to locate these people, right?

2 A. Yes.

3 Q. And that would be a logical thing to find out?

4 A. I'm sorry, what would be?

5 Q. What would be -- whether or not the information that they
6 were -- that this information which would be standard, was prohibited
7 by the Bodine memo?

8 A. I'm still not sure I understand your question. I'm sorry.

9 Q. Let me try it more simply.

10 Did you ask the individuals who you spoke with whether the
11 Bodine memorandum prevented them from collecting this identifying
12 information?

13 A. I did not.

14 Q. Now, if I understand, you first came onto this case in
15 August 22nd?

16 A. Yes.

17 Q. Excuse me. August of 2022.

18 A. Yes.

19 Q. Okay. And as the case agent?

20 A. Yes.

21 Q. And was one of your responsibilities to use your knowledge
22 and your expertise in order to locate the people who are contained in
23 what has been identified as AE 319DDD?

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1 A. Yes.

2 Q. And am I correct to say that one of the things that you
3 would have done in the very beginning is to do a thorough and
4 complete search of all FBI documents relating to the individuals that
5 are contained in 319DDD?

6 A. Yes.

7 Q. And that you did that, right?

8 A. I did. It's still ongoing, but I have.

9 Q. And in going through that, did you learn that in 2000 and
10 2001 and 2003, that the actions of the FBI and other investigators
11 was to gather evidence for a criminal prosecution?

12 A. Yes.

13 Q. And that their task was, in part, to collect the evidence
14 that would be necessary to identify suspects, right?

15 ATC [LCDR SCHREIBER]: Objection. It's asked and answered at
16 this point. We've covered this already.

17 MJ [COL ACOSTA]: Defense?

18 LDC [MR. NATALE]: Judge, I'm asking my questions ----

19 MJ [COL ACOSTA]: No, I understand that. I think he's saying
20 that you've asked ----

21 LDC [MR. NATALE]: Oh, I thought he was saying ----

22 MJ [COL ACOSTA]: ---- it before.

23 LDC [MR. NATALE]: Fine. If I asked it before, let me ask you

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1 this.

2 Q. What about the -- the witnesses?

3 A. I'm sorry, sir?

4 MJ [COL ACOSTA]: Yeah, I think you need to put a complete
5 sentence with that because I'm not sure she knows what you're talking
6 about.

7 Q. Okay. Let's try to do this.

8 Based on all of the investigation that you did to find out
9 what was done in the past, did that include possible suspects?

10 A. I'm not sure I understand the question ----

11 MJ [COL ACOSTA]: I don't understand the question either.

12 A. ---- "possible suspects."

13 Q. Your job is to identify people, correct?

14 MJ [COL ACOSTA]: Hold on. I think you need to take a step
15 back and form your questions. I don't know what you're asking.

16 LDC [MR. NATALE]: Okay. Let's try it again from the very
17 beginning.

18 MJ [COL ACOSTA]: Are you asking about her job right now as
19 the case agent to identify witnesses or to identify suspects?

20 LDC [MR. NATALE]: I'm trying to go backwards. Originally I
21 asked was it her understanding that the people doing the
22 interrogation ----

23 MJ [COL ACOSTA]: The questions that we've talked about with

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1 the interviews of these witnesses?

2 LDC [MR. NATALE]: Right, that their task was, in part, to
3 find possible suspects and witnesses for a criminal prosecution.

4 MJ [COL ACOSTA]: Okay.

5 LDC [MR. NATALE]: Was that her understanding?

6 WIT: Yes.

7 MJ [COL ACOSTA]: You can answer that question.

8 Yes. Her answer is yes.

9 Q. And would that also have included information necessary to
10 call these people, if possible, at a future date?

11 A. Yes.

12 Q. Now, from 2000 up to the present, based on what you looked
13 at, did you find at any time, 2001, 2002, 2003, anytime, that the
14 government tried to reconnect with any of the people who are listed
15 in Appellate Exhibit 319DDD?

16 A. Yes.

17 Q. And which ones did they try to locate and in what year?

18 A. All of them, and most recently, this list, 2019.

19 Q. My question is: Prior to your list and your action on the
20 historical data that you reviewed, did you find documents that
21 related to efforts to maintain contact with the witnesses that are
22 contained in AE 319DDD?

23 A. I wouldn't characterize it as maintain contact, but I

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1 would say that we, prior to my efforts here, attempted to locate
2 them.

3 Q. Okay. Could you tell me what individuals and on what
4 dates and what efforts were taken to locate them?

5 ATC [LCDR SCHREIBER]: Objection. It's not relevant to their
6 availability currently, which is what we're here to establish.

7 MJ [COL ACOSTA]: Overruled. I'll allow it.

8 When -- when did you try to find these -- when were the
9 efforts to try to find these individuals? You've mentioned 2019.
10 Was there any effort prior to 2019 that you found in your review of
11 these -- of the information to where ----

12 WIT: Yes.

13 MJ [COL ACOSTA]: ---- the FBI or the government or the
14 United States was trying to contact these witnesses and, if so, when?

15 WIT: Yes, sir. There were efforts prior to and including
16 2019. I don't know the exact dates of all of those efforts or the
17 exact names of all of those efforts, but I do know that in 2019, this
18 list of names, there was an effort made to locate them.

19 Q. Just for clarification, I'm not asking about 2019. I'm
20 asking for prior to 2019.

21 A. Yes.

22 Q. Are you saying under oath that there are documents that
23 show that they tried to locate people that are on this list?

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1 ATC [LCDR SCHREIBER]: Objection. Argumentative and asked and
2 answered.

3 MJ [COL ACOSTA]: Overruled.

4 A. To the best of my recollection, from my review of the case
5 file, yes.

6 Q. But you don't recall what witnesses or at what time?

7 A. I don't recall that precisely, no.

8 Q. Do you recall what efforts were taken prior to 2019?

9 A. Yes.

10 Q. What ----

11 A. Database ----

12 Q. What were those efforts?

13 A. Database searches, as I've previously described.

14 Inquiring of other foreign countries whether they could be of any
15 assistance in locating the individuals. Things of that nature that
16 I've previously described.

17 Q. The searches that you're talking, did they include in the
18 Arabic language or purely English?

19 A. I don't know.

20 Q. Do you know if these activities which you say occurred
21 prior to 2019 were the same as what you have conducted since 2019?

22 A. I don't know that they were the same, but they were
23 similar.

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1 Q. Would you say that it was a thorough attempt?

2 A. As compared to ----

3 Q. What you've done.

4 A. ---- the attempt that I'm making?

5 Q. Yeah.

6 A. I think I'm making a more thorough attempt.

7 Q. Did you inquire as to why or who made those prior
8 attempts?

9 A. Inquire of whom? I ----

10 Q. The people who wrote the documents that you're referring
11 to.

12 A. Yes.

13 Q. Okay. Who of those people did you talk to and say, hey, I
14 saw something in this thing that in 19 whatever, 2000 whatever, you
15 did this. Can you tell me more about that?

16 ATC [LCDR SCHREIBER]: Objection. Not relevant to their
17 availability currently or for a future trial.

18 LDC [MR. NATALE]: Your Honor, if I may?

19 MJ [COL ACOSTA]: Please.

20 LDC [MR. NATALE]: The reason why it's relevant, because the
21 government is alleging that these people are unavailable. If they
22 never conducted or tried to conduct the investigation and the
23 procedure from the very beginning, when they knew it was going to be

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1 a criminal prosecution, or throughout this entire time, what they
2 have done is taken a -- what I would call in legal terms, deliberate
3 ignorance as to where these people were. And, therefore, now they
4 can claim they're unavailable so they can use their hearsay
5 statements.

6 MJ [COL ACOSTA]: Your objection is overruled. I'll allow it.
7 Go ahead.

8 WIT: I'm sorry, sir. Could you repeat the question?

9 MJ [COL ACOSTA]: The question was who did you speak to that
10 made the previous efforts to locate the individuals.

11 WIT: So I spoke to some of the prior case agents who had my
12 job before I took this job.

13 Q. Do you have the names of any of those agents?

14 A. One of them comes to mind, Mary Boese.

15 Q. Okay.

16 A. But -- Claire Caetano is another one that comes to mind.
17 I don't know all their names.

18 Q. And when did you speak to them about their activities in
19 the past?

20 A. I've had ongoing discussions with all of them since I
21 started this position in August 2022.

22 Q. These documents are information that you say show efforts
23 were made to locate witnesses prior to 2019. Do you still have

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1 access to those?

2 A. I do.

3 Q. Is there any -- would you be willing to present that to
4 the defense and to this court?

5 ATC [LCDR SCHREIBER]: Objection. That's not her position.

6 MJ [COL ACOSTA]: Sustained. This isn't the time to request
7 the information, Counsel.

8 Q. Let me ask you this: Did anything in the documents that
9 you reviewed reflected plans to have these Yemeni witnesses testify
10 in any way, shape, or form? In a criminal proceeding.

11 A. I don't know if you can have plans if you can't find them,
12 so I'm not sure how to answer that. I wouldn't characterize it as
13 plans.

14 Q. Well, how would you characterize it?

15 A. Efforts to locate the witnesses. There were efforts to
16 locate the witnesses.

17 Q. There was nothing that you learned that at one point there
18 may have been an effort to have them brought to a ship where they
19 could testify?

20 A. I don't -- I don't know. I don't recall anything of that
21 nature.

22 Q. Now, let me ask you some questions about -- you said that
23 you had identification on some of the people who are listed on AE

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1 319DDD, correct?

2 A. Some possible identifications.

3 Q. Okay. Which ones did you have some possible
4 identification information?

5 A. I don't remember all of the names or declarant numbers
6 offhand.

7 Q. Do you remember where that identifying information that
8 you had on these people who you can't recall right now came from?

9 A. I do.

10 Q. And where did it come from?

11 A. Public sources, open sources, and Arabic-language
12 sources -- searches conducted by the linguist.

13 Q. And that was done when?

14 A. Since August 2022, within the last few months.

15 Q. I want to ask you the same question prior to August 2022.
16 Did you have identifying information, date of birth, passport photos,
17 anything, addresses, of any of the people listed on AE 319DDD prior
18 to your work?

19 A. Did I have any identifying information ----

20 Q. That's what ----

21 A. ---- prior to my work?

22 Q. In the documents that you reviewed, was there anything in
23 there from the very beginning?

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1 A. I'm afraid I don't understand "was there anything in
2 there."

3 Q. All right. Let me ----

4 MJ [COL ACOSTA]: I'm going to clarify it for you.

5 WIT: Thank you, sir.

6 MJ [COL ACOSTA]: You stated that when you took the job you
7 went back and you reviewed the prior work of other agents. When you
8 reviewed that prior work, did you find any of the -- any information
9 regarding contact information or identifying information for any of
10 the witnesses that the government now seeks?

11 WIT: Not beyond what was originally collected in the FD-302.

12 Q. So does that mean that some of the 302s that were written
13 in Yemen of these interviews contained that information?

14 A. Some of the 302s ----

15 Q. Is that what you said?

16 MJ [COL ACOSTA]: She didn't find anything other than what
17 was ----

18 ATC [LCDR SCHREIBER]: Objection.

19 MJ [COL ACOSTA]: I've got the -- she's saying that the only
20 thing that she had was the information that was contained in the 302s
21 that you have. There was no other information.

22 Is that correct, Agent? I don't want to put words in your
23 mouth.

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1 WIT: It is correct, but there were -- there was a review of
2 other documents that had the Yemeni identification numbers, and that
3 was not in the 302. That was in a separate document that I located
4 in the paper case file.

5 Q. So all of that was -- are you saying that was for every
6 witness that was listed on AE 319DDD, or just a few?

7 ATC [LCDR SCHREIBER]: Objection. Confusing question.

8 MJ [COL ACOSTA]: All right.

9 LDC [MR. NATALE]: All right. I'll try it slower.

10 MJ [COL ACOSTA]: Hold on. Counsel, what I'm trying to -- I
11 understand -- I think I understand where your questions are. I'm not
12 trying to interrupt -- believe me, when I -- do not take me trying to
13 clarify as anything of -- other than just trying to help you get the
14 information that you need that you want to give to me.

15 LDC [MR. NATALE]: Very well.

16 MJ [COL ACOSTA]: And I know that you don't because
17 we're -- we're just trying to get the -- the answer to the -- the
18 question.

19 If you can ask it -- I believe what she has stated is
20 that -- and I'm just to summarize here so that you know -- so that
21 you can go where you choose from from here.

22 The question was when she had looked back at the previous
23 information when she first took the job, she -- the question was

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1 whether or not there was any other identification -- identifying
2 information showing the -- the results of searching for them, did she
3 find any information that was the result of a search for those
4 witnesses prior -- that had been conducted prior for the witnesses,
5 correct?

6 LDC [MR. NATALE]: Correct.

7 MJ [COL ACOSTA]: Did you find anything from prior searches by
8 the FBI for these witnesses in your files?

9 WIT: Yes.

10 MJ [COL ACOSTA]: Okay. Now pick up from there.

11 LDC [MR. NATALE]: Okay.

12 Q. What did you find and for what witnesses?

13 A. I don't remember what witnesses, but the same sort of
14 possible address, possible phone number information.

15 Q. Now, am I correct in saying that some of the 302s that
16 were conducted in Yemen actually contained identifying information?

17 A. Yes.

18 Q. Some of them didn't contain the identifying information?

19 A. Yes.

20 Q. Previously, did you intend to say that they were prevented
21 from asking and getting identifying testimony?

22 A. No.

23 Q. So they were capable of doing it. It's sometimes they did

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1 and sometimes they didn't, right?

2 A. I think they always asked for identifying information, but
3 I think that it wasn't always provided as fulsome and thoroughly as
4 we might like.

5 Q. Well, what I'm asking is date of birth -- is what you're
6 saying that at -- that your understanding is every interview when
7 they were interviewing someone they expressly asked the basic
8 identifying information? Are you saying that?

9 A. I was not there. I don't know what was done. But in
10 general, an FBI agent does ask those questions when conducting an
11 interview.

12 Q. And that would be included in the 302?

13 A. Yes. If you got an answer, it would be included.

14 Q. Did you inquire as to the people who did the interviews
15 where there was no information regarding identification, that they
16 actually asked that question and were told no, I'm not going to give
17 it to you or you can't answer that?

18 A. No.

19 Q. In looking at the document, you don't know if maybe some
20 of the people just didn't ask, correct?

21 A. I don't know.

22 Q. So it would be wrong for anyone to infer that for all of
23 the people they interviewed, this information at the time was asked?

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1 A. I'm sorry. It would be wrong to infer?

2 Q. That every agent asked every witness this identifying
3 information.

4 A. I have no way of knowing if every agent asked for this
5 identifying information.

6 Q. And so therefore you cannot testify that in the first
7 instance, the attempt was even made, correct?

8 A. I cannot. I wasn't there.

9 Q. Now, since the initial interviews, how many instances do
10 you recall where in the documentation it shows there was attempts to
11 locate these people for purposes of testifying?

12 ATC [LCDR SCHREIBER]: Objection, asked and answered. We've
13 covered this.

14 MJ [COL ACOSTA]: Defense?

15 LDC [MR. NATALE]: I think I'm now specific -- I'm -- okay.
16 If you want me to clarify, I'm clarifying about which ones of anybody
17 did -- did it reflect that they tried.

18 ATC [LCDR SCHREIBER]: Objection. I'm still pretty confident
19 it's asked and answered.

20 MJ [COL ACOSTA]: Overruled.

21 For which witnesses did they seek to locate? Which
22 witnesses did they seek to locate?

23 WIT: They sought to locate all of the witnesses.

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1 Q. And you're saying that that is contained in the documents
2 that you looked at?

3 A. Yes.

4 Q. And that is on how many occasions?

5 A. I don't know a precise number.

6 Q. Would the only way you could give a precise number is if
7 you were able to review the records?

8 A. That would be the best way.

9 Q. Well, I see you hesitating. Is there any other way that
10 you would suggest to try to find out that information?

11 A. I could interview or talk to every other person who's been
12 the case agent for this investigation, every member of the team, and
13 assess what their recollection might be. But I believe the best way
14 would be to review the documentation to get a precise number.

15 Q. And would you agree that where efforts were not made, that
16 it made your job infinitely more difficult to locate these people in
17 2000 -- when did you come on? 2019?

18 MJ [COL ACOSTA]: '22.

19 A. '22 is when I came on, sir.

20 I don't know that it would make my job any more difficult.
21 The passage of time over 20 years has made my job difficult enough.

22 Q. Let me make sure I understand this. So if you had all of
23 the standard identifying information that you would normally have in

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1 a 302 witness, are you saying that your task to identify and locate
2 these people would be just as difficult?

3 A. No. I must have misunderstood your previous question. If
4 I had all the identifying information from the original FD-302, my
5 job would be easier.

6 Q. Now, you mentioned two agents that you did speak to that
7 were involved in these past efforts.

8 A. Yes.

9 Q. Okay. Did they tell you what specific steps they took and
10 when they took them?

11 A. I had that from the documentation, so I didn't need to ask
12 them specifically, but the steps they took were similar to the steps
13 I'm taking.

14 Q. And when you say similar, you've done a -- what do you
15 mean by similar? How much? The same exact things you've done? Two
16 or three of the things you've done?

17 A. I mean similar. Similar in the sense that the
18 public-source databases that are the paid-for services might not have
19 been exactly the same. It may have been a different company that the
20 FBI used for those public-source searches. They may have used other
21 search engines for their searches. But they did do similar things in
22 that sense.

23 Q. And you're saying that because that's recorded in the

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1 documentation you read?

2 A. Yes.

3 Q. So it would be very -- as specific as the documentation
4 that you've made as far as what you've done?

5 A. My documentation is more specific.

6 Q. At any time prior to today, anytime, are you aware if
7 there was any attempt for an agent to travel to Yemen in order to try
8 to identify/locate so these people could be called in the future?

9 A. I'm not aware of any attempt to travel to Yemen.

10 Q. Are you aware of whether in 2003 people could travel to
11 Yemen?

12 A. I believe they could in 2003, but I'm not certain.

13 ATC [LCDR SCHREIBER]: Objection, relevance, given this case
14 didn't even exist in 2003.

15 MJ [COL ACOSTA]: Overruled.

16 Q. 2004, people could still travel?

17 A. I believe they could.

18 Q. 2005 ----

19 MJ [COL ACOSTA]: That's the next one.

20 Q. ---- '6 and '7?

21 MJ [COL ACOSTA]: Counsel, is your question when did it
22 become -- when did travel become impermissible or impractical?

23 LDC [MR. NATALE]: I could do it stylistically that way.

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1 MJ [COL ACOSTA]: I don't know that it's just a style. I'm
2 just trying to ----

3 Q. When ----

4 A. In twenty ----

5 Q. When was the date, to your understanding, that people
6 couldn't go to Yemen anymore?

7 A. I believe the U.S. embassy closed in 2015.

8 Q. Okay. So is it your understanding that anytime before
9 that, people could go to Yemen?

10 A. I believe so.

11 Q. Okay. Are you aware of when the criminal case was
12 initiated against Mr. Nashiri?

13 A. In this court?

14 Q. Let's start with this court, yeah.

15 A. I believe so.

16 Q. Okay. What was the date?

17 A. I believe, if I'm not mistaken, the charges may have been
18 filed in 2011 or 2013. I'm not positive.

19 Q. Okay. That would be -- both of those dates would be
20 during the time when people could still go to Yemen, correct?

21 A. I believe so.

22 Q. Specifically, do you have any recollection as to whether
23 efforts were made after the filing of this case, this death penalty

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1 case -- that any efforts were made to go to Yemen to locate these
2 people?

3 A. I don't know.

4 Q. Have you tried to find out?

5 A. I have reviewed the file. I don't know at this moment for
6 the time frame you're specifying.

7 Q. So I understand your testimony, at this point in time as
8 the lead case agent, you don't know what efforts to locate these
9 witnesses in Yemen has occurred since the filing of these charges?

10 A. I believe I have told you what efforts have been made, but
11 I don't know with specificity for the time frame you're asking about.

12 Q. My question -- my question is a very different question.
13 It's specific to from the filing of the indictment -- which you're
14 aware would be criminal charges, correct?

15 A. Yes.

16 Q. You're aware that's what the charges are. They're
17 criminal.

18 A. Yes.

19 Q. And that there was a need to have witnesses called in
20 order to prove that case. You're aware of that too?

21 A. Of course.

22 Q. Your review of the records doesn't really reflect whether
23 from 2011 up to when you came on to the case that they tried to

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1 locate these witnesses, right?

2 ATC [LCDR SCHREIBER]: Objection. It's a confusing question.
3 I'm not sure what time period that counsel is referring to.

4 Q. From 2011 to 2015.

5 A. I don't know if the efforts that I have been talking about
6 that were conducted happened in that time period specifically.

7 Q. Okay. And you have no recollection right now of any
8 efforts that were made during the time frame of 2011 to 2015 to go to
9 Yemen and locate these people? You either know it or you don't. Do
10 you?

11 ATC [LCDR SCHREIBER]: Objection, asked and answered. The
12 question -- she just said that.

13 MJ [COL ACOSTA]: Counsel, is that different from what you
14 just ----

15 LDC [MR. NATALE]: I want to make sure ----

16 MJ [COL ACOSTA]: I'm counting that this is the third time
17 you've asked that question, and she ----

18 LDC [MR. NATALE]: I want to make sure that it's clear because
19 the witness keeps adding, well, it was similar to, there was these
20 other things, and I want to tie it down.

21 MJ [COL ACOSTA]: My question is are you talking about the
22 efforts that the -- are you asking her if there were efforts to
23 travel there from 2011 ----

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1 LDC [MR. NATALE]: Yes.

2 MJ [COL ACOSTA]: ---- and '15?

3 LDC [MR. NATALE]: That's precisely my question.

4 MJ [COL ACOSTA]: Okay, because to find them, remember, could
5 be database searches or to be the other. I think that's the
6 question.

7 Were there any efforts to your knowledge from 2011 to 2015,
8 Agent, for anybody to go to Yemen and locate these witnesses?

9 WIT: I don't know.

10 Q. Did you make any inquiries to find out?

11 A. I haven't made inquiries for that particular time frame.

12 Q. Now, are you familiar with a red notice?

13 A. Yes.

14 Q. A red notice is something that Interpol can put which
15 would alert law enforcement authorities as to the names of certain
16 individuals, right?

17 A. There's other requirements in addition to that, yes.

18 Q. But that's what the red notice does?

19 A. In part.

20 Q. Okay. At any time, to your knowledge, has the FBI, in an
21 effort to try to locate these people, put or requested a red notice?

22 A. A red notice would not be appropriate for these witnesses.

23 Q. Is there any mechanism -- are you saying -- is there any

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1 mechanism that Interpol could do to either research or to place some
2 type of notice regarding the movement of any of the individuals that
3 are on this list?

4 A. I don't know precisely what all of the different colored
5 notices are that Interpol can place and what all the different
6 requirements are for each notice sitting here today. I don't know
7 with any certainty.

8 Q. Have you made any request or looked into any aid in any
9 form, based on whatever color, from Interpol to help with identifying
10 these people?

11 A. I would go back to my discussion of least-intrusive to
12 most-intrusive techniques. So I'm applying the least-intrusive
13 techniques to try to locate these witnesses. Placing an Interpol
14 notice on these witnesses would be fairly intrusive and could result
15 in people with a similar name having contact with law enforcement
16 that might not be welcome.

17 So I'm still working on a least-intrusive-to-
18 most-intrusive continuum in accordance with the Attorney General
19 guidelines, and I don't believe that Interpol level of intrusive
20 technique is appropriate at this point in my efforts to locate the
21 witnesses.

22 Q. That's your explanation. I'm asking you: Did you do
23 anything?

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1 A. Did I do anything with regard to ----

2 Q. At the request of Interpol?

3 A. No.

4 Q. Not why you made it ----

5 A. Nope. No, I have not.

6 Q. Is that something, your concern about the privacy of
7 individuals, at least at this point, would take priority over the
8 locating of witnesses in a death penalty case?

9 A. I've not spent time evaluating that. I don't know.

10 Q. What would trigger you to do more assertive
11 messages -- methods to try to locate these people? You know what I
12 mean when I say what's going to trigger it?

13 A. When following up on leads that I already have, based upon
14 the partial matches from public source and open source, it would
15 trigger a more intensive or intrusive method if I were to get some
16 positive match that I would have with more certainty than what I have
17 now.

18 Q. Well, you have certain information. What have you done to
19 pursue whether the information you have on any of these people on the
20 list is or is not the person who was interviewed by the FBI?

21 A. I think I've described everything that I have done so far
22 on direct examination.

23 Q. Which of the individuals on the list that you have in some

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1 ways received a hit on have you gone or done anything else to
2 determine if they are one and the same? What have you done?

3 A. So it's an ongoing process. We've made phone calls to the
4 U.S.-based numbers that have come up. We have compared the years of
5 birth and the dates of birth with the year of birth or date of birth
6 in the FD-302. We've asked Customs and Border Protection and State
7 Department. And we're continuing to conduct these searches.

8 Q. The searches that you've conducted regarding the leads
9 that you have just identified, have they definitively shown that that
10 lead is not the person who was interviewed by the FBI in Yemen?

11 A. Some of the results of the searches have shown that, yes.

12 Q. Okay. Now, let's talk about the searches that haven't
13 shown that. When I say "that," what I mean is haven't shown that
14 they can be eliminated.

15 A. Okay.

16 Q. Do you understand the question?

17 A. Yes.

18 Q. Regarding those people who have not been eliminated, tell
19 us what has been done. Not what you intend to do, but what you have
20 done to the date of now, when you're testifying.

21 A. I feel like I've already done that, that I've already
22 explained what I have done from the date that I started this position
23 until now, so I'm not sure what more you want me to talk about or

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1 in -- in what more detail.

2 Q. Here's what I'm asking you.

3 A. All right.

4 Q. You have said that you had certain identifying
5 information, you've done some research and investigation, and you
6 eliminated those people as being the same people that are on the
7 list, correct?

8 A. There are some people we've eliminated, yes.

9 Q. Okay. There are people who you have identified but you
10 haven't eliminated as of today, correct?

11 A. Yes.

12 Q. All right. Those people, the people who you've identified
13 but have not eliminated, what, other than identifying, have you done
14 to confirm whether or not they are the person that you're looking
15 for, in addition to what you did to locate them -- to identify them?

16 ATC [LCDR SCHREIBER]: Objection, asked and answered. The
17 witness ----

18 MJ [COL ACOSTA]: Counsel.

19 ATC [LCDR SCHREIBER]: ---- has said that -- she described it.
20 If he wants more detail, ask for detail.

21 MJ [COL ACOSTA]: She said that she did the searches ----

22 LDC [MR. NATALE]: Okay.

23 MJ [COL ACOSTA]: ---- the phone calls, and the ----

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1 LDC [MR. NATALE]: Let me ask ----

2 MJ [COL ACOSTA]: ---- the searches and phone calls. Is there
3 a question that's more specific than that?

4 LDC [MR. NATALE]: Yes.

5 Q. Regarding any of the people who you have identified and
6 you haven't eliminated, did you go to where you believe they might
7 live and see if they are the person?

8 A. No.

9 Q. Did you contact either local FBI or police departments to
10 inquire if the person is, in fact, the same person you're looking
11 for?

12 A. No, not yet, but that's still possible.

13 Q. I'm asking you what you've done. The question will -- you
14 may say that I intend to do it, but right now I'm asking.

15 So all the questions I'm going to ask now are about what
16 you've done up to this point. Is that clear?

17 A. Yes.

18 Q. Okay. Up to this point, have you tried to contact any
19 employment -- that you may have -- information regarding these
20 people?

21 A. No.

22 Q. Up to this point, has anyone just did a drive-by and not
23 knocked on the door to see if this might be the person that you're

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1 looking for?

2 A. No.

3 Q. And these particular people are people who could be in the
4 United States?

5 A. Highly unlikely.

6 Q. Okay. Well, wherever these people are located, have you
7 asked any of their local law enforcement to help to confirm whether
8 they're the same person?

9 A. No.

10 Q. But that's something that you would agree should be done
11 in order to determine whether they're the right person or not?

12 A. I don't agree.

13 Q. Then how are you going to know that this person is the
14 same person that you're looking for if you don't do any of those
15 things?

16 ATC [LCDR SCHREIBER]: Objection. Mischaracterizes the
17 witness's testimony.

18 MJ [COL ACOSTA]: Defense?

19 LDC [MR. NATALE]: I don't think it does.

20 ATC [LCDR SCHREIBER]: "Any of those things."

21 MJ [COL ACOSTA]: Can you clarify what you mean, Counsel?

22 LDC [MR. NATALE]: Okay.

23 Q. If you don't send somebody to knock on their door, if you

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1 don't send somebody to drive by and try to observe the person, if you
2 don't ask for any help from law enforcement or any other means on the
3 ground, how is it that you would be able to know whether that person
4 is or is not the person you're looking for?

5 A. I'm not going to advance to those intrusive techniques
6 until I have a little bit more certainty that it's valuable and
7 fruitful.

8 Customs and Border Protection and State Department checks
9 were negative for all of these individuals that I had partial
10 identifiers for. That tells me that they are not likely to be in the
11 United States and that the person I located in the United States is
12 not likely to be identifiable with the Yemeni witness I'm looking
13 for.

14 Q. But wouldn't it be at least confirmation? Sometimes
15 people travel under false names, they change their names, they modify
16 it a little bit. Certainly, as an FBI agent, you've seen those sort
17 of cases?

18 A. I have.

19 Q. What would trigger the more, what you call, intrusive
20 activity?

21 ATC [LCDR SCHREIBER]: Objection, asked and answered.

22 MJ [COL ACOSTA]: Sustained.

23 Q. For people outside of the United States, what additional

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1 information do you need before you can eliminate them as the person
2 who you're looking for?

3 A. I would like further identifiers on the people outside the
4 country. I'd like to know if any of the foreign telephone numbers
5 were answered by the person I'm seeking or by a person who knows who
6 that is and where that person might be.

7 Q. Have you done that?

8 A. That's in process. I've made that request to the
9 assistant legal attaché.

10 Q. My question is not what you intend to do or what may
11 happen. Have you done that to this date?

12 A. I personally have not called the foreign phone numbers. I
13 have asked that it be done.

14 Q. Do you have any response regarding the foreign activity
15 that you requested?

16 A. They -- the assistant legal attaché agreed to do it and,
17 as I understand, has started to call those phone numbers, with
18 limited success.

19 Q. Okay. But -- I'll ask you: Do you know which particular
20 people?

21 A. I do not.

22 Q. Okay. Have you asked for the help of any U.S. -- and I'm
23 not asking to identify which groups, but any U.S. intelligence agency

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1 to aid in the identification and possible location of these
2 individuals?

3 A. If State Department can be considered an intelligence
4 agency or if Customs and Border Protection can be, then yes.

5 Q. Other than them, did you -- and I don't need you to tell
6 me the names -- did you request any other U.S.
7 intelligent -- intelligence agencies to help you in locating these
8 people?

9 A. No.

10 Q. Based on all that you've done, are you aware that
11 oftentimes U.S. intelligence agencies have access to more information
12 than maybe you would as an FBI agent?

13 A. I am aware.

14 Q. That they even could have assets or other intel, means of
15 gathering information than you have?

16 ATC [LCDR SCHREIBER]: Objection to both relevance and
17 speculation.

18 LDC [MR. NATALE]: I'm asking if she knows. She said she's
19 been on the counterterrorism stuff.

20 MJ [COL ACOSTA]: I understand. Are you suggesting that
21 she -- okay. What's your question for her? Ask the question.

22 Q. Have you ----

23 MJ [COL ACOSTA]: She said that she has not asked any U.S.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 intelligence agencies.

2 Q. Are you aware that U.S. intelligence agencies have the
3 capacity to collect information in foreign countries? Are you aware
4 of that?

5 A. Yes.

6 Q. Have you requested any of the agencies that you know ----

7 ATC [LCDR SCHREIBER]: Objection, asked and answered.

8 MJ [COL ACOSTA]: Sustained.

9 Q. You haven't asked any of these people?

10 ATC [LCDR SCHREIBER]: Objection. Asked and answered.

11 MJ [COL ACOSTA]: I sustained your objection, Counsel.

12 ATC [LCDR SCHREIBER]: Your Honor, he continued to try and ask
13 the question. That's why I objected again.

14 MJ [COL ACOSTA]: Counsel. Counsel.

15 Q. You said that certain foreign governments refused. What
16 specifically did you ask them? Did you tell them you were conducting
17 an investigation in a death penalty case?

18 ATC [LCDR SCHREIBER]: Objection. If we need to go into any
19 of this, we need to go into a classified session.

20 LDC [MR. NATALE]: I'm not asking which place. I'm just
21 saying if that was the request.

22 MJ [COL ACOSTA]: Counsel, it -- your question kind of started
23 one way and then maybe shifted another.

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1 Did you -- did you -- when you made any request to foreign
2 governments, did you inform them that you were working on a death
3 penalty, a capital case?

4 WIT: I don't believe that was part of the information
5 provided in the request, no.

6 Q. And would those requests that you made have been
7 documented?

8 A. Yes.

9 Q. And would their response be documented?

10 A. If we received a response, yes.

11 Q. And how many refusals did you receive versus
12 non-responses? If you know.

13 A. I don't remember specifically the ratio between those
14 refusals and non-responses.

15 Q. Did the refusals give you any reason why they were
16 refusing?

17 A. That's possible. I don't remember the reasons that were
18 given specifically. I would have to speculate, which I don't want to
19 do.

20 Q. With these country -- these other foreign entities, have
21 you requested those governments -- and I'm not asking who they
22 are -- whether FBI agents could try to locate people there, any of
23 these witnesses there?

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1 A. Have I requested whether FBI agents could travel there, do
2 you mean?

3 Q. Yeah, travel there to conduct the investigation in
4 conjunction with the local law enforcement.

5 A. That was not part of the request.

6 Q. Okay. So you have not asked that?

7 A. We have not asked whether FBI agents could travel to those
8 foreign countries.

9 Q. Are you aware of whether FBI agents have been allowed to
10 travel to foreign countries to conduct investigations in terrorist
11 cases?

12 A. If you're speaking about all terrorist cases, yes, FBI
13 agents have traveled to foreign countries to investigate terrorist
14 cases.

15 Q. So based on your experience, it's possible that, if asked,
16 they could go to these countries?

17 A. Yes. In fact, many of them already are in the countries
18 through the presence of our legal attaché offices attached to the
19 embassies of those foreign countries.

20 Q. And those that are present in country, have they been
21 dispatched -- the FBI people been actually dispatched to
22 locate -- try to locate these people?

23 A. That's not how it works in a sovereign country.

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1 Q. So the FBI agents can only search or look in the country
2 and talk to people that the foreign country says they can?

3 A. It would have to be an agreement with the foreign country,
4 their law enforcement or government service.

5 Q. Do you know if any of the people on the ground in any of
6 those countries went to their counterparts in the countries and
7 asked?

8 A. Of course they did. That's how I got my request -- that's
9 how the FBI got their request to the foreign country, through the FBI
10 representatives in that country.

11 LDC [MR. NATALE]: Your Honor, could I have a moment?

12 MJ [COL ACOSTA]: You may.

13 **[Counsel conferred.]**

14 LDC [MR. NATALE]: I have no further questions.

15 MJ [COL ACOSTA]: All right. Government, any redirect?

16 ATC [LCDR SCHREIBER]: Yes, Your Honor.

17 **REDIRECT EXAMINATION**

18 **Questions by the Assistant Trial Counsel [LCDR SCHREIBER]:**

19 Q. I apologize in advance. I'm going to jump around a little
20 bit on some of these topics.

21 I think you indicated, both on direct and on cross, that
22 some of the 302s that you reviewed had some information about -- to
23 identify a person, like a birthday or an address, right?

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1 A. Yes.

2 Q. And did some of them have more and some have less?

3 A. Yes.

4 Q. You also said on direct that you had -- I mean, you've
5 been to Afghanistan. You've been in the Middle East; is that right?

6 A. Yes.

7 Q. Are you familiar, I mean, just having been there, with
8 sort of the general cultural of those countries?

9 A. Yes.

10 Q. Is it common for ----

11 MJ [COL ACOSTA]: Hold on. There's an objection.

12 LDC [MR. NATALE]: Objection, relevance and foundation.

13 ATC [LCDR SCHREIBER]: I'm asking about her direct knowledge
14 of the culture there and what she saw in terms of -- I'm going to ask
15 about addresses, birthdays, things like that.

16 LDC [MR. NATALE]: Your Honor, it's beyond the scope of my
17 cross-examination, and I'm not sure what's the relevance of her
18 experience, and she said she had nothing to do with the interviewing
19 of these people.

20 MJ [COL ACOSTA]: Overruled. I'll allow it. Go ahead.

21 ATC [LCDR SCHREIBER]: Thank you.

22 Q. Is it uncommon, in your experience and observation, for
23 people in those countries to not have an address in the way that we

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1 might think of it, something very specific, to be able to locate
2 them?

3 A. It's not uncommon ----

4 LDC [MR. NATALE]: Your Honor, could we have the specific
5 countries? When he says those question -- those countries, what
6 countries? I have no idea what ----

7 MJ [COL ACOSTA]: Counsel, let me answer before you keep
8 going. All counsel, when I -- when I say something -- and
9 this -- just give me a second.

10 Government, the objection is sustained. Can you clarify
11 which country that she has the experience to which you're referring
12 to?

13 Q. Special Agent Sonnen, can you run off a list of the
14 countries in the Middle East and in Central Asia that you have worked
15 in and have experience in as a -- as an FBI special agent?

16 A. In Jordan and Afghanistan, specifically in that region.

17 Q. Okay. Both of those are Arabic-speaking countries; is
18 that right?

19 A. Some Arabic in Afghanistan, but other languages too.

20 Q. Okay. So in your experience in those two countries, in
21 those potentially Arabic-speaking countries, birthdays, do people
22 typically -- is it uncommon for somebody to not know a specific
23 birthday for themselves or their family?

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1 A. No.

2 Q. So it's not uncommon ----

3 LDC [MR. NATALE]: Objection to relevance because we're
4 talking about Yemen. We're not talking about Afghanistan or Jordan.
5 These are witnesses that were in Yemen.

6 MJ [COL ACOSTA]: I got it. Government, is there ----

7 ATC [LCDR SCHREIBER]: Your Honor, I'm going to move on from
8 here. This is -- this witness's observation and her -- the countries
9 in which she had experience, I'd ask Your Honor to give it the
10 appropriate weight.

11 MJ [COL ACOSTA]: It has. It's also been presented by
12 other -- numerous other witnesses that had experience in the region
13 that those are not commonly ----

14 ATC [LCDR SCHREIBER]: Yeah.

15 MJ [COL ACOSTA]: ---- retained things, such as the addresses
16 and the -- and the birthdays. Please move on.

17 ATC [LCDR SCHREIBER]: Thank you, Your Honor. I'm just going
18 to ask you to consider that information as well.

19 MJ [COL ACOSTA]: That's later for argument, but
20 whatever -- whatever you can present for argument at sometime, I will
21 consider. Go ahead.

22 ATC [LCDR SCHREIBER]: Yes, Your Honor.

23 Q. I want to pose -- on the issue of the prior attempts to

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1 find these individuals conducted by the FBI in -- say, around the
2 2015 time frame I think is what you identified, right?

3 A. Yes.

4 Q. Let's say, just as a hypothetical, that those efforts had
5 actually managed to locate one of the individuals on that list.

6 Would you -- in 2019 through 2022, would you have still done the same
7 kinds of searches to reconfirm that individual, find them?

8 A. Yes.

9 Q. So for what you were tasked with, would it have mattered
10 whether that person was found in 2015?

11 A. No.

12 Q. You've mentioned a couple of times most intrusive to
13 least -- or, excuse me, least intrusive to most intrusive methods.

14 A. Yes.

15 Q. Is that an official sort of guidance or standard or did
16 you just come up with that yourself?

17 A. It's official.

18 Q. From where?

19 A. The Attorney General guidelines and the FBI's Domestic
20 Investigations and Operations guidelines.

21 Q. Defense counsel asked you a couple of times about if you
22 had knocked on somebody's door or sent somebody to somebody's home to
23 observe whether they were there.

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1 How would you characterize going to someone's home or
2 putting an agent outside of a space to see if they see somebody?
3 What would that be, you know, least or most intrusive?

4 A. It's very intrusive, most intrusive.

5 Q. For -- we talked about this a little bit, but for folks
6 you have identified potentially an address -- or, actually, let me
7 start first.

8 You searched these folks -- some of these folks in
9 open-source database, public-source database, right?

10 A. Yes.

11 Q. And found for some of them potentially a phone number
12 attached to the name, right? Have you called all those phone
13 numbers?

14 A. We have.

15 Q. Okay. So any phone numbers you've found, you've called?

16 A. Yes.

17 Q. Found some addresses potentially linked to those
18 people ----

19 A. Yes.

20 Q. ---- right?

21 Comparing calling -- picking up the phone and calling a
22 number to see if somebody is there versus sending somebody to that
23 address, what's the difference there between most or least intrusive

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1 efforts?

2 A. It's less intrusive to pick up the phone and call a phone
3 number. It's more intrusive to visit a home address.

4 Q. Given that you have a name attached to an address that you
5 just found searching the web, do you -- at this point, do you know if
6 that's the person that we're -- that was interviewed in 2001, 2000?

7 A. I do not.

8 Q. So would it be intrusive to go and just knock on that
9 random address and find out if that's the person we're looking for?

10 A. It would be.

11 Q. Were there some of the folks you looked for up to this
12 point on that list for which you have found absolutely no open,
13 public-source information on at all?

14 A. Yes.

15 Q. So it's fair to say that there's nothing more to follow on
16 them, correct?

17 A. I can continue to do those searches in case some fresh
18 record were to be available in Google that had not previously
19 populated. But there is nothing further to do at this point,
20 correct.

21 Q. You mentioned -- the defense counsel asked you about
22 contacting Interpol to locate folks overseas ----

23 A. Yes.

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1 Q. ---- specifically.

2 If you were to give -- actually, I want to back up
3 one -- one question to the prior section there.

4 If I asked you to go find -- to search -- use the FBI
5 resources to search for Mary Sonnen, and that's all I gave you, just
6 a name, and I said I need you to find Mary Sonnen, would you go knock
7 on the door of everybody in America with the name Mary Sonnen?

8 A. I would not.

9 Q. Would that be intrusive for all those Mary Sonnens?

10 A. It would.

11 Q. So for the Interpol notice, if -- if you give a name to
12 Interpol and ask for that person to be found, is that like asking
13 other law enforcement to go and seek people?

14 A. Yes.

15 Q. Could that, in certain countries, result in, you know, not
16 U.S. -- maybe unfriendly or ----

17 LDC [MR. NATALE]: Your Honor, objection. Lack of foundation.

18 ATC [LCDR SCHREIBER]: Your Honor, defense counsel asked her
19 about ----

20 MJ [COL ACOSTA]: Counsel, hold on.

21 LDC [MR. NATALE]: Lack of foundation.

22 MJ [COL ACOSTA]: I've got your objection. Government.

23 ATC [LCDR SCHREIBER]: Your Honor, defense counsel asked her

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1 if she's familiar with Interpol. I'm asking her if she's familiar
2 with Interpol and what the result of asking ----

3 MJ [COL ACOSTA]: All right.

4 ATC [LCDR SCHREIBER]: I mean, she said she is.

5 MJ [COL ACOSTA]: All right. Okay. Overruled.

6 ATC [LCDR SCHREIBER]: Thank you, sir.

7 Q. If you gave a name to Interpol and said please go find
8 this individual, could that result in foreign law enforcement or
9 governments going to the homes of people who may be -- you know,
10 anybody who matches that name?

11 A. It could, yes.

12 Q. Could that potentially be dangerous for those people?

13 A. Yes.

14 Q. Those people who might not be the one you're searching
15 for?

16 A. Yes.

17 Q. If you had -- in the searches that you've done so far,
18 have you had any indication for any of the names on that list, that
19 those individuals were located in a country other than Yemen
20 currently?

21 A. We found some name matches for individuals who have the
22 same name but have a passport from a different country.

23 Q. And have you done additional searches to determine -- like

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1 additional data-matching to see if that might be the person we're
2 searching for?

3 A. Yes.

4 Q. And did any of those come up that you ----

5 A. No.

6 Q. ---- that the -- so the searching that you've done, it
7 doesn't appear those are the people we're searching for?

8 A. It doesn't appear. It seems unlikely that it's the person
9 that we're searching for.

10 Q. If you had information that made it seem likely that the
11 person that we were seeking was in some country other than the
12 United States or Yemen, which we've already established that we've
13 requested, would you go to that country again and ask for their
14 assistance to contact that person?

15 A. Yes.

16 Q. The defense asked you about sort of eliminating people off
17 of this list. I want to just ask you: Are you trying to eliminate
18 people from that list?

19 A. No, I'm trying to find them.

20 Q. And again, are those efforts to find these people ongoing?

21 A. Yes.

22 Q. Are you taking all the practical and logical steps that
23 you can think of to do that?

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1 A. Yes.

2 Q. Up to this point, have you found any of them?

3 A. No.

4 ATC [LCDR SCHREIBER]: That's all I have, Your Honor.

5 MJ [COL ACOSTA]: All right. Government, permanent for the
6 purposes of this motion, or temporary?

7 ATC [LCDR SCHREIBER]: Sorry. I was pressing the wrong
8 button, sir. For the purpose of this session, certainly on the
9 purpose of this motion, 319 ----

10 MJ [COL ACOSTA]: She might be called back.

11 ATC [LCDR SCHREIBER]: She may be called back for those
12 continuing efforts, but for this session, yes, sir, permanent.

13 MJ [COL ACOSTA]: When you say this session, not just this
14 week, but all of next week as well, correct?

15 ATC [LCDR SCHREIBER]: That's correct. We have nothing to
16 offer from Special Agent Sonnen next week.

17 MJ [COL ACOSTA]: All right. Agent Sonnen, for the purposes
18 of this session, you are permanently excused. Do not discuss your
19 testimony or your knowledge of this case with anyone other than
20 counsel for either side. You can step down and return to your
21 duties.

22 WIT: Thank you.

23 **[The witness was warned, was permanently excused and withdrew from**

1 **the RHR.]**

2 MJ [COL ACOSTA]: All right, Counsel. We're going to -- I
3 believe that's all we have before we take up the closed session with
4 Dr. Crosby for the government's -- what they believe to be a
5 classified cross-examination question and then follow-up with
6 the -- with the defense redirect.

7 Is there anything else to take up in open session before we
8 close for the day and then for -- close publicly for the remainder of
9 the week -- for the remainder of the day, which is the remainder of
10 the week? Government?

11 TC [MR. O'SULLIVAN]: No, Your Honor.

12 MJ [COL ACOSTA]: Defense?

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

14 MJ [COL ACOSTA]: All right. We'll recess until -- what we'll
15 do is we'll recess now and come back at 1300 for the closed session
16 with Dr. Crosby on the stand.

17 The commission is in recess until 1300 for a closed session.

18 **[The R.M.C. 803 session recessed at 1055, 24 February 2023.]**

19 **[END OF PAGE]**