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The unofficial transcript herein accurately captures all portions of  
the proceedings.

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

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

4           TC [MR. O'SULLIVAN]: Good morning, Your Honor.

5           MJ [COL ACOSTA]: Good morning.

6           TC [MR. O'SULLIVAN]: These proceedings are being transmitted  
7   via CCTV to public viewing locations in the United States pursuant to  
8   the commission's order in AE 028M dated 22 November 2019.

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

11           Present for the United States at Guantanamo Bay are myself,  
12   Michael O'Sullivan; Mr. John Wells; Major James Garrett; Major  
13   Michael Ross; Captain Jonathan Danielczyk. Mr. Pascual Tavaréz-Patin  
14   will be in and out, Your Honor. Chief Petty Officer Kenneth Traylor,  
15   Mr. Forrest Parker Smith, Mr. Louie Marmo, and our linguist.

16           Present in the Remote Hearing Room in northern Virginia are  
17   Lieutenant Commander Keven Schreiber, Major Stephen Romeo, Mr. Edward  
18   Ryan, Master Sergeant Laura Speranza, Staff Sergeant Maria Young,  
19   Ms. Paige McLachlan, Special Agent Paul Rude from the Transregional  
20   Criminal Investigation Unit; and from the FBI, Supervisory  
21   Special Agent Mary Sonnen; and from the Office of General Counsel,  
22   Ms. Katherine Eisenreich.

23           I'll note as a reminder that Lieutenant Tess Schwartz will

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1 not be here today and tomorrow, Your Honor.

2 MJ [COL ACOSTA]: Okay. Thank you.

3 Defense, good morning. Who is here on behalf of the  
4 defense?

5 LDC [MR. NATALE]: You know ----

6 MJ [COL ACOSTA]: Be careful.

7 LDC [MR. NATALE]: ---- grace and elegance has never been my  
8 strong suit.

9 MJ [COL ACOSTA]: Take your time.

10 LDC [MR. NATALE]: Is that when you say enjoy your trip ----

11 MJ [COL ACOSTA]: No.

12 LDC [MR. NATALE]: ---- come back next fall?

13 Your Honor, Anthony Natale on behalf of Mr. Nashiri.

14 Mr. Nashiri is present locally, however he will be listening to the  
15 entire day. The government and I spoke as to part of the reason for  
16 that, but he is voluntarily waiving his physical presence, but he  
17 will be present and able to hear the entire proceedings.

18 MJ [COL ACOSTA]: Okay.

19 LDC [MR. NATALE]: Ms. Morgan is here. Lieutenant  
20 Colonel Nettinga, Mr. Dolphin, and Mr. Bendoragel will be coming in.  
21 LN1 Wood will be coming in -- excuse me, is presently here, and Staff  
22 Sergeant McGuire will probably be coming in shortly.

23 In the RHR we have Lieutenant Commander Piette, Ms. Carmon,

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1 Mr. Padilla, and Mr. Roy.

2 All of these people have the necessary qualifications and  
3 clearance in order to be here, Your Honor.

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

5 Based upon the defense's representation and -- of the  
6 accused's presence in the local area but his physical absence from  
7 the courtroom, the commission finds that the accused has voluntarily  
8 waived his right to be present in the courtroom today. Okay.

9 Government, we're taking up Mr. Hieb, correct?

10 ATC [LCDR SCHREIBER]: That's correct, Your Honor.

11 MJ [COL ACOSTA]: All right. You may proceed.

12 ATC [LCDR SCHREIBER]: Thank you, Your Honor. Government  
13 calls Mr. Kenny Hieb.

14 Stand right there next to the chair, please. All right.  
15 Would you please raise your right hand.

16 **KENNETH HIEB, civilian, was called as a witness for the prosecution,**  
17 **was sworn, and testified as follows:**

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

19 **DIRECT EXAMINATION**

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

21 Q. And you are Kenny Hieb; is that correct?

22 A. Yes.

23 Q. Just because it's not pronounced quite the way it's

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1 spelled, that's H-I-E-B?

2 A. Yes.

3 Q. Okay. All right. So before we get started I want to just  
4 kind of orient you a little bit. Right there in front of you is a  
5 document in a classified folder that is 337D Attachment C. It is a  
6 crosswalk document that has some letter combinations that indicate  
7 MOI and PSO officers and their related true names.

8 If anything comes up where you need to talk about or want to  
9 mention a name of any PSO officer or MOI person that you may have  
10 encountered, check that list first to see if their name is on the  
11 list. If so, please use their identifier.

12 A. Okay.

13 Q. The same would be if defense or I ask you about a  
14 particular identifier, you could go there and take a look and see if  
15 you know that person.

16 A. Understand.

17 Q. I don't have any intent to elicit classified information.  
18 I don't think that's going to be relevant for us today. But if I do  
19 ask something you think requires a classified response or that can't  
20 be said in open court, then let me know and we'll deal with that.

21 Last thing, there is simultaneous interpretation going on  
22 because the accused is listening, so we'll need to be slow and take  
23 pauses as we talk, and also make sure that I finish talking before

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1 you start and vice versa. Okay?

2 A. Okay.

3 Q. All right. Mr. Hieb, are you currently employed?

4 A. No. Retired.

5 Q. Okay. Do you do anything in your retirement time to pass  
6 the time?

7 A. Yes. I do PI work and golf.

8 Q. Okay. If you would turn the mic just a little bit closer  
9 to you, just for my own hearing. They might be able to hear you a  
10 little bit, but we've got speakers in the back. All right.

11 So just a little background. Where did you grow up?

12 A. New York. Long Island.

13 Q. And what is your educational background?

14 A. Associate's degree in criminal justice.

15 Q. And where is that from?

16 A. Nassau Community College.

17 Q. Now ultimately, you joined the New York Police Department;  
18 is that right?

19 A. Yes.

20 Q. What year did you join the -- the NYPD?

21 A. January 26th, 1982.

22 Q. And how old were you?

23 A. Twenty-one years old.

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1 Q. Did you have any relevant employment, like other jobs  
2 before you joined the New York Police Department?

3 A. No. Just side work and menial jobs.

4 Q. Okay. Just teenage ----

5 A. Teenage things.

6 Q. ---- odd jobs? Okay.

7 Why did you apply to be a New York police officer?

8 A. It's just what I always wanted to do.

9 Q. Is it a family thing or ----

10 A. No. I have a family of construction workers.

11 Q. All right. You said that you joined in January of 1982.  
12 I assume you went to the police academy?

13 A. Yes.

14 Q. How long is the police academy?

15 A. Six months.

16 Q. All right. So at some point you joined the Joint  
17 Terrorism Task Force; is that right?

18 A. Yes.

19 Q. Can you just give a quick overview of your police career  
20 with the New York Police Department from the time you joined up until  
21 when you joined the Joint Terrorism Task Force?

22 A. Okay. January 1982, New York City Police Academy. After  
23 the academy I was assigned to Queens, the borough of Queens, the 103

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1 Precinct in South Jamaica, Queens. I was assigned to patrol for a  
2 couple of years.

3 From patrol I went to anticrime, the plainclothes unit.  
4 From there, still in the 103 Precinct, was assigned to the RIP unit,  
5 the Robbery Information Program Unit, which just deals strictly with  
6 robberies in my area.

7 Got my detective shield in 1989. From there I got assigned  
8 to the detective squad in the 111 Precinct in Bayside, Queens. Also  
9 was assigned to Queens Central Robbery Squad. In 1991 I took an  
10 interview with the joint -- for the Joint Terrorism Task Force, got  
11 assigned to the Joint Terrorism Task Force from there.

12 Q. Okay. We'll talk about that in just a second.

13 A. Yeah.

14 Q. When it came to all of your time with the -- just doing  
15 standard police work and then the robbery information program,  
16 detective work, safe to say you did a lot of just normal police work,  
17 interviews with suspects and with witnesses, things like that?

18 A. Yes.

19 Q. Lineups and photo books and things like that?

20 A. Yes. Conducted lineups and photo arrays.

21 Q. Okay. So just lots of standard police work?

22 A. Yes.

23 Q. Now, you said you joined the Joint Terrorism Task Force.



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1 Why did you decide to do that?

2 A. I had a friend in the FBI at the time, and because I was  
3 with the Queens Robbery Squad and Central Robbery Squad, I did well,  
4 I had a good record, and a friend of mine suggested this would be a  
5 good fit for me. So I took the -- interviewed and I passed.

6 Q. Okay. Can you give us an overview of the kinds of things  
7 you were doing with the Joint Terrorism Task Force?

8 A. With the Joint Terrorism I was in the -- what they called  
9 the Surveillance Unit, which dealt with counterterrorism and in -- in  
10 New York -- in New York and throughout the United States with  
11 surveillance.

12 Q. Okay. What kinds of investigations did you work on while  
13 you worked in that surveillance group?

14 A. All counter -- counterterrorism.

15 Q. Okay.

16 A. Involved with the Atlanta bombings, Oklahoma City bombing.  
17 Anybody that was a suspect or a person of interest, we would do  
18 surveillance on -- on those individuals.

19 Q. And then I -- do you -- you ended up moving over to an  
20 intelligence squad; is that right?

21 A. Yes.

22 Q. Can you talk about that a little bit.

23 A. We did -- with the -- with JTTF?

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1 Q. Yes, JTTF Intelligence Squad, the 48.

2 A. Well, when I was up in JTTF in I-48, which is the  
3 investigative part of it, I was involved with Irish -- the Irish  
4 terrorism, and Afghanistan and Pakistan regions.

5 Q. And then moving up all the way to 1999, were you involved  
6 in the Y2K investigations in New York City?

7 A. Yes.

8 Q. Okay. And what was that?

9 A. That was during the -- right before the year 2000, we had  
10 suspects in 1999 that were going to do damage to the subways of New  
11 York City. We had an individual that came to the police -- police  
12 department and gave us information, because they were staying at his  
13 residence. And through his information, we were able to track these  
14 individuals down to an apartment in Brooklyn. And we were able  
15 to -- not apprehend them. We -- the team went in and actually shot  
16 two of the individuals.

17 Q. This was an investigation ----

18 A. It was an investigation. Sorry.

19 Q. ---- related to potential attacks on the New York City  
20 subway, right?

21 A. Yes.

22 Q. Okay. Now, I'm going to -- I'm going to skip your  
23 involvement in the COLE because we're going to come right back to it.

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1 But were you in New York on 9/11?

2 A. Yes.

3 Q. And were you involved in the investigation into the  
4 attacks on 9/11?

5 A. Yes.

6 Q. What was your involvement with that investigation?

7 A. I was involved -- I was assigned to Flight 175, the second  
8 plane that went into the towers.

9 Q. Okay. And did you have work also in Washington, D.C., as  
10 it related to 9/11?

11 A. Yes. I was assigned to the PENTTBOM core team at  
12 FBI Headquarters for two years.

13 Q. Okay. So you spent some time here in Washington, D.C.?

14 A. Yes.

15 Q. Okay. And when did you retire from the NYPD?

16 A. March of 2003.

17 Q. And did you stay retired or get on with somebody else?

18 A. No, I went on to -- I got hired by the FBI to do what they  
19 called SSG, Special Surveillance Group, in June of 2003.

20 Q. Okay. Can you just, briefly, and to the extent you can,  
21 what were you doing with the FBI?

22 A. There with the FBI, strictly doing surveillance of  
23 counterterrorism and known or suspected individuals that are spies

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1 and keeping tabs on -- on them. Predominantly dealt with Russian,  
2 Chinese, Cuba, and other state org -- I'm sorry -- countries that  
3 have ----

4 Q. State-sponsored terrorism?

5 A. State-sponsored terrorism. Sorry. Yes.

6 Q. No problem. Okay.

7 So it sounds like -- so that was in June of 2003, joined the  
8 FBI, right? June of 2003?

9 A. Yes.

10 Q. Okay. And when did you ultimately retire from the FBI?

11 A. March of 2021.

12 Q. Okay. So it sounds like between your time with the  
13 New York Police Department and the FBI, Joint Terrorism Task Force,  
14 the surveillance group, it sounds like a lot of exposure to  
15 counterterrorism and terrorism investigation. Is that right?

16 A. Yes.

17 Q. Okay. That in mind, though, was all of that work -- other  
18 than the COLE bombing, was all of that work domestic work; that is,  
19 work that you conducted in the United States?

20 A. Yes.

21 Q. Okay. So international threats potentially, but all work  
22 done in the United States?

23 A. Yes.

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1 Q. So is the only overseas work you've ever done was with  
2 the -- your part in the investigation of the bombing of the COLE?

3 A. Yes.

4 Q. All right. So let's talk about that.

5 So October of 2000, from what you just talked about, you  
6 were still with the New York Police Department Joint Terrorism Task  
7 Force, right?

8 A. Yes.

9 Q. Had you had, in that job, any exposure to the Kenya and  
10 Tanzania embassy bombings?

11 A. No. I knew of them but did not -- I was not involved.

12 Q. And so no involvement in those investigations?

13 A. No.

14 Q. Okay. Were you aware of the bombing of the USS COLE when  
15 it happened in October of 2000?

16 A. Yes.

17 Q. And did you -- were you immediately, like, assigned to  
18 that team or just knew about it because of the news and other stuff?

19 A. No, I just knew about it from the news and from my job.

20 Q. Okay. There were other individuals at your work who were  
21 immediately involved?

22 A. Yes.

23 Q. So how did you ultimately get to be involved with the

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1 investigation into the COLE bombing?

2 A. I volunteered.

3 Q. Why did you volunteer?

4 A. Because that was my job to do.

5 Q. And when -- when did you volunteer, slash, when were you  
6 actually on the ground in Yemen?

7 A. February of 2001. February-March of 2001.

8 Q. Now, before you went to Yemen to do the support, did you  
9 get any training before you went?

10 A. Yeah, I was -- I did some training in Fort Bragg for  
11 counterterrorism training. It was a one-week course, crash course.

12 Q. So this wasn't necessarily training specific to Yemen?

13 A. No, it was just a counterterrorism awareness course.

14 Q. Okay. Did you get any training about the situation on the  
15 ground or anything like that before you left?

16 A. No.

17 Q. Did you know anything about it through other sources?

18 A. Yes.

19 Q. What was that?

20 A. Through other individuals that went to Yemen, you know,  
21 you would talk, of course, to one another about what's there and  
22 what's going on.

23 Q. So folks from your office who have gone and come back?

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1 A. Yes, my colleagues and part -- and partners.

2 Q. Okay. Now, did you go to Yemen for this investigation as  
3 part of a team?

4 A. Yes.

5 Q. And who was on that team with you, if you can recall?

6 A. Thomas Ward, I traveled with him personally. And  
7 we -- there were other members already there when we -- when we got  
8 to Yemen.

9 Q. And was it Detective Ward?

10 A. Detective, yes.

11 Q. Detective Ward, he was also New York Police Department  
12 Joint Terrorism Task Force?

13 A. Yes.

14 Q. And he's since passed away, right?

15 A. He's passed, yes.

16 Q. All right, so you went to Yemen via London, right?

17 A. Yes.

18 Q. Arduous trip?

19 A. Yes.

20 Q. Okay. When you got to Yemen, what were your first  
21 impressions when you arrived at the airport?

22 A. It's a third-world country. It's run -- it's run down.  
23 Not much there.

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1 Q. Okay.

2 A. Just ----

3 Q. Who picked you up at the airport?

4 A. Our -- our SWAT team.

5 Q. Like FBI?

6 A. FBI SWAT -- SWAT team.

7 Q. And from the airport, where did you all go?

8 A. To the hotel.

9 Q. All right. So when you volunteered to go to Yemen and go  
10 there, did you know what you would be doing when you got there?

11 A. Doing investigations. That's the -- the gist of it from  
12 my supervisors and anybody else that was there. We were there to  
13 conduct interviews.

14 Q. Okay. So specifically interviews?

15 A. Yes.

16 Q. Now, you went and got there, got to the hotel. When  
17 you're there in Yemen, did you get any familiarization tours of  
18 relevant locations, places that were relevant to the investigation of  
19 the COLE bombing?

20 A. No. Just knew about the harbor, where the COLE  
21 was -- where the -- the -- the bombing happened. That's it.

22 Q. Did you get to go out and see some of the other locations,  
23 though?



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1           A.     Yes.

2           Q.     Okay. Which locations did you get to see?

3           A.     I saw the -- the apartment that the individuals -- the  
4 terrorists were at, the clock tower where it was alleged observation  
5 point, and the -- and the harbor, and the control tower in the  
6 harbor.

7           Q.     Okay. So we're going to talk about interviews throughout  
8 the -- today. We're going to talk about interviews you did between  
9 the 24th of February and the 1st of March of 2001, okay?

10          A.     Okay.

11          Q.     So I want to talk about how you -- like, the process of  
12 those interviews. How were you notified that you and your team had  
13 an interview that you got to go do?

14          A.     Got, yeah, a phone call.

15          Q.     Just start with that. Who was calling who, to the best of  
16 your knowledge?

17          A.     To the best of my knowledge, it was the PSO from the  
18 Yemeni government would call our hotel. I was not involved in the  
19 phone -- phone call. I was just assigned to go.

20          Q.     Okay. So your supervisor comes and tells you you've got  
21 an interview to do?

22          A.     Correct.

23          Q.     Okay. Now, you're waiting at the hotel to do these

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1 interviews. Was there, like, a particular schedule? Like, you know,  
2 they'd tell you the night before that you're going to do interviews  
3 the next morning, or how did this work?

4 A. No. It was just when a phone call came in, it came in at  
5 whatever time during the day or night, then we would have to prepare  
6 to travel to the location.

7 Q. Do you have any idea who decided who you were going to go  
8 interview or, like, how these people to interview were found?

9 A. No.

10 Q. So do you have like -- let me just ask this differently.  
11 Were these folks that you requested to interview?

12 A. No.

13 Q. Okay. So no idea how their names got to you?

14 A. Nope.

15 Q. Was there a typical number of interviews you'd do in a  
16 given day or did it vary?

17 A. It varied.

18 Q. So you were staying in a hotel?

19 A. Yes.

20 Q. Is this like a command post, like lots of U.S. folks?

21 A. It was just a regular hotel. We took over the -- two  
22 floors, I believe, in the hotel.

23 Q. So did you have interactions with the members of the PSO

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1 and MOI there at that location?

2 A. Yes.

3 Q. So outside of the interviews where you have interactions  
4 with them -- we'll get to that -- what was your impression of the  
5 PSO/MOI?

6 A. They were professional. They -- we spoke to them, you  
7 know, just on occasion, and that was really all. And they were there  
8 to assist us with directions or driving, you know.

9 Q. In those interactions, separate from the interviews, did  
10 you ever observe the PSO or MOI trying to steer your investigation in  
11 any direction or another?

12 A. No.

13 Q. So were you -- so let's talk a little bit more about the  
14 interview process then. Were you aware of an agreement between the  
15 United States government and the government of Yemen about how the  
16 investigation and the interviews were to be conducted?

17 A. Yes.

18 Q. Does -- the Bodine memorandum, is that how you knew it?

19 A. Yes.

20 Q. So as you understood it, what was the interview protocol  
21 that you were supposed to follow based on that agreement?

22 A. With our interpreters?

23 Q. Uh-huh. If you could describe it for the judge.

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1           A.     We would have myself or the -- we'd have us, the  
2 interviewer. We would have our interpreter from the U.S., a Yemeni  
3 interpreter, and then the individual we were speaking with.

4           So when we asked questions, we had to ask our interpreter,  
5 our interpreter would speak to the Yemeni interpreter, the Yemeni  
6 interpreter would speak to the witness, and it would go back in that  
7 same direction, the witness to their interpreter, to our interpreter,  
8 back to us.

9           Q.     And in the interviews that you conducted, did you follow  
10 that interview protocol every time?

11          A.     Yes.

12          Q.     Okay. So did you deviate from it at all?

13          A.     No.

14          Q.     Did you or anybody on your team speak Arabic, other -- I'm  
15 sorry.

16                 Other than the interpreter, did you or anybody on your team  
17 speak Arabic?

18          A.     No.

19          Q.     Okay. Still don't speak Arabic, I assume?

20          A.     Still do not.

21          Q.     Okay. Before you arrived for a particular interview, were  
22 you given questions to ask the witnesses?

23          A.     No.

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1 Q. When you arrived, were you given ----

2 A. Yes.

3 Q. Okay. So I'm going to put that carefully. So when you  
4 arrived ----

5 A. When we arrived.

6 Q. ---- were you given questions to ask the witnesses?

7 A. Yes.

8 Q. Who gave you those questions? And I mean who, by which  
9 organization, United States or Yemen?

10 A. United States, I want to say.

11 Q. Okay. So somebody from your team ----

12 A. Someone from our team ----

13 Q. ---- or the FBI or ----

14 A. ---- yes.

15 Q. I just want to make it clear. Did the Yemenis give you  
16 questions to ask these witnesses?

17 A. Not the -- no.

18 Q. Okay. But you were given prewritten questions before  
19 you -- or before you started the interviews?

20 A. Yes.

21 Q. In your interviews then, it sounds like you relied  
22 entirely on the translators?

23 A. Yes.

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1           Q.     Was that interview protocol and that reliance on the  
2 translators challenging?

3           A.     Oh, yes.

4           Q.     Why?

5           A.     Because the -- there's even a language barrier between the  
6 Arabic that our interpreter would speak and the Arabic that our  
7 witness would speak. It's not personal. It's -- you're going  
8 from -- like I said, from me to an interpreter to another interpreter  
9 to a witness and back again, so it's not the ideal situation to  
10 interview somebody.

11          Q.     Between that process and the questions that you were given  
12 in advance, were there instances in which you would have liked to ask  
13 more or additional questions that you weren't able to?

14          A.     Yes.

15          Q.     That said, did the Yemeni authorities, to the best of your  
16 recollection, ever prevent you from asking questions that you wanted  
17 to of those witnesses?

18          A.     No.

19          Q.     And I guess I should be clear. We're going to talk about  
20 the setting of the room in just a second here.

21                 But in every interview that you did, were there Yemeni  
22 officials present?

23          A.     Yes.

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1 Q. So the witness, Yemeni officials, and then the  
2 United States team?

3 A. Yes.

4 Q. So the only interviews we're going to talk about today,  
5 the nine that we're going to talk about, were all those conducted in  
6 the name location?

7 A. Yes.

8 Q. I was going to say, with the one notable exception of a  
9 second interview follow-up, right?

10 A. Correct.

11 Q. And we'll come to that one.

12 Where was this location that these interviews were  
13 conducted?

14 A. At the police -- the PSO barracks or police station.

15 Q. And can you go ahead and describe the building and the  
16 room, to the -- to your recollection.

17 A. A brick building, a -- maybe two -- two stories tall, all  
18 brick. The interview room was a small room, dim -- dimly lit, had a  
19 table, chairs. I don't remember any windows being there. Just cold,  
20 like a basement type of room.

21 Q. Okay. So anything -- it sounds like  
22 nothing -- just nothing terribly notable about it?

23 A. No, just four walls.

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1 Q. Was there anything scary or intimidating about it, to your  
2 recollection?

3 A. No. It was just very rundown and different from here,  
4 from the United States' interview rooms, but that's what it -- it is  
5 there.

6 Q. Let's briefly just kind of circle back just briefly to  
7 traveling from the hotel where you got notified of the interview to  
8 this location and do the interview. What was that process to travel  
9 from point A to point B?

10 A. When we got a phone call prior to traveling, we would have  
11 to check all our vehicles for explosives or anybody that tampered  
12 with our vehicles because they're out in an own parking lot. So the  
13 vehicles were checked prior to our travel. And then we would travel  
14 in a caravan, probably -- I believe four -- at least four vehicles  
15 with -- I did not drive. I was a passenger. We had diplomatic  
16 security personnel, our SWAT team and others, that we traveled in a  
17 caravan to -- to and from the location.

18 Q. Were you aware that at the time there were still, like,  
19 active threats against U.S. folks in Yemen and the investigation?

20 A. Yes.

21 Q. Now, when you were -- you got to the -- the interview  
22 room, were the witnesses already there?

23 A. Yes.



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1 Q. So did you have any idea where they were -- where the  
2 witness that you were going to speak with had been before they were  
3 there in the room to meet with you?

4 A. No.

5 Q. Did you ever ask any of them where they had been before?

6 A. No.

7 Q. When you knew you were going to be doing an interview, you  
8 were given -- say, hey, you're doing an interview in a couple of  
9 hours, were you and your team able to prepare for those interviews in  
10 any way?

11 A. No.

12 Q. I mean, why not?

13 A. We didn't know who we were interviewing.

14 Q. Didn't know who they were until you got there?

15 A. Did not know who they were until we got there.

16 Q. All right. So you get to the room, witness is there. I  
17 assume Yemeni authorities are there?

18 A. Yes.

19 Q. You all arrive. Did you get an opportunity to at least  
20 introduce yourselves to these witnesses and explain why you were  
21 there?

22 A. Yes.

23 Q. From your recollection, did it appear that they understood

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1 why you were there to talk to them?

2 A. Yes, through the interpreter.

3 Q. Right. Through the interpreter, of course.

4 A. Through the interpreter, yes.

5 Q. Yes.

6 Now, we already discussed that you had a lot of experience  
7 in your job prior to this point in doing witness and subject  
8 interviews, right? You'd done a ton, I assume?

9 A. Yes.

10 Q. Like, probably countless, yes?

11 A. Yes.

12 Q. Okay. In a typical interview that you had done prior to  
13 this, would you normally try and build some rapport with the person  
14 you were talking with before you started interviewing them?

15 A. Yes, of course.

16 Q. Were you able to do that in these interviews?

17 A. No.

18 Q. And just, again, it might seem obvious, but why not?

19 A. We were on a time limit. We -- I -- there's four or five  
20 people in -- in the room, so it's -- you can't build a rapport, plus  
21 a language barrier. So it was just very difficult. We were, again,  
22 limited, and our questionings were what -- what they were.

23 Q. Now, so during the interviews that you conducted, once you

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1 got started, was there a -- were the witnesses and you participating  
2 in, like, a question-and-answer, or was there some other format that  
3 you experienced?

4 A. No, it was question -- question and answer.

5 Q. Did some of the witnesses have, like, narratives that they  
6 told you?

7 A. Yes.

8 Q. Okay. Did anybody that you talked with, to your  
9 recollection, appear that they were under duress?

10 A. No.

11 Q. Did any of them appear that they had been, like, abused or  
12 injured in any way?

13 A. No.

14 Q. Was anybody that you talked to restrained or shackled or  
15 anything like that?

16 A. No.

17 Q. Did any of them appear to be frightened to speak with you?

18 A. No.

19 Q. Did any of them appear to be frightened or nervous to be  
20 in the presence of the PSO or MOI folks who were there?

21 A. No.

22 Q. Now, if anybody had appeared in any of those manners or  
23 anything else concerning, would you have noted that in the 302?

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1 A. Yes.

2 Q. At the time that you did these interviews, did you have  
3 any knowledge that the PSO was -- like, mistreated witnesses or  
4 anything like that?

5 A. No.

6 Q. Based on what you observed, did you have any reason to  
7 believe that that was true, of what you observed of the  
8 interviewer -- interviewees?

9 A. No.

10 Q. All right. Let's talk about how you documented the  
11 interviews that you did.

12 The interviews were documented on FBI 302s; is that right?

13 A. Yes.

14 Q. Did you have experience at that point with the FBI 302  
15 process?

16 A. Yes.

17 Q. And that was because you'd worked with JTTF?

18 A. Yes.

19 Q. What's the purpose of an FBI 302?

20 A. To document -- document your -- what -- what was said or  
21 what you observe during an interview.

22 Q. Okay. Is it meant to be a, like, verbatim recitation of  
23 what the witness says?

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1 A. No.

2 Q. Is it meant to capture literally everything that is said  
3 or observed in an interview?

4 A. No.

5 Q. So what is it meant to be a tool for? I mean ----

6 A. Just to document that we did it, conducted an interview,  
7 and get the best that we can of the information the person provided  
8 for us.

9 Q. Okay. So, again, not all the information, but is it the  
10 relevant information?

11 A. Relative information, yes.

12 Q. When y'all did an interview and then drafted a 302 to  
13 document what you learned in that interview, did you -- what was the  
14 process that you took? Like, how soon was it done? How did you guys  
15 do it as a team? If you could describe that, please.

16 A. Once you did the interview, we would go back to the hotel  
17 and we'd put our notes together, and somebody would type up the 302.  
18 We'd review it and sign it.

19 Q. Okay. So you had an opportunity to review every one of  
20 these 302s before you put your initials on it?

21 A. Yes.

22 Q. And did you -- did y'all compare your notes and  
23 recollections of interviews?

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1 A. Yes.

2 Q. Okay. Did y'all typically do it the exact same day, or  
3 was there potentially some wiggle room on that?

4 A. They -- you could be there the next day.

5 Q. Did anybody outside of your team, that is the group that  
6 did it interview and then documented it, whoever was there that day,  
7 did anybody ever tell you to remove anything or put anything into the  
8 302 that wasn't what you'd actually heard in the interview?

9 A. Oh, no.

10 Q. Okay. So nobody ever interfered in your 302 drafting  
11 process?

12 A. No, nobody -- nobody interfered with our process.

13 Q. And once you completed the 302s, did you, like, submit  
14 those to sort of whatever leadership chain you had?

15 A. Yes.

16 Q. At the end of each day that y'all did interview work and  
17 investigatory work, did you have, like, an end-of-the-day briefing?

18 A. We would, yes.

19 Q. Okay. And would you, you and your team, kind of give a  
20 summary of what you might have learned in an interview, if you had  
21 conducted one that day?

22 A. Yes.

23 Q. Did you have any -- any involvement in writing any report

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1 that might have come out of that meeting or anything -- like, daily  
2 summary or anything like that?

3 A. No. What -- what -- no.

4 Q. Okay. So your job was to do interviews and write the  
5 302s?

6 A. Correct.

7 Q. All right. I want to talk briefly about the process that  
8 you used with regard to photo books.

9 In the interviews that you conducted, or at least almost all  
10 of them, did you ask a witness to take a look at a photo book?

11 A. Yes.

12 Q. Now, the photo book that you used, did you have any  
13 involvement in creating that photo book?

14 A. No.

15 Q. Do you have any idea -- or at the time, did you have any  
16 idea where the photos in the photo book came from?

17 A. No.

18 Q. Did you know who any of the individuals in the photo book  
19 were at the time?

20 A. No.

21 Q. So when you showed witnesses the photo book that you used,  
22 what was the process that you -- that you used to do that?

23 A. Well, once -- once we got done with the interview, we

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1 asked them to look at a photo book, and we presented the photo book  
2 to them. It had pictures of individuals in the photo book, and they  
3 would go through it, page -- page by page and were asked do they know  
4 anybody or recognize anybody in the photo book.

5 Q. Did you ever suggest to anybody that you were looking for  
6 a particular individual?

7 A. No.

8 Q. So never asked them to ID a specific photo in the book,  
9 say, hey, do you know this particular person?

10 A. No.

11 Q. In all the interviews where you showed somebody the photo  
12 book, did anybody actually identify a photo?

13 A. No.

14 Q. All right. So before we dive into the interviews  
15 themselves, what did you review to prepare for your testimony today?

16 A. My previous 302s.

17 Q. Did you also review some of your own personal notes?

18 A. Yes.

19 Q. And that was for one particular interview?

20 A. Excuse me?

21 Q. That was just for one interview?

22 A. Yes.

23 Q. Now, before today, and even potentially now, do you have a



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1 discrete, like, individualized memory of each and every interview you  
2 did in Yemen?

3 A. No.

4 Q. Okay. And that said, did you -- do you today and before  
5 today, did you have a memory of going to Yemen and doing interviews?

6 A. Oh, yes.

7 Q. Okay. So if I had come to you, say, three months ago,  
8 before we ever started talking about your testimony today, and I'd  
9 said, hey, Kenny, you were in Yemen, right? You did some interviews.  
10 What was that like? What do you remember about that? What would you  
11 have been able to say?

12 A. Oh, I could tell you the -- where the interview process  
13 took place and a couple of the individuals that I actually -- I  
14 remember a couple of the statements that some of the individuals  
15 said.

16 Q. Such as?

17 A. Such as one of the guys jumped overboard with a cigarette  
18 and a cup of tea -- a cigarette and a cup of tea, jumped off his tug  
19 boat. I remember that guy. I also remember the doctor that was on  
20 the beach with his kids, and the -- that's it. Right.

21 Q. So fair to say you remembered a couple of details, right?

22 A. Yes.

23 Q. But are you -- and the testimony you're going to give

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1 about all of these statements, are you relying on your review of the  
2 302 for the additional details of these interviews that you did  
3 20-some years ago?

4 A. Yes.

5 Q. Okay. All right. Let's move on and actually start  
6 talking about some of these interviews. The first two grouping of  
7 two that we're going to talk about are number 96, Dr. Ali Mansour  
8 Mohammad; and number 72, Nazar Abbad Awad Saleh.

9 MJ [COL ACOSTA]: Can I get the second number again? I  
10 apologize.

11 ATC [LCDR SCHREIBER]: Number 72, Your Honor.

12 MJ [COL ACOSTA]: Thank you. And the name?

13 ATC [LCDR SCHREIBER]: The second name, Nazar Abbad Awad  
14 Saleh.

15 MJ [COL ACOSTA]: Okay. Thank you.

16 ATC [LCDR SCHREIBER]: Yes, sir. All right.

17 Q. So we'll go ahead and talk about number 96, Dr. Ali  
18 Mansour Mohammad first. So I think you just mentioned a second ago  
19 you remembered a doctor, right?

20 A. Yes.

21 Q. Okay. So do you remember doing an interview with  
22 Dr. Mansour Mohammad in the 27th of February of 2001?

23 A. Yes.

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1 Q. And the location for this interview, was it as you've  
2 described before, in this room at PSO Headquarters?

3 A. Yes.

4 Q. And again, were there PSO representatives or MOI  
5 representatives present?

6 A. Yes.

7 Q. And your U.S. law enforcement team?

8 A. Yes.

9 Q. And the interpreters, right?

10 A. Yes.

11 Q. When you -- to the best of your recollection when you're  
12 talking with Dr. Mohammad -- or Mansour Mohammad, were there any  
13 signs that he had been abused or mistreated?

14 A. No.

15 Q. Did he appear to be, like, healthy and oriented to what  
16 you were doing?

17 A. Yes.

18 Q. Was he in appropriate clothing?

19 A. Yes.

20 Q. Was there anything notable about his demeanor to you?

21 A. No.

22 Q. Did he appear frightened or nervous to be there?

23 A. No.

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1 Q. Now, for this individual -- I think this one is unique for  
2 all of them -- are you aware whether he had made a prior statement?

3 A. No.

4 Q. You are not aware that he had made a prior statement or  
5 that he did?

6 A. No, I'm not aware.

7 Q. Okay. So this one, we don't -- you don't know whether he  
8 did or not?

9 A. No, I don't know.

10 Q. Now, did you have an opportunity to introduce your team  
11 and tell him why you were talking to him?

12 A. Yes.

13 Q. And then your team got to ask him questions?

14 A. Yeah, so he would tell us his -- his story.

15 Q. Okay. So, again, this is a combination of sort of  
16 narrative and questions, right?

17 A. Yes.

18 Q. Did you stick to that interview protocol that you've  
19 described to the letter?

20 A. Yes.

21 Q. And were you specifically prevented from asking any  
22 question you -- that either you were given or you might have wanted  
23 to ask of Mr. -- or Dr. Mohammad Mansour?

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1 A. No.

2 Q. So did the Yemenis interfere in any way?

3 A. No, they did not.

4 Q. From your observation of talking with him, did he appear  
5 to be answering your questions willingly?

6 A. Yes.

7 Q. All right. So this guy was a Ph.D.-type doctor, right?

8 A. Yes.

9 Q. What did he tell you that he was doing on the afternoon of  
10 the 3rd of January of 2000?

11 A. He was playing on the beach with his five kids, playing  
12 soccer -- or football, they call it.

13 Q. And what did he -- did he tell you that he'd seen -- seen  
14 somebody that he knew on the beach?

15 A. He saw an individual that he knew on -- on the beach that  
16 was wet, and he was approached by that -- by that person.

17 Q. All right. So this wet person, did he know that person by  
18 name?

19 A. Yes, he knew him as Allan.

20 Q. Mahmoud Allan or Allan?

21 A. Yes.

22 Q. So I think we said Allan in here, but Allan?

23 A. Allan.

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1 Q. Okay. Did he talk with Mahmoud Allan? Did he speak with  
2 him?

3 A. Yes.

4 Q. And what did Mr. Allan -- sorry. Let me ask it  
5 differently. What did they speak about?

6 A. They spoke -- Allan told the doctor that he saved the boat  
7 and the doctor said you -- oh, you saved the boat. You should find  
8 out who owns the boat and you get a reward for it.

9 Q. So after that brief conversation you had with  
10 Mr. Allan -- oh, and by the way, was it just Mr. Allan or was there  
11 another person?

12 A. No, there was one other individual.

13 Q. Okay.

14 A. I don't recall his name.

15 Q. After the conversation that Dr. Mohammad had with  
16 Mr. Allan, what did he do?

17 A. Mr. ----

18 Q. After they talked about this boat, what did Mr. -- what  
19 did Dr. Mohammad tell you that he did next?

20 A. After he had the conversation with Allan, he left with his  
21 kids.

22 Q. Now, did -- did you ask Mr. -- excuse me. Did you ask  
23 Dr. Mohammad if he actually saw this boat ----

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1 A. Yes.

2 Q. ---- that he told you about?

3 A. Yes.

4 Q. And what did he tell you?

5 A. Yes. We asked him if he saw the boat. He said he never  
6 saw the boat.

7 Q. How about, did you ask him if he saw Mr. Allan with, like,  
8 anything in his possession, like a ----

9 A. He -- to the best of my recollection, no, he had nothing  
10 in his possession.

11 Q. Now, had -- between the time that Dr. Mohammad saw  
12 Mr. Allan on the beach and when you talked to him, had he seen  
13 Mr. Allan again?

14 A. Yes.

15 Q. What -- when did he see him and why?

16 A. He did electrical -- he did electrical work at the  
17 doctor -- at Hassan's house.

18 Q. So Mr. Allan?

19 A. Mr. Allan did electrical work at the doctor's house.

20 Q. Did they talk about this boat during that encounter?

21 A. No.

22 Q. Did they ever talk about the boat again to Dr. Mohammad's  
23 recollection?

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1 A. No.

2 Q. Did you show Dr. Mohammad the photo book?

3 A. Yes.

4 Q. Was he able to identify any photos in the photo book?

5 A. No.

6 Q. And y'all drafted the 302 the next day?

7 A. Yes.

8 Q. And you reviewed that 302 for your testimony today?

9 A. Yes.

10 Q. When you reviewed it, did you have any reason to think  
11 that it was not an accurate -- when you reviewed it, did you have any  
12 reason to think that it was not an accurate representation of the  
13 interview you did that day?

14 A. No.

15 Q. All right. We're moving on to number 72. This is  
16 Mr. Nazar Abbad Awad Saleh. Do you remember conducting an interview  
17 of this individual on the 24th -- initially, anyway, on the 24th of  
18 February of 2001?

19 A. Yes.

20 Q. And you actually saw him a second time, right, and spoke  
21 to him again to follow up with him on -- from the first interview?

22 A. I'd have to see, if you don't mind.

23 Q. One second. I'm going to come -- let me come back to



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1 that.

2 A. Okay.

3 Q. Okay. Do you remember interviewing Mr. Awad Saleh on the  
4 23rd of February 2001? Was this at the same location you as you've  
5 described before, PSO Headquarters?

6 A. Yes.

7 Q. And I apologize. I'm getting my own stuff mixed up. So  
8 not somebody you saw a second time?

9 A. No.

10 Q. That's my fault. I apologize.

11 A. Okay. Yeah, Saleh was one time.

12 Q. Yeah. No. No. Apologize. That's -- that's on me.

13 Okay. So the same location as described before,  
14 PSO Headquarters?

15 A. Yes.

16 Q. And the setting as described before, in this sort of  
17 nondescript room?

18 A. Yes.

19 Q. Other -- your law enforcement team present?

20 A. Yes.

21 Q. And representatives of the Yemeni government?

22 A. Yes.

23 Q. Was the witness, Mr. Awad Saleh, present when you arrived?

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1 A. Yes.

2 Q. Any signs of abuse or duress for him?

3 A. No.

4 Q. Did he appear healthy and oriented to the interview?

5 A. Yes.

6 Q. Was he in appropriate clothing?

7 A. Yes.

8 Q. And anything notable, to your recollection, about his  
9 demeanor? Anything odd?

10 A. No.

11 Q. Did he appear frightened of either you or the Yemeni  
12 folks?

13 A. No.

14 Q. Had he made a prior statement to the PSO?

15 A. Not that I know of.

16 Q. And did you have an opportunity to introduce yourself and  
17 your team, explain why you were there?

18 A. Yes.

19 Q. And did you guys follow the interview protocol to the  
20 letter, as you've described?

21 A. Yes.

22 Q. That said, were you specifically prevented by the Yemeni  
23 authorities from asking any question that you wanted to ask?

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1 A. No.

2 Q. Did they interfere in any way?

3 A. No.

4 Q. And from your observations, did Mr. Awad Saleh appear to  
5 be answering your questions willingly?

6 A. Yes.

7 Q. Now, for this interview with Mr. Awad Saleh, did you  
8 actually also get to review your own personal notes of the interview?

9 A. Yes.

10 Q. Did you take -- did you take notes in every interview, or  
11 was that sometimes a job split up among the team?

12 A. I believe it was a job split up among the team.

13 Q. Okay. So there might have been interviews in which you  
14 didn't take notes?

15 A. Yes.

16 Q. So Mr. Awad Saleh, what did he tell you that he was doing  
17 on the 3rd of January of 2000?

18 A. He was going to the post office in Al-Buhayrah for his  
19 father and he had to pass the power station, because the road that he  
20 normally takes was crowded, and he came along the beach area, I  
21 guess, passed the power station. He observed a vehicle with a  
22 trailer and a boat on it.

23 Q. Okay. Was he able to describe the -- the vehicle that he

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1 saw there, the car?

2 A. Yes. It's a yellow 1980 to 1983 Land -- Toyota Land  
3 Cruiser.

4 Q. And he said he saw a boat on a trailer?

5 A. Yes.

6 Q. Was he able to give you a description of the boat?

7 A. Yes. He said it was a fiberglass boat approximately 30  
8 feet long and 9 feet wide.

9 Q. Did he give you those measurements in meters, probably?

10 A. In meters, yes, I'm sorry.

11 Q. But translated to that?

12 A. Yes.

13 Q. Okay.

14 A. Sorry.

15 Q. All right. So he gets there, he sees this car, sees this  
16 boat. Were there any people with the car and the boat?

17 A. There were two individuals.

18 Q. Okay. And did he talk to them?

19 A. Yes. He spoke to one of the individuals, and he stated  
20 that he was stuck in the sand. And he asked him if he can  
21 use -- help use his car to help them, I guess, move -- move the  
22 trailer or the car. And he says his car was too small. And that was  
23 their conversation that he had with them.

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1 Q. Okay. So did he -- I just want to make it clear so the  
2 record is clear. The individuals asked him for help?

3 A. For help.

4 Q. They asked -- the individuals asked Mr. Saleh for help?

5 A. For help, yes.

6 Q. And was he able to help them?

7 A. He was not able to help -- help them because he said his  
8 car was too small.

9 Q. So declined to help them. Did he stick around?

10 A. No. He continued on to do -- to go to the post office.

11 Q. Okay. Did he get any names for these individuals that he  
12 met?

13 A. No.

14 Q. Did they indicate to him what they were going to do with  
15 the boat?

16 A. I believe they said they were going to go on a cruise.

17 Q. Had he ever seen these guys before?

18 A. No.

19 Q. Did he ever see them again?

20 A. No.

21 Q. Did he ever -- did he come back to the beach?

22 A. Yes.

23 ATC [LCDR SCHREIBER]: I see it, Your Honor.

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1 Q. Did he come back to the beach the same day?

2 A. Yes.

3 Q. And what did he see there?

4 A. He just observed the boat on the trailer.

5 Q. So no car, no individuals, no men?

6 A. No. No men, no vehicle.

7 Q. Did you show him the photo book?

8 A. Yes.

9 Q. And was he able to make any identifications in the photo  
10 book?

11 A. No.

12 Q. Drafted the 302 on the 26th of February?

13 A. Yes.

14 Q. Have you had a chance to review that 302 before testifying  
15 today?

16 A. Yes.

17 Q. Based on that review, any reason to think that it was not  
18 an accurate record of the interview?

19 A. No.

20 ATC [LCDR SCHREIBER]: All right, Your Honor. That's all I  
21 have on this first group of witnesses, so nothing further on these.

22 MJ [COL ACOSTA]: Thank you.

23 Defense, cross?

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1 DDC [LCDR PIETTE]: Yes, Your Honor. Thank you.

2 CROSS-EXAMINATION

3 Questions by the Detailed Defense Counsel [LCDR PIETTE]:

4 Q. All right. Good morning.

5 A. Good morning.

6 Q. All right. First we're going to dig a little deeper into  
7 the interview room itself. You said it was inside the PSO barracks?

8 A. Yes.

9 Q. Are you aware that there is also a jail in or around the  
10 PSO barracks?

11 A. Not that I remember.

12 Q. You said there were no windows in the room?

13 A. Not that I remember.

14 Q. Okay. And just four walls. Were the walls cinderblock or  
15 brick?

16 A. Brick.

17 Q. Okay. And you said there was a table in the room?

18 A. There's -- yes.

19 Q. How many people -- just to get an idea of the size of it,  
20 how many people could fit around that table?

21 A. It would be four -- four -- maybe five -- about  
22 six -- about six of us total.

23 Q. Okay. And just to get an idea of where everyone was

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1 seated, did the witness -- was the witness sitting at the long end of  
2 the table or a short end of the table?

3 A. Short end, across.

4 Q. So he was sitting directly across from you?

5 A. Yes.

6 Q. Okay. Where -- and there were PSO agents in the room,  
7 correct?

8 A. Yes.

9 Q. Did they sit on either side of the witness?

10 A. They were in -- they were in the room. I -- they might  
11 have stood or sat. I don't ----

12 Q. Don't remember?

13 A. ---- don't really recall what they were doing.

14 Q. Okay. Would there be more than two PSO officers in the  
15 room at any time?

16 A. Not that I remember, no.

17 Q. Okay. And then there were four United States law  
18 enforcement agents in the room; is that correct?

19 A. There would be, yes, three -- three or four of us,  
20 depend -- including the interpreter.

21 Q. Okay. So ----

22 A. Yeah.

23 Q. ---- the interpreter, an FBI agent, either Special Agent



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1 Pitra **[sic]** or Special Agent Crouch?

2 A. Yes.

3 Q. Detective Ward?

4 A. Detective Ward.

5 Q. And yourself?

6 A. Myself.

7 Q. And would you all sit on one side of the table across from

8 the witness?

9 A. Yes.

10 Q. And you introduced yourselves as law enforcement agents?

11 A. Yes.

12 Q. Did you introduce yourself as a New York police officer?

13 A. Yes, New York City detective.

14 Q. Excuse me.

15 A. It's okay.

16 Q. And how many doors were in the room?

17 A. From what I -- one.

18 Q. Would that door be behind you or behind the witness?

19 A. I believe it was behind -- behind me.

20 Q. And to get an idea of the size, if the witness were to get

21 up and leave the room, would they have to squeeze past anyone, or was

22 the room big enough that you could walk freely?

23 A. I don't -- he could probably get up and walk -- walk out

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1 without a problem.

2 Q. All right. And the government talked about this already.  
3 You said the witness was in the room when you arrived?

4 A. Yes.

5 Q. So you didn't see how the witness was brought into the  
6 room?

7 A. No.

8 Q. Did you see a waiting room where the witnesses were held?

9 A. No.

10 Q. No holding cell, anything like that?

11 A. No.

12 Q. Okay. So, again, you don't know where the witness was  
13 before the interview?

14 A. Correct.

15 Q. And you don't know how long the witness was waiting before  
16 the interview?

17 A. No.

18 Q. And you don't know who they were waiting with before the  
19 interview?

20 A. No, sir.

21 Q. Okay. And again, as I understand on -- from direct, the  
22 PSO or MOI didn't tell you how they found this particular witness  
23 that you would be speaking to?

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1 A. Not -- not to me, no, sir.

2 Q. Okay. And the way you found out was your supervisor would  
3 tell you that there was a witness?

4 A. Yes, sir.

5 Q. You didn't know who the witness was?

6 A. No.

7 Q. Would you only learn that once you got in the room with  
8 the witness?

9 A. Yes.

10 Q. And is that when you would get the questions that had been  
11 provided for you?

12 A. Yes.

13 Q. And let's talk about those questions briefly. Were  
14 they -- you said they were from -- United States law enforcement  
15 drafted those questions; is that right?

16 A. Yes.

17 Q. Were they specific to the witness or were they more  
18 general questions that you could probably ask of any witness?

19 A. General questions.

20 Q. And did you have the leeway, then, to ask follow-up  
21 questions related to those questions that had been provided for you?

22 A. No, not really.

23 Q. And the PSO or MOI didn't provide you any reports of their

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1 investigations, like the equivalent of a 302 of how they found the  
2 witness?

3 A. No.

4 Q. And so you weren't -- clearly you weren't present  
5 when -- for the interviews. If there was a prior interview that the  
6 PSO gave of the witness, you obviously weren't present for that?

7 A. Correct.

8 Q. And you wouldn't know where that interview was conducted?

9 A. No.

10 Q. Don't know when it was conducted?

11 A. No.

12 Q. Don't know which PSO or MOI agents conducted it?

13 A. No.

14 Q. Don't know how many PSO or MOI agents conducted it?

15 A. No.

16 Q. And you don't know if the same PSO/MOI agents that  
17 conducted the previous interviews were the ones who were in the room  
18 with you while you were conducting your interview?

19 A. No.

20 Q. Okay. And you don't know if any promises were made to the  
21 witness to provide that interview?

22 A. No, sir.

23 Q. Don't know if any threats were made to the witness?

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1 A. No.

2 Q. Don't know if any threats or promises were made to the  
3 witness's family members?

4 A. No.

5 Q. And for the witnesses who were given a prior  
6 statement -- or who did give a prior statement, you were not given a  
7 copy of that prior statement, were you?

8 A. No, I was not.

9 Q. And you mentioned earlier you're relying on your 302s for  
10 this except for a couple of specific memories that you have?

11 A. Yes.

12 Q. Like, you can remember the room, generally who was in the  
13 room, and where they were situated in the room?

14 A. More or less, yes, sir.

15 Q. Okay. But besides two witnesses, you can't remember  
16 individual witnesses?

17 A. Excuse me?

18 Q. But except for two of the witnesses, you really can't  
19 remember the witnesses individually?

20 A. No.

21 Q. Like, for example, if you saw them on the street  
22 today ----

23 A. Oh.

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1 Q. ---- you wouldn't go ----

2 A. Oh, no.

3 Q. ---- oh, that's that guy?

4 A. No, it's 22 years ago.

5 Q. And so it's fair to say when you're reviewing the 302s,  
6 you're not using the 302s to, like, corroborate a memory that you  
7 have in your head; is that correct?

8 A. I remembered some things, but the 302 helps.

9 Q. Okay. But the specific thing is, what the witness said,  
10 the story the witness told, it's not as though you have a memory of  
11 that and you just checked the 302 to make sure; is that correct?

12 A. Correct.

13 Q. Okay. And then vice versa, you're not looking at the 302  
14 with a specific memory and saying, oh, just checking to make sure the  
15 302 is right based on the memory you have?

16 A. Okay. Yes.

17 Q. Yeah. Thank you.

18 A. Okay.

19 Q. That was a little more confusing ----

20 A. Yeah.

21 Q. ---- than I imagined it being. Okay. All right.

22 Now, getting into the specific witness. When you walked  
23 in -- or when you came in, the witness was sitting in the room.

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1 This -- we're talking now specifically about the doctor, Dr. Ali

2 Mansour Mohammad.

3 You didn't know him before you came into the room, correct?

4 A. No. I did not know him.

5 Q. You had never seen him before?

6 A. Never seen him before.

7 Q. You were told by the PSO what his name was?

8 A. Yes.

9 Q. But you didn't -- you didn't confirm his identity with a  
10 Yemeni ID card?

11 A. No.

12 Q. You didn't confirm his identity with a Yemeni passport?

13 A. No.

14 Q. You didn't photograph him?

15 A. No.

16 Q. Didn't take prints?

17 A. No.

18 Q. You didn't get a phone number for him?

19 A. It's whatever information he provided us. No.

20 Q. And per the agreement, as you understood it with the PSO  
21 and MOI, really the only way for you to get in contact with that  
22 witness again was to go through the PSO and MOI?

23 A. Yes.

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1 Q. And if they did give you an address, you never went -- or,  
2 excuse me, you never went to the address?

3 A. No.

4 Q. Never verified the address?

5 A. No.

6 Q. All right. In this interview with Dr. Ali Mansour  
7 Mohammad, he said, he talked about the boat and getting a reward. He  
8 said that it was normal for people to save boats and collect a reward  
9 from the owner?

10 A. Yes.

11 Q. Did you ask him what he meant by normal?

12 A. No.

13 Q. Do you know if he meant often, by normal?

14 A. No.

15 Q. So we don't know if people are saving boats and getting  
16 rewards, like, once a week?

17 A. No.

18 Q. Once a month?

19 A. No, sir.

20 Q. Once a day?

21 A. No. No.

22 Q. And again, to be clear, he never saw the boat?

23 A. No.



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1 Q. The witness never saw the boat?

2 A. No.

3 Q. Okay. He didn't see anything in the other individuals'  
4 possession that he talked about?

5 A. No.

6 Q. And you haven't spoken to this -- this witness since the  
7 interview?

8 A. No.

9 Q. You've never made any attempts to locate him?

10 A. No.

11 Q. You don't know of anybody else making any attempts to  
12 locate him?

13 A. No.

14 Q. All right. Now we'll move on to the next witness, Nazar  
15 Abbad Awad Saleh. Again, this is in the same room that we were  
16 talking about earlier?

17 A. Yes, sir.

18 Q. And you mentioned on direct that room had a basement feel  
19 to it. Do you recall if it was, in fact, in the basement?

20 A. No, it was not. My recollection, it was on the  
21 first -- first floor.

22 Q. Okay. First floor?

23 A. I'd say the main floor.

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1 Q. Do you mean ground floor?

2 A. Ground floor. Thank you.

3 Q. And again, you didn't -- when you arrived in the room, the  
4 witness was already there?

5 A. Yes. Yes. Sorry.

6 Q. Again, you didn't see a waiting room?

7 A. No.

8 Q. So you don't know where the witness was before the  
9 interview?

10 A. No.

11 Q. You don't know how long he was waiting before the  
12 interview?

13 A. No.

14 Q. You don't know who he was waiting with before the  
15 interview?

16 A. No.

17 Q. And the PSO or MOI did not tell you how they located this  
18 witness?

19 A. No.

20 Q. You don't know how they knew that this witness might be  
21 relevant to the investigation?

22 A. No.

23 Q. And they didn't provide you any investigative report that

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1 they might have made about this witness and how they found them?

2 A. No.

3 Q. And again, this witness was not previously interviewed by  
4 the PSO, according to the 302?

5 A. Correct.

6 Q. Okay. And again, I know it was mentioned on direct, but  
7 you followed the Bodine memorandum guidelines to a "T"?

8 A. Yes.

9 Q. You didn't speak Arabic?

10 A. No.

11 Q. The only Arabic speaker on the United States team was your  
12 interpreter?

13 A. Yes.

14 Q. And again, it's -- as you mentioned before, it's been 22  
15 years?

16 A. Yes.

17 Q. And you don't have an independent memory of this  
18 particular witness at all?

19 A. No.

20 Q. So, again, if you saw this witness on the street, you  
21 would have no idea who they were?

22 A. None at all.

23 Q. And again, like I said before, you're not using -- again,

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1 you don't have an independent memory of this witness, what he told  
2 you, but the 302 maybe jogs that memory. You're relying entirely on  
3 the 302?

4 A. Yes.

5 Q. All right. And on that day that you interviewed this  
6 witness, you had never seen the witness before?

7 A. No.

8 Q. You didn't confirm his identity with a PSO identification?

9 A. No.

10 Q. You didn't confirm his identity with -- or, excuse me,  
11 with a Yemeni passport?

12 A. No.

13 Q. You didn't photograph him?

14 A. No.

15 Q. Didn't take prints?

16 A. No.

17 Q. Didn't -- let me check here.

18 You did get an address from him, but you never went to the  
19 address?

20 A. No, didn't -- did not go to the address.

21 Q. And you never verified the address with, say, a Yemeni ID  
22 card?

23 A. No.

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1           Q.     And again, per the agreement with the PSO and MOI, the  
2     only way that you could contact this witness again was getting in  
3     touch with the PSO and MOI and asking them to get in touch with the  
4     witness for you?

5           A.     Yes.

6           Q.     Now, when the witness -- if you know, when the witness  
7     arrived and saw the trailer, saw the boat, saw the two subjects, did  
8     he -- did the witness get out of his vehicle?

9           A.     I don't recall.

10          Q.     Did you -- do you know how far the witness was away from  
11     the two people he spoke to?

12          A.     No.

13          Q.     Do you know how long he spoke to them?

14          A.     No.

15          Q.     Do you know if he had seen them before?

16          A.     As far as I know, he did not.

17          Q.     Do you know if he saw them since then?

18          A.     No.

19          Q.     And do you recall the date -- oh. Yeah.

20                 Do you recall the date that he says that he had this  
21     interaction with the two subjects?

22          A.     January 3rd of 2000.

23          Q.     And do you recall the date of the interview that you had

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1 with this witness?

2 A. In February of 2001.

3 Q. So over a year later?

4 A. Yes.

5 Q. And he hadn't seen or heard from those two subjects since  
6 then?

7 A. No.

8 Q. Do you know what time of day it was that he saw the two  
9 subjects?

10 A. No.

11 Q. Do you know the lighting conditions?

12 A. It was day, because he said he was going to the post  
13 office.

14 Q. But these were not follow-up questions that you asked at  
15 the time?

16 A. Excuse me? Say it ----

17 Q. Were these follow-up questions that you were able to ask  
18 at the time?

19 A. No, I didn't.

20 Q. Because you had to stick to the questions that you  
21 were ----

22 A. Stick to the -- yes. Yes, sir.

23 Q. So if we were wanting to know the answers to those

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1 questions, we'd need to ask that witness himself?

2 A. Yes.

3 Q. And to be clear, you haven't spoken to this witness since  
4 the events memorialized in the 302?

5 A. Yes. Have not.

6 Q. You've never made any attempts to locate him?

7 A. No.

8 Q. You don't know of any attempts to locate him?

9 A. No.

10 DDC [LCDR PIETTE]: Thank you, Your Honor. That's all the  
11 questions I have on this grouping.

12 MJ [COL ACOSTA]: All right.

13 Government, any redirect?

14 ATC [LCDR SCHREIBER]: I just have, like, one redirect  
15 question on this grouping. And then would you like me to proceed  
16 further or are we going to take a recess?

17 MJ [COL ACOSTA]: We're going to take a recess ----

18 ATC [LCDR SCHREIBER]: Okay.

19 MJ [COL ACOSTA]: ---- after your redirect.

20 ATC [LCDR SCHREIBER]: Just didn't know if I needed to move  
21 all my stuff, but ----

22 MJ [COL ACOSTA]: No.

23 ATC [LCDR SCHREIBER]: ---- one second.

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1 MJ [COL ACOSTA]: Just the one.

2 **REDIRECT EXAMINATION**

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

4 Q. Special Agent Hieb, on that last statement you were just  
5 talking about, defense counsel asked you if you had inquired about  
6 the lighting, things like that, that the -- that this individual  
7 seeing these two men.

8 A. Yes.

9 Q. Was -- I believe it was Mr. Saleh. Was he able to  
10 identify anybody in the photo book that you showed him?

11 A. No.

12 ATC [LCDR SCHREIBER]: That's all. Thank you, Your Honor.

13 MJ [COL ACOSTA]: All right. Mr. Hieb, we're going to take a  
14 recess, and what that means is that you're going to still be under  
15 oath and on the stand, but you can step down in a moment when we  
16 recess. I'll have you be brought back into the room before  
17 we -- before I call the court back to order.

18 But during the recess, don't discuss your testimony with  
19 anyone, including the government. Do you understand that?

20 WIT: Yes, sir.

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

23 MJ [COL ACOSTA]: All right. The commission is in recess for



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1 15 minutes.

2 **[The R.M.C. 803 session recessed at 1012, 2 March 2023.]**

3 **[The R.M.C. 803 session was called to order at 1033, 2 March 2023.]**

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

5 Government, all parties present as before?

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

7 MJ [COL ACOSTA]: Defense?

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

9 MJ [COL ACOSTA]: All right. Lieutenant Commander Schreiber,  
10 you may continue.

11 ATC [LCDR SCHREIBER]: Thank you, sir. The next grouping is  
12 two. The first one, number 92, Mr. Ali Ahmed Ali Ahmed; and the  
13 second number 108, Mr. Ahmed Abed Rabbad **[sic]** -- I'm sorry, Rabbah  
14 Ahmed.

15 MJ [COL ACOSTA]: All right.

16 **DIRECT EXAMINATION CONTINUED**

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

18 Q. So let's get started with number 92, Ali Ahmed Ali Ahmed.  
19 Do you remember interviewing this individual on the 24th of February  
20 of 2001?

21 A. Yes.

22 Q. Okay. And I screwed this up earlier. This is actually  
23 somebody you got to see again, right?

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1 A. Yes.

2 Q. Okay. We're going to come back to that.

3 This initial interview, was it in the same location,  
4 PSO Headquarters or PSO police station, as you've described before?

5 A. Yes.

6 Q. In the setting as you've described before, this interview  
7 room?

8 A. Yes.

9 Q. And other -- were there PSO or MOI representatives  
10 present?

11 A. Yes.

12 Q. And then your law enforcement team and interpreter?

13 A. Yes.

14 Q. And was Mr. Ali Ahmed present for the interview when you  
15 arrived, as you've described?

16 A. Yes.

17 Q. Do you recall any signs of abuse or duress for Mr. Ali  
18 Ahmed?

19 A. No.

20 Q. Did he appear healthy, oriented to the interview?

21 A. Yes.

22 Q. Was he in appropriate clothes, to your recollection?

23 A. Yes.

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1 Q. And did he appear frightened or nervous to be there to  
2 talk to you?

3 A. No.

4 Q. Had he made a prior statement to the PSO?

5 A. No.

6 Q. Did you have an opportunity to go ahead and introduce  
7 yourselves and your team to Mr. Ali Ahmed, as you've described?

8 A. Yes.

9 Q. And did he appear to understand why he was talking to you?

10 A. Yes.

11 Q. And then did you follow the interview protocol, as you've  
12 described?

13 A. Yes.

14 Q. That said, were you specifically prevented by the Yemeni  
15 authorities from asking any question that you wanted?

16 A. No.

17 Q. And from your observation, did Mr. Ali Ahmed appear to be  
18 answering your questions willingly?

19 A. Yes.

20 Q. Okay. So talking about Mr. Ali Ahmed, what did Mr. Ali  
21 Ahmed do for a living?

22 A. He was a harbormaster.

23 Q. Okay. There in the Port of Aden?

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1 A. Yes.

2 Q. Okay. So focusing on the 12th of October of 2000, was he  
3 working that day?

4 A. No.

5 Q. Did he tell you why not?

6 A. He said it was a Thursday and that was his -- considered  
7 his weekend. He works on a rotation basis.

8 Q. So if he was off that day, what was he doing that morning?

9 A. He was at a barbershop.

10 Q. Did he hear or experience the explosion on the COLE?

11 A. Yes.

12 Q. And what did he tell you about when he heard it?

13 A. He said that he heard an explosion, a piece of the ceiling  
14 fell down in the barbershop, and an individual came into the  
15 barbershop and said there was an explosion at -- at the port.

16 Q. As a harbormaster ----

17 A. Or harbor.

18 Q. ---- he might be concerned about that?

19 A. Yes.

20 Q. So after he gets this -- gets this notice that there had  
21 been an explosion in the port, what did he do?

22 A. He went to the port tower.

23 Q. And when he got to the port control tower, what did he do?

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1           A.     He tried to radio the -- he saw that there was an  
2 explosion. He tried to radio the USS COLE and made a couple  
3 attempts.

4           Q.     Was he able to reach them right away?

5           A.     No.

6           Q.     Okay. Go ahead.

7           A.     And I believe on the second or third try, he was able to  
8 reach the COLE. The COLE was aware of the explosion. And they  
9 wanted to send boats to help.

10          Q.     Did the COLE request assistance from the port control  
11 tower?

12          A.     Yes.

13          Q.     And in response to that request, what did Mr. Ali Ahmed do  
14 from the port control tower?

15          A.     Tried to send boats out to help.

16          Q.     Okay. And from his recollection, were those boats -- at  
17 least initially, were they allowed to approach the COLE?

18          A.     No.

19          Q.     So if these boats are not able to approach the COLE, did  
20 he tell you about somebody intervening to make that happen?

21          A.     Yes. The USA military -- a liaison, Conroe for the best  
22 pronunciation of the name, was able to make contact with the COLE and  
23 told the COLE that they're going to send boats for -- that -- to

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1 assist on helping.

2 Q. Okay. So did he -- did you ask him about when he  
3 typically gets notice of ships arriving in the port?

4 A. Yes.

5 Q. And actually, let me back up one question. He works to  
6 send boats out to the COLE, military liaison officer intervenes. Did  
7 he do anything else specific that he told you about to, like, assist  
8 with the COLE personally or anything like that?

9 A. No.

10 Q. Okay. So let me ask the question I asked earlier.

11 Did he tell you when he typically gets notice of ships that  
12 will be arriving in the Port of Aden?

13 A. Yes, five to ten days prior.

14 Q. Did he have a specific memory of getting notice that the  
15 USS COLE was going to arrive?

16 A. No, he did not remember the -- getting a notice of the  
17 COLE arriving.

18 Q. Does his office at the port authority -- do they put out  
19 notices of arriving ships?

20 A. Yes.

21 Q. What did he tell you about that?

22 A. The -- it gets sorted out, only a few -- a few people, 24  
23 to 48 hours prior to the day -- the daily logs get sent out or people

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1 get notified.

2 Q. Did he give you a list of names of people who might have  
3 access to those reports of the ships that are arriving in 24 to 48  
4 hours?

5 A. Yes, I believe there were 11, 11 names.

6 Q. Did you personally interview those people?

7 A. No.

8 Q. Are you aware of whether those people were interviewed by  
9 someone else perhaps?

10 A. No.

11 Q. Did he tell you if the port had radar equipment?

12 A. The radar -- the radar equipment does not work.

13 Q. So at the time, it wasn't working?

14 A. No.

15 Q. How about cameras?

16 A. No, there are no cameras.

17 Q. And was he aware that at the time of the attack on the  
18 COLE, that there was another ship being moored in the harbor?

19 A. Yes.

20 Q. Did he recall which pier that that ship was being moored  
21 at at the time?

22 A. Pier 6.

23 Q. Had he ever seen a boat fitting the description of

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1 the -- of what y'all believed the attack boat was at the time, had he  
2 ever seen a boat fitting that description?

3 A. No.

4 Q. And did you show him the photo book?

5 A. Yes.

6 Q. Was he able to make any identifications from the photo  
7 book?

8 A. No.

9 Q. Now, we touched on this right at the start. Did you  
10 actually see him a second time?

11 A. Yes.

12 Q. And where did you see him this second time?

13 A. At the -- the control tower.

14 Q. Okay. Was this the very next day?

15 A. The next day.

16 Q. Why did you go to see him at the port control tower the  
17 next day?

18 A. He supplied the daily logs of ships coming -- gave us  
19 a -- paperwork.

20 Q. Okay, paperwork from the port control tower?

21 A. Yes.

22 Q. From your observation, when you saw him there, did it  
23 appear that he worked there in the port control tower?



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1 A. Yes.

2 Q. Okay. So you interviewed him on the 24th of February, saw  
3 him on the 25th, right?

4 A. Yes.

5 Q. And then it looks like you drafted the 302 on the 26th of  
6 February?

7 A. Yes.

8 Q. Did you review this 302 to prepare for your testimony  
9 today?

10 A. Yes.

11 Q. Any reason to think that it's not an accurate record of  
12 the information you learned from Mr. Ali Ahmed?

13 A. No.

14 Q. Do you have any specific recollection of the documents  
15 that he provided to you when you saw him that second day?

16 A. No.

17 Q. Only that you just got some relevant documents from him?

18 A. Correct, yes.

19 ATC [LCDR SCHREIBER]: Your Honor, moving on to Tab 108.

20 Q. So we're going to talk to you about Mr. Ahmed Abed  
21 Rabbad -- sorry, Rabbah Ahmed. Do you remember conducting an  
22 interview of Mr. Rabbah Ahmed from the 27th of February of 2001?

23 A. Yes.

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1 Q. And again, location as you've described before, PSO -- the  
2 PSO police station or headquarters in Aden?

3 A. Yes.

4 Q. The same kind of room setting as you've described before?

5 A. Yes.

6 Q. And were there other, again, representatives of the Yemeni  
7 government there as you've described?

8 A. Yes.

9 Q. And then your law enforcement team and interpreter?

10 A. Yes.

11 Q. When you arrived, was Mr. Rabbah Ahmed present for the  
12 interview when you arrived?

13 A. Yes.

14 Q. And to your recollection, were there any signs of abuse or  
15 duress for him?

16 A. No.

17 Q. Did he appear healthy and oriented to the interview?

18 A. Yes.

19 Q. Was he appropriately clothed, to your recollection?

20 A. Yes.

21 Q. Did he appear frightened or nervous to speak with you?

22 A. No.

23 Q. Did he appear frightened or intimidated of the Yemeni

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1 officials there?

2 A. No.

3 Q. Had he made a prior statement to the PSO?

4 A. No.

5 Q. And did you have an opportunity to introduce your team at  
6 least and explain why you were there?

7 A. Yes.

8 Q. Did he appear to understand why you were there?

9 A. Yes.

10 Q. And then did you follow the interview protocol, as you've  
11 described?

12 A. Yes.

13 Q. Were you specifically prevented from asking any questions  
14 by the Yemeni representatives?

15 A. No.

16 Q. Did the Yemeni representatives interfere in your interview  
17 in any way?

18 A. No.

19 Q. And from your observation, did Mr. Rabbah Ahmed appear to  
20 be answering your questions willingly?

21 A. Yes.

22 Q. What was Mr. Rabbah Ahmed's occupation? What did he do  
23 for a living?

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1 A. He's a pilot, a harbor pilot.

2 Q. So there in Aden, Yemen?

3 A. Yes.

4 Q. And going back to the 12th of October of 2000, when did he  
5 tell you that sort of his day got started or ----

6 A. I believe he said it started at 6:00 a.m.

7 Q. And when was his first call, approximately, to pilot a  
8 ship that day?

9 A. I believe 9:45 in the morning.

10 Q. Okay. Did he recall the name of the ship that he was to  
11 pilot that day?

12 A. The Multi-Diamond.

13 Q. And did he tell you what kind of ship it was?

14 A. It was a ship from Cyprus.

15 Q. Okay. It was, like, a transport ship or something?

16 A. I don't -- don't recall.

17 Q. Don't recall? That's fine.

18 Looking ahead just to some of the other interviews we're  
19 going to talk about, a lot of other witnesses that you talked to, did  
20 they mention this ship that was not the COLE coming in around the  
21 same time?

22 A. Yes.

23 Q. Did any of them remember the name of the ship?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Not that I recall.

2 Q. Okay. But this guy was the pilot for that ship, right?

3 A. Yes.

4 Q. And he was able to remember the name?

5 A. Yes.

6 Q. Okay. So when you talked to other people, you were aware  
7 of the name because of this individual?

8 A. Yes.

9 Q. Okay. You said that he got a call to pilot around 9:45 in  
10 the morning to go handle the Multi Diamond. Did he tell you about  
11 what time he got to that ship?

12 A. I don't recall. I'd have to look at my paperwork.

13 Q. Would it help you to review the 302 to remember what time  
14 he told you he got to the Multi Diamond?

15 A. Yes.

16 ATC [LCDR SCHREIBER]: Your Honor, permission to approach the  
17 witness and move about?

18 MJ [COL ACOSTA]: Permission granted.

19 ATC [LCDR SCHREIBER]: I'm going to show the witness Appellate  
20 Exhibit 319MM, page 1862.

21 Q. And I direct your attention to the last paragraph on that  
22 page.

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

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           ATC [LCDR SCHREIBER]: I'm retrieving the document.

2           Q.     Did that refresh your memory about what time he arrived at  
3 the Multi Diamond?

4           A.     Yes.

5           Q.     What time did he tell you?

6           A.     10:25 a.m.

7           Q.     And what was his instruction about what to do with the  
8 Multi Diamond?

9           A.     Push the Multi Diamond into Pier 6.

10          Q.     Did he tell you about how far Pier 6 is from Pier 7?

11          A.     I believe he said 300 meters.

12          Q.     And did he recall if there was another ship already there  
13 at Pier 7 at that time?

14          A.     Yes.

15          Q.     Which ship was that?

16          A.     The USS COLE.

17          Q.     Now, did he tell you how many boats were involved in  
18 bringing the Multi Diamond into Pier 6?

19          A.     Yes. Four.

20          Q.     Okay. All the same kind of boat or different kinds?

21          A.     Two -- two tugboats, two mooring boats.

22          Q.     Now, did he ultimately hear and see the -- or hear or see  
23 the explosion at the COLE?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     Yes, he heard an explosion.

2           Q.     Okay. Had they started mooring the Multi Diamond at the  
3 time that he heard the explosion?

4           A.     Yes.

5           Q.     Did he initially know where this explosion had occurred?

6           A.     No.

7           Q.     What was his initial thought, actually?

8           A.     He initially thought it was on the Multi Diamond.

9           Q.     And did he -- did he look to see potentially where it was,  
10 if it wasn't the Multi Diamond?

11          A.     He looked. He -- and he saw to his back -- he turned  
12 around and saw it was from the -- from -- from the COLE, USS COLE.

13          Q.     And what was he able to see?

14          A.     I believe black smoke.

15          Q.     And for the four boats that were assisting with the  
16 Multi Diamond, did he see any particular reaction on the crews of  
17 those boats after the explosion?

18          A.     No. He was advised that one individual did jump  
19 overboard.

20          Q.     Now, did they -- did he tell you whether they continued to  
21 try and, like, dock or did they run away or -- that is, the  
22 Multi Diamond.

23          A.     For safety reasons, they continued to dock the

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Multi Diamond.

2 Q. Once they had successfully -- let me ask it this way.

3 Did they successfully complete docking of the Multi Diamond?

4 A. Yes.

5 Q. And once that was complete, did he attempt to provide  
6 assistance to the COLE?

7 A. Not him.

8 Q. Did he ask folks under his command to do so?

9 A. Yes.

10 Q. And what did he order them to do?

11 A. He ordered them to assist the COLE.

12 Q. This is the boats that were assisting the docking?

13 A. Yes, the -- the total of four boats.

14 Q. Did he himself leave the Multi Diamond?

15 A. At one point, yes.

16 Q. Okay. Do you recall approximately what time he left?

17 A. 12 -- 12:20 p.m.

18 Q. And did he attempt to help do any assistance to the COLE?

19 A. No, he went to lunch.

20 Q. Did he recall seeing any small boats that were -- like,

21 unusually stand out, small boats when he was mooring the

22 Multi Diamond?

23 A. No.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Was he aware of when the USS COLE -- excuse me.

2 Was he aware prior to that day that the USS COLE would be  
3 arriving?

4 A. No, I believe he was not aware.

5 Q. Did you show him the photo book?

6 A. No.

7 Q. Do you have any recollection why you didn't show him the  
8 book?

9 A. No, I don't.

10 Q. Now, you drafted the 302 on the same day as the interview;  
11 is that correct?

12 A. Yes.

13 Q. And have you had a chance to review the 302 that you  
14 created for this interview?

15 A. Yes.

16 Q. In reviewing it, did you see any reason to think that it  
17 was inaccurate -- an inaccurate representation of the interview and  
18 the information you learned from Mr. Rabbah Ahmed?

19 A. No.

20 ATC [LCDR SCHREIBER]: Your Honor, that's all I have for this  
21 pair.

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

23 DDC [LCDR PIETTE]: Yes, Your Honor.

**CROSS-EXAMINATION CONTINUED**

**Questions by the Detailed Defense Counsel [LCDR PIETTE]:**

Q. Okay. First I'm going to focus back on the harbormaster, Ali Ahmed Ali Ahmed.

A. Okay.

Q. And again, this was in that same room, that PSO barracks that we talked about before?

A. Yes.

Q. Same setup with four United States law enforcement agents on one side and the harbormaster on the other side of the table?

A. Yes.

Q. And at least two PSO or MOI agents in the room as well?

A. Yes.

Q. No windows?

A. Yes.

Q. Only doors behind you and across the table from the harbormaster?

A. Yes.

Q. And you didn't see how the harbormaster arrived at PSO Headquarters?

A. No.

Q. Okay. You don't know where he was waiting before the interview?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. No.

2 Q. You don't know who he was waiting with?

3 A. No.

4 Q. And you don't know how long he was waiting?

5 A. No.

6 Q. And the PSO and MOI, they didn't give you any details on  
7 how they located the harbormaster?

8 A. No.

9 Q. They didn't tell you ----

10 A. Well, they ----

11 Q. You do know that he was not previously interviewed  
12 regarding their investigation?

13 A. Excuse me?

14 Q. You know that he did not give a previous statement to the  
15 PSO?

16 A. No.

17 Q. All right. But you don't know how they -- when they found  
18 him, what they said to him, how they got him to agree to come talk to  
19 you?

20 A. No.

21 Q. So you don't know if they made him any promises?

22 A. No.

23 Q. You don't know if they made any threats to him?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. No.

2 Q. You don't know if they made any promises to or regarding  
3 his family?

4 A. No.

5 Q. And you don't know if they made any threats to or  
6 regarding his family?

7 A. No.

8 Q. And like the other witnesses, before you entered the room,  
9 you did not know who you were going to be interviewing?

10 A. That's correct.

11 Q. You just got the information from your supervisor; is that  
12 correct?

13 A. Yes.

14 Q. And then you geared up and went to PSO Headquarters?

15 A. Yes.

16 Q. When you got to the room, he was already in there?

17 A. Yes.

18 Q. And you don't have a specific memory of this particular  
19 witness; is that correct?

20 A. No.

21 Q. Again, if you saw him on the street, you wouldn't say, oh,  
22 that's the harbormaster from Yemen?

23 A. No.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Okay. And before reviewing your 302, did you remember  
2 details, like if he had been at the barbershop and a piece of the  
3 barbershop ceiling fell down? Anything like that?

4 A. Yeah, I remember the barber, but that's it.

5 Q. All right.

6 A. Minor detail.

7 Q. All right. But you didn't remember -- it's not like when  
8 you're looking at the 302, it's just confirming this memory that you  
9 already have in your head; is that correct?

10 A. Yes. Yes.

11 Q. And you said he got notice of the COLE coming in five to  
12 ten days prior to the COLE arriving?

13 A. He gets noticed.

14 Q. Yes. And it was about five to ten days prior, according  
15 to ----

16 A. Yes, normally they'd get notifications five or ten days  
17 prior.

18 Q. And were you able to confirm that with the documents that  
19 you received when you went to the harbor?

20 A. No, I didn't see those documents.

21 Q. When -- we can go ahead and talk about that now.

22 So the documents that you retrieved from the harbor, you  
23 personally did not review them?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I did not.  No, I did not.

2           Q.     You just packed them up and sent them to other U.S. law  
3 enforcement agents?

4           A.     I didn't personally get possession of them.

5           Q.     Oh, so you'd never touched them at all?

6           A.     No, not that I remember, no.

7           Q.     Never looked at them?

8           A.     Yes, I have seen them -- seen them, but don't recall  
9 seeing them.

10          Q.     Okay.  At the time?

11          A.     At the time, yes.

12          Q.     Understood.

13                 So do you know who the harbormaster would have gotten the  
14 notice from that the COLE was coming in five to ten days prior?

15          A.     No.

16          Q.     And he gave you a list of names, at least 11 people, who  
17 had access?

18          A.     Excuse me?

19          Q.     And he gave you a list of names of people who had access  
20 to the logs?

21          A.     To the dailies, yes.

22          Q.     And would have known that the COLE was coming in?

23          A.     Whatever the dailies said.  I didn't see what the daily

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 logs said, so -- he gave a list of 11 people that have access to the  
2 daily logs.

3 Q. Okay.

4 A. What's on those daily logs, I did not see.

5 Q. Understood.

6 And you also interviewed his assistant, the assistant to the  
7 harbormaster. Do you recall that?

8 A. Can you give me a name?

9 Q. I am not sure at this point, but you don't have an  
10 independent recollection of doing that?

11 A. No, sir.

12 Q. So you don't remember hearing or learning from him that he  
13 delivers daily logs to the port authority, naval base, naval police,  
14 navy health department, and the MOI?

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

16 Q. So you don't remember then talking to the assistant  
17 harbormaster and him telling you that one of his jobs is to deliver  
18 the daily logs to the port authority, naval base, naval police, naval  
19 health department, and the MOI?

20 A. No. I believe he stated that the daily logs go out to  
21 other agencies and these employees, not specific agencies.

22 Q. Okay. So you know -- but you do know yourself that, to  
23 clarify that, the daily logs do go out to other agencies and their

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 employees?

2 A. Yes.

3 Q. Okay. And so that's more than just the 11 people that  
4 this witness gave you; is that correct?

5 A. Correct.

6 Q. Okay. Again, the harbormaster, you spoke to him twice?  
7 That's correct?

8 A. Yes, sir.

9 Q. Did you confirm his ID with a Yemen ID card?

10 A. No.

11 Q. Did you confirm his ID with anything like a -- I don't  
12 know -- ID card from his place of work at the harbor?

13 A. No.

14 Q. Were you able to confirm his ID with a Yemeni passport?

15 A. No.

16 Q. And you didn't photograph him?

17 A. No.

18 Q. Didn't take prints?

19 A. No.

20 Q. And you never verified his address; is that correct?

21 A. Correct.

22 Q. And again, just like the other witnesses, if you needed to  
23 get in contact with this witness again, you had to go through the PSO



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 or MOI?

2 A. Yes.

3 Q. And after talking to the harbormaster the second -- during  
4 that second day, you haven't seen him since then?

5 A. No, I've not seen him.

6 Q. You've never made any attempts to locate him?

7 A. No.

8 Q. And this is more general, but something that came up. I  
9 should have -- I could have asked it earlier.

10 When did you leave Yemen as part -- in regards to your  
11 investigation of the COLE?

12 A. I was there February-March of two -- the exact date?  
13 Sometime in March ----

14 Q. March?

15 A. ---- I believe.

16 Q. We don't need an exact date. Just ----

17 A. Yeah, end of March.

18 Q. Did you stay involved in the USS COLE investigation after  
19 that?

20 A. No.

21 Q. How much longer did you stay on the Joint Terrorism Task  
22 Force?

23 A. Until March of 2003.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. I'm assuming in between March of 2001 and then March of  
2 2003 you had the Joint Terrorism Task Force, you focused on other  
3 terrorism-related events?

4 A. Yes.

5 Q. I'm assuming September 11th?

6 A. Yes, I was assigned.

7 Q. Among others?

8 A. Yes.

9 Q. And after you -- the Joint Terrorism Task Force, did you  
10 remain in law enforcement or did you retire from the Joint Terrorism  
11 Task Force?

12 A. Well, I retired from the Joint Terrorism Task Force as a  
13 New York City detective.

14 Q. Okay.

15 A. And then I was hired by the FBI to do their -- what they  
16 call -- as a staff employee, the SSG, Special Surveillance Group, in  
17 June of 2003? \*

18 Q. And then when did you retire from that?

19 A. March of 2001.

20 Q. And you're fully retired now?

21 A. Yes.

22 Q. All right. Now we'll move on to the next witness, Ahmed  
23 Abed Rabbah Ahmed, the harbor pilot. Again, I have to do this for

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 all these witnesses, but again, like the other witnesses, was this in  
2 the same room in PSO barracks?

3 A. Yes.

4 Q. And like the other witnesses, were there four  
5 United States law enforcement officials?

6 A. Yes.

7 Q. You introduced yourself as United States law enforcement  
8 agents?

9 A. Yes.

10 Q. There were at least two PSO or MOI individuals in there as  
11 well?

12 A. Yes.

13 Q. No windows?

14 A. Yes.

15 Q. Door behind you?

16 A. Yes.

17 Q. And since this was in a foreign country, were you able to  
18 have a sidearm on you?

19 A. I did.

20 Q. And did you have it on in the interview room?

21 A. I don't recall.

22 No, I did not.

23 Q. You did not?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           A.     I did not.

2           Q.     And when you arrived at that interview room, the witness,  
3 as far as you recall, was already in the room?

4           A.     Yes.

5           Q.     You didn't see -- or you don't know where they were before  
6 the interview?

7           A.     No.

8           Q.     You don't know how long they had been waiting before the  
9 interview?

10          A.     No.

11          Q.     You don't know if they had been waiting in, say, a waiting  
12 room before coming into the interview room?

13          A.     No.

14          Q.     And you don't know who they were waiting with before then?

15          A.     No.

16          Q.     And again, the PSO/MOI never told you how they discovered  
17 this witness?

18          A.     No.

19          Q.     They never gave you any sort of investigative report  
20 detailing that?

21          A.     No.

22          Q.     Again, this witness was not previously interviewed by the  
23 PSO, at least to the extent that they gave a interview, a statement;

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 is that correct?

2 A. That's correct.

3 Q. But you don't know what was said to this witness by the  
4 PSO before coming in -- or before agreeing to come in and speak to  
5 you?

6 A. No.

7 Q. Again, you don't know if they -- or if the PSO or MOI made  
8 any promises to this witness?

9 A. No.

10 Q. You don't know if the PSO or MOI made any threats to this  
11 witness?

12 A. No.

13 Q. You don't know if they made any threats to this witness's  
14 family?

15 A. No.

16 Q. And no promises to this witness's family?

17 A. No.

18 Q. And again, like the other witnesses, you followed the  
19 Bodine memorandum to a "T"?

20 A. Yes.

21 Q. And that involved you or whoever was asking the question  
22 asking it to your translator, correct?

23 A. Correct.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1           Q.     And the translator would ask -- is it one of the PSO  
2 agents, or was there a separate Yemeni translator in there who wasn't  
3 one of the PSO agents?

4           A.     I don't know. I believe it was a PSO agent.

5           Q.     Okay. So just asked the PSO agent, and then the PSO agent  
6 would ask the witness, correct?

7           A.     Yes, sir.

8           Q.     And then the witness had to respond to the PSO agent?

9           A.     Yes.

10          Q.     And then the PSO agent would respond to your translator?

11          A.     Yes.

12          Q.     And the translator would respond to you?

13          A.     To -- to me, yes. Sorry. Yes.

14          Q.     Yes. And you mentioned before that there was some  
15 difficulty with that that maybe your translator had some -- was it  
16 some difficulty with the dialect or he didn't speak exactly the  
17 dialect that they spoke in Yemen? Is that what it was?

18          A.     Yeah, there's different dialects with tran -- so questions  
19 go back and forth, not the same as in -- if you speak Spanish ----

20          Q.     Right.

21          A.     ---- it's different dialects, depending on where you are.

22          Q.     Okay.

23          A.     So that's the best example I can give you.

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. And so on that regard, it was like the translator -- your  
2 translator and the Yemen PSO kind of had to work out that and figure  
3 out their communication, correct?

4 A. Yes.

5 Q. And again, having been 22 years, you wouldn't recognize  
6 this harbor pilot if you saw him walking down the street?

7 A. No.

8 Q. You don't remember -- without reviewing your 302, you  
9 don't really remember his story until you had reviewed the 302?

10 A. Correct.

11 Q. So you weren't using the 302 to kind of confirm something  
12 you already remembered; is that correct?

13 A. Correct.

14 Q. And again, with this harbormaster **[sic]**, when you walked  
15 in, he was in there. You made introductions, he told you who he was  
16 or the PSO told you who he was.

17 Did you confirm his identity by asking to see a Yemen ID  
18 card?

19 A. No.

20 Q. Were you able to confirm his identity with a Yemen  
21 passport?

22 A. No.

23 Q. And again, you didn't photograph him?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. No, sir.

2 Q. Didn't take prints?

3 A. No.

4 Q. Didn't get an address?

5 A. I don't believe so, no.

6 Q. Okay. And he told you he didn't -- well, actually, let me  
7 back up.

8 From what you remember, did he tell you how long it took for  
9 him to take his boat out and assist the Multi Diamond in its docking  
10 procedures?

11 Let me ask that, maybe make it more clear.

12 A. Yes.

13 Q. Do you know how long it took him to dock the Multi Diamond  
14 that day?

15 A. No.

16 Q. Do you know, did he tell you about the amount of boat  
17 traffic in the harbor?

18 A. No.

19 Q. Were you able to ask him, as a harbor pilot, when he's  
20 docking a ship, what he's paying attention to? In other words, like,  
21 is he looking at the harbor or is he mostly focusing on the ship?  
22 Were you able to ask him questions like that?

23 A. No.



UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. Again, if we were to want to know things like that, we  
2 would -- the best witness to ask would be him directly?

3 A. Yes, sir.

4 Q. And he didn't actually -- he told you -- I believe you  
5 said he heard an explosion. Does that mean that he didn't see the  
6 explosion?

7 A. Correct. He had his back to the COLE.

8 Q. So he had to turn around. Once he heard the explosion,  
9 that's what made him turn around?

10 A. Yes.

11 Q. When you arrived in Yemen, you were aware that the  
12 USS COLE had been attacked?

13 A. Oh, yes.

14 Q. You'd seen pictures of it?

15 A. Yes.

16 Q. You'd seen the hole in the side of it?

17 A. Yes.

18 Q. And by the time you arrived, was the COLE still there or  
19 had it already been taken back to the United States?

20 A. I don't remember.

21 Q. Okay. But fair to say you already knew that there had  
22 been an explosion on the USS COLE?

23 A. Excuse me?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 Q. It's fair to say you already knew, before this witness  
2 told you that he heard an explosion, that there had been an explosion  
3 on the COLE?

4 A. Oh, yes.

5 Q. Okay. And after talking to this witness, you haven't  
6 spoken to them since?

7 A. No.

8 Q. You haven't made any attempts to locate him?

9 A. No.

10 Q. And you don't know of any other efforts to locate him?

11 A. No.

12 DDC [LCDR PIETTE]: That's all the questions I have for this  
13 grouping, Your Honor. Thank you.

14 MJ [COL ACOSTA]: All right.

15 ATC [LCDR SCHREIBER]: Your Honor, I don't have any redirect.  
16 My intent is to move on to the next two statements.

17 MJ [COL ACOSTA]: All right. Go ahead and get started.

18 ATC [LCDR SCHREIBER]: Aye, sir. All right.

19 The next set is a group of two. The first one, Tab 106,  
20 Radwan Mohammad Ali Muthana; and then number 107, Abd al Nasir  
21 Hussein Abd Rabaa Atyri. Okay.

22 [END OF PAGE]

23

**DIRECT EXAMINATION CONTINUED**

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

Q. So the first one we're going to talk about, number 106.

So this is Radwan Mohammad Ali Muthana -- Muthana.

Do you recall doing an interview with Mr. Ali Muthana on the 27th of February of 2001?

A. Yes.

Q. The same location as you've described before, the PSO building in Aden?

A. Yes.

Q. The same room setting as described before?

A. Yes.

Q. PSO present?

A. Yes.

Q. Your law enforcement team and interpreter present?

A. Yes.

Q. And was Mr. Ali Muthana present when you arrived for this interview as you've described?

A. Yes.

Q. Any signs of abuse or duress from Mr. Muthana?

A. No.

Q. Was he -- did he appear healthy and oriented to the interview?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. Yes.

2 Q. Was he appropriately clothed?

3 A. Yes.

4 Q. And did he appear frightened or nervous to be there to  
5 talk to you?

6 A. No, he wasn't.

7 Q. Had he made a prior statement to the PSO?

8 A. No, not that I know of.

9 Q. And did you have an opportunity to introduce your team and  
10 explain why you were there?

11 A. Yes.

12 Q. Did he appear to understand why you were there?

13 A. Yes.

14 Q. And then did you follow the interview protocol as you've  
15 described?

16 A. Yes.

17 Q. Were you at any point specifically prevented from asking  
18 any questions of Mr. Muthana that you might have wanted to?

19 A. No.

20 Q. Did the Yemenis interfere in your interview in any way?

21 A. No.

22 Q. So what was Mr. Muthana's occupation when you spoke to  
23 him?

UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT

1 A. I believe he's a pilot, tug -- tugboat pilot.

2 Q. Okay. A tugboat captain?

3 A. Captain.

4 Q. Can you recall what he told you the name of his tugboat  
5 was?

6 A. I don't remember.

7 Q. Would it help you to review your 302 ----

8 A. Yes.

9 Q. ---- to remember the name that he told you ----

10 A. Yes, please.

11 Q. ---- of his tugboat?

12 ATC [LCDR SCHREIBER]: Your Honor, I'm showing the witness  
13 Appellate Exhibit 319MM, page 1855.

14 Q. And I would direct your attention to the -- the last three  
15 paragraphs on that page.

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

17 A. Okay.

18 ATC [LCDR SCHREIBER]: Retrieving the document.

19 Q. Did that refresh your memory as to the name of his  
20 tugboat?

21 A. Yes.

22 Q. What was the name?

23 A. Dohrab.

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1 Q. Pronunciation is what it is.

2 A. Yes, sir. I'm sorry.

3 Q. Okay. How long had he been a tugboat captain?

4 A. I believe since 2000.

5 Q. And on the 12th of October of 2000, when did his day start  
6 as a ----

7 A. I believe 4:00 a.m.

8 Q. Did he have a ship -- a first ship that he took care of  
9 that morning?

10 A. Yes.

11 Q. And where did he take that ship?

12 A. To Pier 7.

13 Q. Sorry. I want to talk about before the Pier 7. Was there  
14 another ship he took elsewhere?

15 A. Not that I ----

16 Q. Do you recall whether or not ----

17 A. No, I don't recall.

18 Q. Would it help to review your 302 ----

19 A. Yes, please.

20 Q. ---- to recall whether he told you about another ship?

21 ATC [LCDR SCHREIBER]: Your Honor, I'm showing the witness the  
22 same page.

23 Q. I'll direct your attention again to the bottom three

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1 paragraphs of that page.

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

3 A. Okay. I'm sorry.

4 ATC [LCDR SCHREIBER]: Retrieving the document.

5 Q. Did that refresh your memory about whether he had a  
6 ship first thing early in the morning?

7 A. Yes.

8 Q. And what did he tell you about that?

9 A. He said he took an unknown ship to what they call the free  
10 zone.

11 Q. After that ship, what was the next ship that he handled  
12 that day?

13 A. To Pier 7, the USS COLE.

14 Q. Was it just his tugboat that handled the COLE or was  
15 he -- did he have another ----

16 A. Yeah, one other.

17 Q. And you mentioned to Pier 7?

18 A. Yes.

19 Q. Not only did the -- was there something else unusual about  
20 taking them to Pier 7? He took the COLE to Pier 7 but also did  
21 something else with it, right?

22 A. Yeah, they turned the ship around.

23 Q. So not just taking them, but also then turning?

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1 A. Yes. Yes.

2 Q. After they took the COLE to Pier 7, where did  
3 he -- what -- what did he do?

4 A. He stood by, waited for orders.

5 Q. And did he assist with another ship that morning?

6 A. Yes.

7 Q. Which -- what was -- what does he recall about that one?

8 A. That he was assigned to Pier 6 to -- well, knowing it's  
9 the -- the Multi-Diamond.

10 Q. Okay. Did he recall the name of the ship?

11 A. I believe not.

12 Q. Okay. But this is the ship to Pier 7 we now know as the  
13 Multi-Diamond?

14 A. Pier 6 is the ----

15 Q. I'm sorry, Pier 6, the Multi-Diamond?

16 A. Yes.

17 Q. So he was assisting with taking the Multi-Diamond to  
18 Pier 6. Did he tell you if he heard about -- or heard the explosion?

19 A. Yes.

20 Q. Did he recall approximately what time he thinks he heard  
21 the explosion on the -- of the COLE?

22 A. I believe 11:00.

23 Q. Okay. And was he able to actually turn and take a look at



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1 the -- where the explosion was coming from at the time?

2 A. Not that I recall.

3 Q. Was he able -- did he ultimately see anything in the  
4 direction of the explosion that he heard?

5 A. I believe he said he saw smoke, black-and-gray smoke.

6 Q. Did he, on his tugboat, render assistance to the COLE?

7 A. No.

8 Q. To be more specific on that, was he ordered to stand by to  
9 potentially offer assistance?

10 A. He was ordered -- he was ordered to stand by.

11 Q. But ultimately didn't help?

12 A. But he eventually -- no, he did not help the COLE.

13 Q. Did you ask him if he saw anything unusual that morning  
14 that just stuck out to him in the port?

15 A. No.

16 Q. Didn't ask him or he said no?

17 A. He didn't see anything unusual.

18 Q. Did he know in advance of the COLE's arrival that the COLE  
19 was going to be arriving that day?

20 A. I -- I don't recall.

21 Q. Okay. Would it help to review your 302 to remember if he  
22 knew that the COLE was arriving that day?

23 A. Yes.

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1           ATC [LCDR SCHREIBER]: Your Honor, I'm showing the witness  
2 Appellate Exhibit 319MM, page 1856.

3           Q.     And I would direct your attention to the third paragraph  
4 from the bottom.

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

6           A.     He didn't know. Yep.

7           ATC [LCDR SCHREIBER]: Retrieving the document.

8           Q.     Did that refresh your memory about whether he was aware of  
9 the COLE's arrival before that day?

10          A.     He was not aware.

11          Q.     Did you show Mr. Ali Muthana the photo book?

12          A.     Yes.

13          Q.     And was he able to identify any photos in the photo book?

14          A.     No.

15          Q.     Now, you and your team drafted the 302 the following day,  
16 the 28th?

17          A.     Yes.

18          Q.     Have you had a chance to review the 302 before your  
19 testimony today?

20          A.     Yes.

21          Q.     And is there any reason, in reviewing it, that you think  
22 that this was not an accurate record of what you learned in that  
23 interview?

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1 A. No.

2 ATC [LCDR SCHREIBER]: One moment, please, Your Honor.

3 MJ [COL ACOSTA]: Yes.

4 **[Counsel conferred.]**

5 ATC [LCDR SCHREIBER]: Thank you, Your Honor.

6 Q. All right. Moving on. The next one in this group I'd  
7 like to talk about is number 107. This is Abd al Nasir Hussein Abd  
8 Rabaa Atyri, so Mr. Atyri.

9 Do you remember doing an interview of Mr. Atyri on the 27th  
10 of February of 2001?

11 A. Yes.

12 Q. Again, PSO Headquarters in Aden?

13 A. Yes.

14 Q. And in the room as you've described before?

15 A. Yes.

16 Q. Yemeni officials present?

17 A. Yes.

18 Q. And your team with an interpreter present?

19 A. Yes.

20 Q. Was Mr. Atyri present when you arrived for the interview?

21 A. Yes.

22 Q. Did you observe any signs that he had been abused or was  
23 under duress?

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1 A. No.

2 Q. Did he appear healthy, oriented to the interview?

3 A. Yes.

4 Q. Was he wearing appropriate clothing?

5 A. Yes.

6 Q. Did he appear frightened or nervous to speak with you or  
7 anything like that?

8 A. No.

9 Q. Had he made a prior statement to the PSO?

10 A. Not that I'm aware of.

11 Q. Were you able to introduce your team and tell him why you  
12 were there?

13 A. Yes.

14 Q. And did you follow the interview protocol as you've  
15 described?

16 A. Yes.

17 Q. And by the way, did Mr. Atyri appear to understand why you  
18 and your team were there?

19 A. Yes.

20 Q. Were you prevented from asking any questions by the Yemeni  
21 authorities?

22 A. No.

23 Q. Did the Yemeni authorities who were present interfere in

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1 your interview in any way?

2 A. No.

3 Q. And from your observations, did he appear to be answering  
4 your questions willingly?

5 A. Yes.

6 Q. Okay. Much like the last individual, what was Mr. Atyri's  
7 occupation?

8 A. A mooring boat.

9 Q. Mooring boat driver?

10 A. I believe he's a mooring tugboat operator. May I see the  
11 paper again?

12 Q. If you're not sure, if ----

13 A. I'm not sure.

14 Q. ---- if it would help ----

15 A. I'm sorry.

16 Q. ---- to refresh your recollection ----

17 MJ [COL ACOSTA]: Slow down. You're talking over each other  
18 again.

19 ATC [LCDR SCHREIBER]: Aye, sir.

20 Q. Would it refresh your recollection to review your 302?

21 A. Yes, please.

22 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit  
23 319MM, page 1858.

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1 Q. And I would direct your attention to the second-to-last  
2 paragraph on the page.

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

4 A. Okay.

5 ATC [LCDR SCHREIBER]: Retrieving the document.

6 Q. Does that refresh your recollection of his occupation?

7 A. Tugboat captain.

8 Q. Okay. So Mr. Atyri was a tugboat captain. How long had  
9 he been doing that?

10 A. Fourteen months.

11 Q. And on the 12th of October of 2000, did he tell you when  
12 his day started that day?

13 A. I believe 7:00 a.m.

14 Q. And his first ship of that day, what was that first ship  
15 that he handled?

16 A. I believe it was the -- the USS COLE.

17 Q. All right. When was he called to the USS COLE? Can  
18 you -- do you recall when he told you he was called out there to help  
19 dock them?

20 A. No.

21 Q. Would it help to review your 302 to remember when  
22 he -- when he was asked to work the COLE?

23 A. Yes.

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1           ATC [LCDR SCHREIBER]: Showing the witness 319MM, pages 1858  
2 and 1859.

3           Q.     And I'll direct your attention to the paragraph from the  
4 bottom of that first page that runs onto the second page.

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

6           A.     Okay. Yeah. Okay.

7           ATC [LCDR SCHREIBER]: Retrieving the document.

8           Q.     All right. Did that refresh your memory about when he  
9 started working with the COLE that day?

10          A.     Yes.

11          Q.     What time did he tell you that happened?

12          A.     8:00.

13          Q.     And what was he instructed to do with regard to the COLE?

14          A.     Go to Pier 7.

15          Q.     Did he recall when they -- approximately when they  
16 finished docking the COLE?

17          A.     About 9:45.

18          Q.     Okay. And did he have another ship to dock that day after  
19 the COLE?

20          A.     Yes.

21          Q.     Where were they taking that ship?

22          A.     To Pier 6.

23          Q.     Okay. Could he recall the name of that ship?

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1 A. No. I don't remember. No.

2 Q. He couldn't or you can't recall whether he ----

3 A. No, he didn't recall the ship.

4 Q. Okay.

5 A. Sorry.

6 Q. But that ship that went to Pier 6, that's the one that  
7 we've learned was the Multi Diamond?

8 A. Yes.

9 Q. Did he hear the explosion at the COLE that day?

10 A. Yes.

11 Q. And approximately when did he hear it, if -- and more  
12 importantly, what was he doing when he heard it?

13 A. He was with the -- tying the lines on -- he started to  
14 pull -- he started to pull out of position on the -- on the  
15 Multi Diamond.

16 Q. I'll just step back.

17 A. Sorry.

18 Q. He told you he was -- he was tying the lines. Like, he  
19 was working on the Multi Diamond?

20 A. Yes.

21 Q. Working to dock the Multi Diamond?

22 A. Docking the Multi Diamond.

23 Q. And then I think you mentioned his reaction to hearing the



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1 explosion was what?

2 A. He pulled -- pulled the ship out of position.

3 Q. So as a tugboat driver, he's ----

4 A. Yes.

5 Q. ---- pulling in the wrong direction or something?

6 A. Pulling in the wrong direction.

7 Q. Was he able to reorient his work with the Multi-Diamond

8 and finish the ----

9 A. Yeah, he got orders from the pilot, the pilot on the  
10 Multi-Diamond, to straighten out, and he pushed the -- they pushed  
11 the ship back into, to position, into the Pier 6.

12 Q. What was he instructed to do following the explosion on  
13 the COLE?

14 A. Stand by.

15 Q. Was he instructed to provide aid at any point to the COLE?

16 A. No.

17 Q. So he didn't provide any aid to them?

18 A. He did not provide aid.

19 Q. When did he -- when did he receive information that the  
20 USS COLE would be arriving that day?

21 A. I believe ----

22 Q. If you can't recall ----

23 A. I don't -- I don't recall.

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1 Q. Would it help to review your 302 to ----

2 A. Yes.

3 Q. ---- recall when he knew about the COLE?

4 A. Yes.

5 Q. Okay.

6 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit  
7 319MM, page 1860.

8 Q. Just -- I'm not going to direct you to any particular  
9 part.

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

11 A. No.

12 ATC [LCDR SCHREIBER]: Okay. Retrieving the document.

13 Q. Did that refresh your recollection as to when Mr. Atyri  
14 knew that the COLE would be arriving?

15 A. Yes.

16 Q. And when did he tell you that he knew about that?

17 A. One hour to an hour and a half before.

18 Q. Before the arrival of the COLE?

19 A. Before the arrival.

20 Q. Did you ask him if he'd seen anything unusual in the  
21 harbor that day?

22 A. No.

23 Q. Did ----

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1 A. He did not see anything unusual ----

2 Q. Okay.

3 A. ---- in the harbor that day. Sorry.

4 Q. And did you show him the photo book?

5 A. Yes.

6 Q. Was he able to identify any photos in the photo book?

7 A. No.

8 Q. You drafted the 302 the same day?

9 A. Yes.

10 Q. Have y'all had an opportunity -- did you have an  
11 opportunity to review the 302 prior to your testimony today?

12 A. Yes.

13 Q. Any reason, during that review that came to you, to think  
14 that it's not an accurate record of the interview that you conducted?

15 A. No.

16 ATC [LCDR SCHREIBER]: Just one moment, please, Your Honor.

17 MJ [COL ACOSTA]: Yes.

18 ATC [LCDR SCHREIBER]: Never mind. Don't need it. That's all  
19 the questions I have for this grouping, sir.

20 MJ [COL ACOSTA]: Okay. All right. Defense?

21 DDC [LCDR PIETTE]: Yes, Your Honor.

22 **[END OF PAGE]**

23

**CROSS-EXAMINATION CONTINUED**

**Questions by the Detailed Defense Counsel [LCDR PIETTE]:**

Q. So, again, both of these interviews took place inside that same room in the PSO barracks?

A. Yes.

Q. Would be the same, where it was four United States law enforcement agents and at least two PSO agents in the room?

A. Yes.

Q. Again, no windows, door behind you; is that correct?

A. Yes.

Q. And you don't know how either of these witnesses -- well, you -- both of them were in the room when you would have arrived?

A. Yes.

Q. And so you never saw any of these witnesses being led into the room?

A. No.

Q. So you don't know if they were shackled at any time before coming into the room?

A. No.

Q. You don't know where they waited before coming into the room?

A. No.

Q. You don't know how long they waited?

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1 A. No.

2 Q. And you don't know how long they waited?

3 A. No.

4 Q. And again, you don't know then how the PSO located these  
5 people to find them and bring them in for these interviews?

6 A. No.

7 Q. You don't know if the PSO was canvassing and came across  
8 their names?

9 A. No.

10 Q. And you don't know if the PSO talked to them maybe at the  
11 harbor or on their tugboat to find out what they knew and how they  
12 would be relevant?

13 A. No.

14 Q. You didn't see any PSO or MOI reports of investigation  
15 that would detail any of that?

16 A. No.

17 Q. So then you don't know if there were any promises made to  
18 these witnesses to come in and talk to you?

19 A. No.

20 Q. You don't know if there were any threats made to these  
21 witnesses to come in and talk to you?

22 A. No.

23 Q. And you don't know if there were any promises or threats

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1 made to any of these witnesses' families ----

2 A. No.

3 Q. ---- in order to get them to come in?

4 A. No.

5 Q. And with both of these witnesses, you followed the Bodine  
6 memorandum guidelines?

7 A. Yes.

8 Q. And again, considering it's been 22 years, you wouldn't  
9 recognize either of these witnesses if you saw them on the street?

10 A. No.

11 Q. So you wouldn't -- yeah, you wouldn't say, oh, that guy,  
12 he was the tugboat captain, anything like that?

13 A. No, sir.

14 Q. And again, it's fair to say you're relying on the 302s  
15 when you -- when you reviewed them to come in here?

16 A. Excuse me?

17 Q. You relied -- so you're relying on your review of the 302s  
18 in your testimony here today?

19 A. Yes.

20 Q. Not really any independent memory you have of these  
21 witnesses telling you their story?

22 A. No.

23 Q. And now, when you -- the way the 302s worked,

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1 you -- obviously, you all would do the interview, correct?

2 A. Yes.

3 Q. Then at least one of you would have taken some notes?

4 A. Yes.

5 Q. And either later that day or the next day at the very  
6 latest, someone, one of you, would draft up the 302?

7 A. Yes.

8 Q. And then all of you would review the 302?

9 A. Yes.

10 Q. And you'd sign your name on it?

11 A. Initial it, yes.

12 Q. And so you have reason to believe that you can trust  
13 what's in the 302?

14 A. Yes.

15 Q. And so, for example, earlier the prosecutor had you -- you  
16 had to refresh your recollection in that case. Again, you're  
17 trusting the 302 -- actually, to make it clear, let me get to the  
18 right question.

19 So when you refreshed your recollection earlier, did that  
20 make you actually remember that the witness wasn't aware that the  
21 COLE was about to arrive, or did you trust the 302 in that it said  
22 that the witness didn't know?

23 A. I trusted the 302.

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1           Q.     Okay. And similarly, when you couldn't remember the exact  
2 job of the witness and your recollection was refreshed, that didn't  
3 make you actually remember, oh, yes, that guy, he was a tugboat  
4 captain and not a mooring boat captain. You're trusting the 302,  
5 that he was the tugboat captain?

6           A.     Yes.

7           Q.     Okay. And now specifically talking about Radwan Mohammad  
8 Ali Muthana, who was -- he was the one that worked for the port  
9 authority and operated the tugboat Dohrab.

10           He said -- you mentioned on direct that he was standing by  
11 after docking the COLE. Do you recall that he went to a place called  
12 the station?

13          A.     Not -- no.

14          Q.     Okay. If I showed you your 302, would it help refresh  
15 your recollection?

16          A.     Yes.

17          Q.     Okay.

18           DDC [LCDR PIETTE]: Your Honor, I'm showing the witness what  
19 has been marked AE 319MM, page 1855 to 1856.

20           MJ [COL ACOSTA]: All right. Proceed. You may move freely.

21           DDC [LCDR PIETTE]: Thank you.

22          Q.     If you just look at the last paragraph on that page as it  
23 goes into the next paragraph.



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

2           A.     Yes, sir.

3           DDC [LCDR PIETTE]: I've retrieved the document.

4           Q.     Did that help refresh your recollection as to the name of  
5 the place where he was standing by?

6           A.     Yes. The station.

7           Q.     Okay. And again, like what I was talking about before, do  
8 you actually now remember, oh, yes, that was called the station, or  
9 are you trusting the 302?

10          A.     I'm trusting the 302.

11          Q.     And when he was at the station -- actually, in  
12 this -- later in the 302 the witness says he didn't notice or there  
13 was no unusual activity during the morning of the COLE coming in. Is  
14 that correct?

15          A.     Correct. Yes.

16          Q.     Do you know if he meant that there was the same amount of  
17 boats and the same type of boats in the harbor? Or do you not know  
18 what exactly he meant by that?

19          A.     No, don't know exactly what he meant.

20          Q.     Again, the best witness to ask what he meant by that would  
21 be this witness himself?

22          A.     Yes.

23          Q.     And from the station, do you know what this witness could

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1 see?

2 A. No.

3 Q. Do you know what he was doing while he was standing by at  
4 the station?

5 A. No.

6 Q. Do you know what he was looking at?

7 A. No.

8 Q. Again, best witness to learn those facts would be the  
9 witness himself?

10 A. Yes.

11 Q. And this particular tugboat captain, you -- when he came  
12 in, you didn't -- well, we'll just do this for both of them. You  
13 didn't know either of these tugboat captains before you saw them ----

14 A. No.

15 Q. ---- the day you interviewed them?

16 A. No.

17 Q. You had never seen them before?

18 A. No.

19 Q. You didn't confirm either of their identities with a  
20 Yemeni ID?

21 A. No.

22 Q. You didn't photograph either of them?

23 A. No.

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1 Q. Didn't take their fingerprints?

2 A. No.

3 Q. Didn't get a phone number?

4 A. No.

5 Q. And again, with both of them, if you'd wanted to talk to  
6 them again, you would have had to go through the PSO or MOI?

7 A. Yes.

8 Q. And both of these witnesses, they didn't see the explosion  
9 occur on the COLE. They just heard it?

10 A. Yes.

11 Q. And again, the second tugboat captain, he also stated he  
12 didn't see anything out of the ordinary that day either?

13 A. Correct.

14 Q. And we don't know if he meant that harbor traffic was  
15 normal. He didn't see any boats that aren't normally in the harbor;  
16 is that correct?

17 A. That's correct.

18 Q. And we also don't know what opportunities he had to  
19 observe the harbor during that day necessarily? Is that correct?

20 A. That's correct.

21 Q. Again, best witness to ask those questions would be the  
22 witness himself?

23 A. Yes.

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1 DDC [LCDR PIETTE]: Thank you, Your Honor. That's all I have  
2 for this grouping.

3 MJ [COL ACOSTA]: All right.

4 ATC [LCDR SCHREIBER]: No redirect, Your Honor.

5 MJ [COL ACOSTA]: All right. We're going to -- okay.

6 Mr. Hieb, we're going to excuse you now for our lunch  
7 recess. Counsel will tell you when you need to be back, but I  
8 anticipate that it will be -- well, I'll tell you, we'll come back at  
9 1315, is when we'll start back up.

10 The same warning as before: Don't discuss your testimony  
11 with anyone including counsel for either side.

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

14 MJ [COL ACOSTA]: The commission is in recess until 1315.

15 **[The R.M.C. 803 session recessed at 1147, 2 March 2023.]**

16 **[The R.M.C. 803 session was called to order at 1316, 2 March 2023.]**

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

18 Government, all parties present as before?

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

20 MJ [COL ACOSTA]: Defense?

21 LDC [MR. NATALE]: Yes, sir.

22 **[The witness, Kenneth Hieb, resumed the witness stand.]**

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

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1 ATC [LCDR SCHREIBER]: Thank you, Your Honor.

2 MJ [COL ACOSTA]: I just remind the witness you remain under  
3 oath. Sorry. Go ahead.

4 WIT: Yes, sir.

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

6 **DIRECT EXAMINATION CONTINUED**

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

8 Q. All right. Mr. Hieb, we're going to handle the last  
9 three, these folks with the mooring boats. So number one -- the  
10 first one is number 112, Maher Isknder Ibrahim Ramadan. The second  
11 would be number 113, Arrif Hassan Ahmed Lahous. And then the last  
12 one will be number 105, Adan Abdah Hassan Qaeid. That one I've had  
13 trouble pronouncing.

14 So the first one, number 112, this is Mr. Maher Isknder  
15 Ibrahim Ramadan. Do you remember interviewing Mr. Ibrahim Ramadan on  
16 the 28th of February of 2001?

17 A. Yes.

18 Q. And was that in the same location you described before,  
19 PSO Headquarters?

20 A. Yes.

21 Q. Or the PSO building?

22 A. Yes.

23 Q. In the same room as you've described, interview room?

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1 A. Yes.

2 Q. And PSO officials present for that?

3 A. Yes.

4 Q. And then you and your -- your team and your interpreter?

5 A. Yes.

6 Q. And when you arrived for the interview, was Mr. Ramadan  
7 already present, as you've described?

8 A. Yes.

9 Q. From your recollection, any signs of abuse or duress for  
10 Mr. Ramadan?

11 A. No.

12 Q. He appeared healthy, oriented to the interview?

13 A. Yes.

14 Q. Was he in appropriate clothing, to your recollection?

15 A. Yes.

16 Q. And did he appear frightened or nervous to be there to  
17 talk to you?

18 A. No.

19 Q. Had he made a prior statement to the PSO?

20 A. No.

21 Q. And did you have an opportunity to introduce your team and  
22 explain why you were there?

23 A. Yes.

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1 Q. Did he appear to understand why he was going to talk with  
2 you?

3 A. Yes.

4 Q. Now, did you follow the interview protocol as you've  
5 described?

6 A. Yes.

7 Q. And were you prevented from asking any questions that you  
8 wanted to of this witness by the Yemeni authorities?

9 A. No.

10 Q. And did the Yemeni authorities interfere with your  
11 questioning of this -- of Mr. Ramadan in any way?

12 A. No.

13 Q. All right. What was Mr. Ramadan's occupation?

14 A. Mooring boat pilot.

15 Q. And how long had he been a mooring boat pilot that he told  
16 you?

17 A. Since 1982.

18 Q. And going back to the 12th of October of 2000, what time  
19 did his day -- what time did his day start?

20 A. Later. About 8:00.

21 Q. Did he tell you why his day started later?

22 A. Yes, because he was late.

23 Q. And did he indicate anything about being late to work to

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1 you?

2 A. Yes. He stated he was always late.

3 Q. So did he have access to his usual mooring boat that day?

4 A. No.

5 Q. And why not?

6 A. Because he was late. I believe the boat was not working.

7 Q. Do you recall which boat that he told you that he did get  
8 to drive that day?

9 A. He went on the Sanaa.

10 Q. And ----

11 A. Excuse me.

12 Q. Sure. His first -- what was his first job of the day then  
13 after he arrived at 8:00?

14 A. It was to go to Pier 6.

15 Q. And what was that Pier 6 ship that we know from other  
16 interviews?

17 A. Yes, is the Multi-Diamond.

18 Q. So if he arrived around 8:00, his first ship was the  
19 Multi-Diamond. Had he been involved in the docking of the USS COLE  
20 that morning?

21 A. No.

22 Q. And who was -- was he aware of who handled the mooring  
23 boat that he would normally be the captain of that morning?



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1           So if he wasn't there to do it, who did it instead?

2           A.     Oh, I don't -- I don't recall.

3           Q.     Would it help to review your 302?

4           A.     Yes.

5           ATC [LCDR SCHREIBER]: Your Honor, I'm showing the witness  
6 Appellate Exhibit 319MM, page 1892.

7           Q.     And I'll direct your attention to the second paragraph on  
8 that page?

9           MJ [COL ACOSTA]: All right.

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

11          ATC [LCDR SCHREIBER]: Retrieving the document.

12          Q.     Did that refresh your recollection as to who handled the  
13 mooring boat for the COLE that morning if it wasn't this guy?

14          A.     Yes. His second in command, Nassir al Barour.

15          Q.     All right. So he told you that he was -- he did later  
16 work the Multi-Diamond from his -- as a mooring boat driver. Did he  
17 hear the explosion, the attack on the COLE that day?

18          A.     Yes.

19          Q.     And was he mooring the Multi-Diamond at the time that he  
20 heard it?

21          A.     No. He was -- he was fixing his ship, a spring on his  
22 ship, he stated.

23          Q.     Okay. What did he -- what did he hear when he was -- or

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1 excuse me.

2 What did he do when he heard the explosion?

3 A. When he heard the explosion, he jumped overboard with a  
4 cup of tea and a cigarette.

5 Q. Was that something that you had recalled if I'd asked you  
6 about this three months ago?

7 A. Yes.

8 Q. Now, as the captain of his mooring boat, did -- was he  
9 ordered to try and assist the COLE once -- after the explosion?

10 A. Yes.

11 Q. And initially, that first attempt, were they able to  
12 approach the COLE and assist?

13 A. No.

14 Q. Did he indicate why not?

15 A. They were scared away by, I believe, the members of the  
16 COLE; they had guns. They were frightened away.

17 Q. Okay. And did they attempt a few more times to assist?

18 A. Yes, I believe in a third, third attempt, they were  
19 successful.

20 Q. In these attempts to assist the COLE, was he joined by  
21 anybody else from the team?

22 A. Yes, he was -- by Captain Rahab **[sic]**.

23 Q. Captain Rabbah?

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1 A. Rabbah.

2 Q. The gentleman we talked about earlier?

3 A. Yes.

4 Q. And you said they ultimately did get to assist the COLE in  
5 that third attempt. What assistance did they provide?

6 A. Removing pass -- not passengers, the sailors, the -- the  
7 injured from -- from the COLE.

8 Q. And how many trips did he tell you that he took with  
9 wounded from the ship?

10 A. I don't recall. I know he said a number. I don't recall  
11 that.

12 Q. Would it help you ----

13 A. Yes.

14 Q. ---- to review your 302?

15 A. Yes.

16 ATC [LCDR SCHREIBER]: Your Honor, showing the witness  
17 Appellate Exhibit 319MM, page 1892.

18 Q. Direct your attention to the bottom two paragraphs on the  
19 page.

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

21 A. Okay.

22 ATC [LCDR SCHREIBER]: Retrieving the document.

23 Q. Did that refresh your memory as to how many trips they

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1 took with wounded from the COLE?

2 A. Yes.

3 Q. How many was it?

4 A. Three.

5 Q. And did he indicate how many -- if you could recall, how  
6 many sailors they took each time?

7 A. Three -- three or four sailors.

8 Q. Was he -- did he get a -- to take a look at the COLE  
9 itself when he was doing these -- transporting the sailors?

10 A. No, I don't recall if he saw.

11 Q. Again, would it -- would it help you ----

12 A. Yep.

13 Q. ---- to refresh your recollection about what he was able  
14 to see on the COLE ----

15 A. Yes.

16 Q. ---- if you could look at your 302?

17 A. Yes.

18 Q. Okay.

19 ATC [LCDR SCHREIBER]: Showing the witness the same page.

20 Q. And direct your attention to the second-to-last paragraph  
21 on the page.

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

23 A. Okay. Sorry.

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1 ATC [LCDR SCHREIBER]: Retrieving the document.

2 Q. Did that refresh your memory as to what Mr. Ramadan was  
3 able to see at the COLE, if anything, when he saw the ship itself?

4 A. Yes.

5 Q. And what did he see?

6 A. Black -- black around the area of the explosion.

7 Q. Did he actually see the blast himself?

8 A. No.

9 Q. Did he hear it?

10 A. Yes.

11 Q. And what did he tell you that he heard?

12 A. An explosion. Don't recall. It's ----

13 Q. Okay. Again, would it help you to -- for the specifics of  
14 what he recalled about hearing the explosion, would it help you to  
15 review your 302?

16 A. Yes.

17 Q. All right.

18 ATC [LCDR SCHREIBER]: Your Honor, showing the witness the  
19 same page.

20 Q. I'd direct your attention to the same paragraph.

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

22 A. Okay.

23 ATC [LCDR SCHREIBER]: Retrieving the document.

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1 Q. Did that refresh your memory as to what he heard with  
2 regard to the blast?

3 A. He heard two blasts.

4 Q. Okay.

5 A. The first being louder than the second.

6 Q. And did he have any knowledge at all of the -- any prior  
7 knowledge of the COLE's arrival that day?

8 A. No.

9 Q. Did you show him the ADENBOM Photo Book -- or, excuse me,  
10 did you show him the photo book you were working with?

11 A. Yes.

12 Q. And was he able to identify anybody in the photo books?

13 A. No.

14 Q. And you drafted an FBI 302 that same day, yeah?

15 A. Yes.

16 Q. And did you have a chance to review that 302 in  
17 preparation for your testimony today?

18 A. Yes.

19 Q. Upon review, any reason to think that it was not an  
20 accurate record of the information you learned in the interview?

21 A. No.

22 Q. All right. Moving on to number 113 ----

23 ATC [LCDR SCHREIBER]: Actually, may I have just a moment,

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1 Your Honor?

2 MJ [COL ACOSTA]: You may.

3 **[Counsel conferred.]**

4 ATC [LCDR SCHREIBER]: Thank you, Your Honor.

5 Q. Moving on to Tab 113 of AE double-Mike **[sic]**. This is the  
6 Mr. Arrif Hassan Ahmed Lahous. Do you remember doing an interview of  
7 Mr. Lahous on the 28th of February of 2001?

8 A. Yes.

9 Q. And was the location you did this interview the same as  
10 you've described, the PSO building in Aden?

11 A. Yes.

12 Q. And the room, this interview room as you've described  
13 before?

14 A. Yes.

15 Q. Other -- were there PSO members present?

16 A. Yes.

17 Q. And then your law enforcement team and the interpreter,  
18 right?

19 A. Yes.

20 Q. Was Mr. Lahous present when you arrived for the interview,  
21 as you've described?

22 A. Yes.

23 Q. And do you recall if he appeared -- did it appear he had

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1    been abused or was under any sort of duress?

2           A.     No.

3           Q.     Did he appear healthy to you?

4           A.     Yes.

5           Q.     Oriented to the interview?

6           A.     Yes.

7           Q.     And was he appropriately clothed?

8           A.     Yes.

9           Q.     Did he appear frightened or nervous in any way to be there  
10   that day?

11          A.     No.

12          Q.     Had he made a prior statement to the PSO?

13          A.     No.

14          Q.     And did your team have an opportunity to introduce  
15   yourselves and explain why you were there?

16          A.     Yes.

17          Q.     And did he appear to understand why he was talking to you?

18          A.     Yes.

19          Q.     Did you guys follow the interview protocol?

20          A.     Yes.

21          Q.     Even following that, were you specifically prevented from  
22   asking any questions you wanted to of this witness?

23          A.     No.



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1 Q. And from your observation, did he appear to be answering  
2 your questions willingly?

3 A. Yes.

4 Q. Did the Yemeni authorities interfere in your interview in  
5 any way?

6 A. No.

7 Q. All right. So much like the previous, what was  
8 this -- Mr. Lahous's occupation?

9 A. He's a mooring boat pilot or captain.

10 Q. Okay. Also there in Aden Harbor?

11 A. Yes.

12 Q. And can you recall approximately how long he'd done that,  
13 from -- of course, you're talking to him in 2001, but ----

14 A. Since 1984.

15 Q. Okay. So on the 12th of October of 2000, when did he tell  
16 you that he arrived to work that day, approximately?

17 A. You know, I believe 8:00, 8:00 a.m.

18 Q. And what was the first -- what was the first boat that he  
19 recalled working on or assisting with that day?

20 A. Pier 6.

21 Q. So the boat at Pier 6?

22 A. Which would be the Multi-Diamond.

23 Q. Now, could he recall the name of the boat that he operated

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1 on that day?

2 A. No.

3 Q. Did he offer some potential names?

4 A. He gave two names.

5 Q. Can you recall them?

6 A. I -- no.

7 Q. Would it help to review your 302 to recall the names he  
8 gave you?

9 A. Yes.

10 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit  
11 319MM, page 1902.

12 Q. And I would direct your attention to the last paragraph on  
13 the page.

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

15 A. Okay.

16 ATC [LCDR SCHREIBER]: Retrieving the document.

17 Q. Did that refresh your memory?

18 A. Yes.

19 Q. So what -- what names did he provide you for the boat he  
20 might have been on?

21 A. Al-Hiswa or the Nijran.

22 Q. Did he happen to recall the name of the other boat?

23 A. Sanaa.

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1 Q. So you said that he was involved in handling the mooring  
2 of the Multi-Diamond; he didn't remember the name, but the  
3 Multi-Diamond to Pier 6?

4 A. Yes.

5 Q. When he was doing that, did he hear the attack on the  
6 COLE, the explosion?

7 A. Yes.

8 Q. Was he able to see it?

9 A. No.

10 Q. At the time when he heard it, what did he think that it  
11 was? Sorry. What time did he think that it was?

12 A. I think it was 10:25 in the morning.

13 Q. Okay. Did they -- did his mooring boat go to assist with  
14 the COLE -- with the explosion?

15 A. I don't remember. I don't recall if his boat ----

16 Q. Would it help you to review your 302 to recall?

17 A. Yes.

18 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit  
19 319MM, page 1903.

20 Q. And I'd direct your attention to the two paragraphs kind  
21 of in the middle of the page.

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

23 A. Okay.

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1 ATC [LCDR SCHREIBER]: Okay. Retrieving the document.

2 Q. I think the question I was on was what time he thought the  
3 explosion that he heard happened?

4 A. About 10:15 in the morning.

5 Q. And then did he and his group attempt to go and assist the  
6 COLE?

7 A. Yes.

8 Q. What did they do to assist the COLE?

9 A. They went -- they first made an attempt to go to the COLE,  
10 and then they went back -- they got turned away and went over to the  
11 pier and waited.

12 Q. Were they -- after they got turned away that initial time,  
13 were they ultimately able to provide assistance to the COLE?

14 A. Yes.

15 Q. Now, to provide this assistance -- he's on his mooring  
16 boat that he can't recall the name of?

17 A. Yeah.

18 Q. He said the other one was the Sanaa. Did he and his crew  
19 provide assistance using their boat or was he using his boat to do  
20 it?

21 A. No, the other boat he went on with Captain Rahab **[sic]**.

22 Q. Okay. So he actually moved boats?

23 A. Yes.

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1 Q. And what did he recall about what specific assistance they  
2 provided on that other boat?

3 A. They transported 15 sailors to the Caltex area.

4 Q. So to shore somewhere?

5 A. To shore, yeah.

6 Q. Did he have any knowledge, prior knowledge that the COLE  
7 would be arriving that day?

8 A. No.

9 Q. Did you -- did he see or hear anything unusual that stood  
10 out to him in the harbor before the attack?

11 A. No.

12 Q. Did you show him the photo book?

13 A. Yes.

14 Q. Was he able to identify any photos in the photo book?

15 A. No.

16 Q. Now, y'all drafted the 302 on the same day?

17 A. Yes.

18 Q. And have you reviewed the 302 in preparation for your  
19 testimony?

20 A. Yes.

21 Q. In reviewing it, did you see any reason to think that it's  
22 not an accurate record of the information you got during this  
23 interview?

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1 A. No.

2 Q. All right. Last one, this is number 105, Mr. Adan Abdah  
3 Hassan Qaeid. Adan Abdah Hassan Qaeid.

4 Do you remember doing an interview of Mr. Qaeid from the 1st  
5 of March of 2001?

6 A. Yes.

7 Q. Same location as you've described, PSO Headquarters?

8 A. Yes.

9 Q. And the same interview room as you've described?

10 A. Yes.

11 Q. PSO members present?

12 A. Yes.

13 Q. And then your law enforcement team with an interpreter?

14 A. Yes.

15 Q. And was Mr. Qaeid present for the interview when you  
16 arrived?

17 A. Yes.

18 Q. Did he show any signs of abuse or duress that you could  
19 observe?

20 A. No.

21 Q. Did he appear healthy and oriented to the interview?

22 A. Yes.

23 Q. Was he in appropriate clothes?

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1 A. Yes.

2 Q. Can you recall if he appeared frightened or nervous to be  
3 there?

4 A. He did not.

5 Q. Had he made a prior statement to the PSO?

6 A. Not -- no.

7 Q. And did you have an opportunity to introduce your team and  
8 explain why you were there?

9 A. Yes.

10 Q. And did he appear to understand why he was there to talk  
11 to you?

12 A. Yes.

13 Q. Did you follow the interview protocol as you've described?

14 A. Yes.

15 Q. With that interview protocol, were you specifically  
16 prevented from asking any question you wanted to ask?

17 A. No.

18 Q. Did the Yemenis who were present interfere with your  
19 investigation -- or your interview in any way?

20 A. No.

21 Q. Okay. And from your observation, did he appear to be  
22 answering your questions willingly?

23 A. Yes.

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1 Q. All right. Sticking with these mooring boats, what was  
2 Mr. Qaeid's occupation?

3 A. He was a laborer.

4 Q. A laborer where?

5 A. On -- on the mooring boat.

6 Q. And going back to the 12th of October of 2000, where was  
7 Mr. Qaeid working that day?

8 A. On the mooring boat.

9 Q. Do you recall which boat he said that he was working on?

10 A. No. I do not.

11 Q. Would it help to review your 302 to remember which boat he  
12 said he worked on?

13 A. Yes.

14 ATC [LCDR SCHREIBER]: Showing the witness Appellate Exhibit  
15 319MM, page 1852.

16 Q. Direct your attention to the last paragraph on the page.

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

18 ATC [LCDR SCHREIBER]: Retrieving the document.

19 Q. Did that refresh your memory?

20 A. Yes.

21 Q. And what boat did he tell you he was working on that day?

22 A. The Nijran -- Najran.

23 Q. What did he tell you about what the Nijran was doing that



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1 day? What was their job at -- that morning?

2 A. Working at Pier 6.

3 Q. So were they instructed to put a ship there?

4 A. Yes.

5 Q. Okay. Again, do we know what ship that was?

6 A. With the Multi-Diamond.

7 Q. Now, that morning did he hear the explosion?

8 A. Yes.

9 Q. So when he heard the attack on the COLE, what was his  
10 reaction?

11 A. Tried to run away.

12 Q. Why did he try to run away?

13 A. Heard the explosion. Got scared, you know.

14 Q. Was he allowed to run away?

15 A. No. He was ordered back.

16 Q. Okay. And ordered back to do -- to finish what?

17 A. To finish the -- mooring the ship at Pier 6.

18 Q. So after -- after finishing tying the ship to the pier,  
19 Pier 6, what did he recall that they did?

20 A. He did help -- he did stand by and did help with, I  
21 believe three people from the USS COLE.

22 Q. So he was -- participated in providing some aid to the  
23 COLE?

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1 A. Yes.

2 Q. Did he actually see the explosion itself?

3 A. No.

4 Q. Was he able to see anything following the attack?

5 A. Not that I recall.

6 Q. Did he see any of the sailors on the ships -- on the ship?

7 A. I -- yes, he saw sailors on the ship, and I believe he saw  
8 life rings in the water.

9 Q. Did he tell you if he saw anything out of the ordinary or  
10 unusual that morning prior to the attack?

11 A. No.

12 Q. That is, he didn't ----

13 A. No.

14 Q. ---- see ----

15 A. He did not see -- he did not say he saw anything.

16 Q. Did you offer him the photo book to take a look at?

17 A. Yes.

18 Q. Was he able to identify anybody in the photo book?

19 A. No.

20 Q. You drafted the 302 on the same day as the interview?

21 A. Yes.

22 Q. And did you get a chance to review it in preparation for  
23 your testimony?

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1 A. Yes.

2 Q. In reviewing it, come across any reason to think it's not  
3 an accurate record of what you learned in that interview?

4 A. No.

5 ATC [LCDR SCHREIBER]: That's all I have on this group, Your  
6 Honor.

7 MJ [COL ACOSTA]: All right.

8 Defense, any cross?

9 DDC [LCDR PIETTE]: Yes, Your Honor.

10 **CROSS-EXAMINATION CONTINUED**

11 **Questions by the Detailed Defense Counsel [LCDR PIETTE]:**

12 Q. Okay. And again, these witnesses, the interviews took  
13 place in the same room in the PSO barracks?

14 A. Yes.

15 Q. Okay. Again, four United States law enforcement officers  
16 and at least two, if not more, PSO/MOI officers?

17 A. Yes.

18 Q. No windows in the room?

19 A. No windows.

20 Q. Just the one door?

21 A. Yes.

22 Q. And that one door was behind you?

23 A. Yes.

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1 Q. And you essentially sat in between the witness and the  
2 door?

3 A. Yes.

4 Q. And as far as you can recall, when you arrived at PSO  
5 barracks, the witness would already be in the room?

6 A. Yes.

7 Q. Now, some of these interviews took place on the same day;  
8 at least two of these that we're going to talk about now did. Would  
9 you all, if you can recall, leave the room and wait for the other  
10 witness to be brought in, or how did that work?

11 A. I don't recall.

12 Q. Okay. But none of these witnesses, you didn't see them in  
13 a waiting room anywhere?

14 A. No.

15 Q. So you don't know where the witnesses were before the  
16 interview?

17 A. No.

18 Q. You don't know how long they were waiting before the  
19 interview?

20 A. Do not.

21 Q. You don't know who they were waiting with before the  
22 interview?

23 A. I do not.

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1 Q. And in these cases, you didn't get any reports from the  
2 PSO or MOI agents about how they found the -- these witnesses?

3 A. No.

4 Q. You don't know, then, how they found the witnesses?

5 A. No, sir.

6 Q. You don't know if they went and canvassed the harbor and  
7 talked to everybody on these boats?

8 A. No.

9 Q. And if they did, you wouldn't know what they said to the  
10 people on the boats, would you?

11 A. No, I would not.

12 Q. So you wouldn't know if these witnesses were promised  
13 anything to come talk to you?

14 A. No.

15 Q. You don't know if they were threatened with anything to  
16 come talk to you?

17 A. No.

18 Q. You don't know if their families were promised anything?

19 A. No.

20 Q. And you don't know if their families -- you don't know if  
21 their families were threatened with anything either?

22 A. No, sir.

23 Q. Okay. And I believe this was mentioned on direct, but

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1 with all of these three witnesses, you followed the Bodine  
2 guidelines?

3 A. Yes.

4 Q. And at the very beginning, you said one of the people you  
5 remembered -- or one of the things you remembered was that somebody  
6 jumped off the boat with his tea and his cigarette?

7 A. Yes.

8 Q. And that was one of these -- that was our first witness  
9 here, Maher Isknder Ibrahim Ramadan?

10 A. Yes.

11 Q. And if you had -- now, if we had met three months before  
12 this and you said that somebody had jumped off the boat, would you  
13 have said that was Maher Isknder Ibrahim Ramadan?

14 A. I wouldn't have given you the name, but I do remember the  
15 interview.

16 Q. Okay. Before you met this person, you had never seen him  
17 before?

18 A. Correct. Never seen him before.

19 Q. That's the same with the other two witnesses?

20 A. Yes, sir.

21 Q. And you were told by the PSO who he was?

22 A. Yes.

23 Q. And you didn't confirm his identity with a Yemeni

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1 passport?

2 A. No.

3 Q. With a Yemeni ID card?

4 A. No.

5 Q. You didn't photograph him?

6 A. No.

7 Q. You didn't take prints?

8 A. No.

9 Q. Didn't get a phone number?

10 A. No.

11 Q. And the only way to contact this witness again would have  
12 been through the PSO or MOI?

13 A. Yes.

14 Q. That was the same with the other two witnesses as well?

15 A. Yes, sir.

16 Q. When you were discussing his job as a mooring boat  
17 operator, did he give you any indication of what that entails, what  
18 it means to be a mooring boat pilot?

19 A. No.

20 Q. Did he talk to you about where his boat is usually docked?

21 A. No.

22 Q. Did he talk to you about what his route is to -- through  
23 the harbor?

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1 A. No.

2 Q. Did he tell you if he needs permission to drive through  
3 the harbor or to take a certain route?

4 A. No.

5 Q. If we were to want the answers to those questions,  
6 obviously we need to talk to him?

7 A. Yes.

8 Q. And again, like many other witnesses, I believe all three  
9 of these people, they didn't see the explosion?

10 A. Yeah, correct.

11 Q. They only heard it?

12 A. Yes.

13 Q. And this witness in particular was on the blind side, he  
14 said, so he couldn't have seen it even if he was looking in that  
15 direction?

16 A. Yes, correct.

17 Q. So he couldn't see what caused the explosion?

18 A. No, could not.

19 Q. And he said he heard two blasts. Did he say how far apart  
20 those blasts were?

21 A. No.

22 Q. If we were to want to know the answer to that question,  
23 again, we'd have to ask him?



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1           A.     Yes.

2           Q.     I'll move on to the next witness, Arrif Hassan Ahmed  
3 Lahous, yet another mooring boat operator. Just like the one we were  
4 just talking about, he hadn't -- he also -- he didn't see the  
5 explosion?

6           A.     Correct, he did not see the explosion.

7           Q.     He only heard it?

8           A.     Yes.

9           Q.     And again, he also heard two blasts or two explosions?

10          A.     Yes.

11          Q.     And he didn't say how far apart they were?

12          A.     No.

13          Q.     He couldn't tell if one of the blasts was an echo from the  
14 first one?

15          A.     I don't recall.

16          Q.     And if we were to want to know that, try to dig deeper  
17 into that, we'd have to talk to him directly?

18          A.     Yes.

19          Q.     And this witness said he didn't see anything unusual in  
20 the days or weeks before. Did he say how often he had been at the  
21 port in the days or weeks before the explosion?

22          A.     No.

23          Q.     Did he say what time of the day he'd been at the port in

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1 the days or weeks before the explosion?

2 A. No.

3 Q. Did he say which parts of the port he spends most of his  
4 time in?

5 A. No.

6 Q. Again, to get the answers to those questions, we'd have to  
7 ask the witness himself?

8 A. Yes.

9 Q. And finally, moving on to the last witness, Adan Abdah  
10 Hassan Qaeid. Do you know -- he said he was at Pier 6 when the  
11 explosion occurred.

12 What, if you know, could he see from his location at  
13 Pier 6 ----

14 A. I don't know.

15 Q. ---- on the harbor?

16 A. I'm sorry. I don't know.

17 Q. Okay. And again, he didn't see the explosion occur?

18 A. Correct. He did not see the explosion.

19 Q. And so he didn't see what caused it?

20 A. No.

21 Q. And if we were to want to know to answer to what he could  
22 have seen and observed from his location, we'd have to talk to that  
23 witness directly?

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1 A. Yes.

2 Q. And, again, some more questions regarding all the  
3 witnesses that we've just spoken about.

4 You haven't spoken to this witness or any of these witnesses  
5 since you interviewed them?

6 A. Correct, I have not.

7 Q. You've not made any attempts to locate them or talk to  
8 them again?

9 A. No.

10 Q. You don't know of anyone making any efforts to locate them  
11 or talk to them again?

12 A. No.

13 DDC [LCDR PIETTE]: Thank you. That's all I have.

14 WIT: Thank you.

15 ATC [LCDR SCHREIBER]: I don't have any redirect, Your Honor.

16 **EXAMINATION BY THE MILITARY COMMISSION**

17 **Questions by the Military Judge [COL ACOSTA]:**

18 Q. I have a question for you, Detective Hieb.

19 A. Yes.

20 Q. The -- and I'm saying that correctly, right? Hieb?

21 A. Yes.

22 Q. Okay.

23 A. Yes.

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1 Q. When you were in the room with the two interpreters and  
2 the two interpreters were talking, could the U.S. interpreter hear  
3 what the Yemeni interpreter was saying to the witness? Was the  
4 Yemeni -- let me ask again.

5 A. The ----

6 Q. Was the Yemeni interpreter repeating the question from the  
7 U.S. interpreter in a voice loud enough to be heard by the U.S.  
8 interpreter?

9 A. I would say yes.

10 Q. Okay.

11 MJ [COL ACOSTA]: Any questions based upon mine, Government?

12 ATC [LCDR SCHREIBER]: Yes. One follow-up, Your Honor.

13 MJ [COL ACOSTA]: Okay.

14 **REDIRECT EXAMINATION**

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

16 Q. Just on that specific point, do you have any recollection  
17 of any instance where your interpreter, the U.S. interpreter,  
18 indicated to you that your questions weren't being accurately relayed  
19 to the witness?

20 A. No.

21 Q. Okay. How about the other direction? Any sort of  
22 indication from your interpreter that there were communication that  
23 wasn't happening that was -- or that was wrong, wasn't being fully

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1     communicated?

2           A.     No.

3           ATC [LCDR SCHREIBER]:   Okay.   That's all, Your Honor.   Thank  
4     you.

5           MJ [COL ACOSTA]:   Defense, any cross?

6           DDC [LCDR PIETTE]:   No, Your Honor.

7           MJ [COL ACOSTA]:   Okay.   All right.   Government, anything else  
8     from Detective Hieb before he's excused?

9           ATC [LCDR SCHREIBER]:   No, sir.   And permanent for this  
10    motion.

11          MJ [COL ACOSTA]:   Defense?   Any objection?

12          DDC [LCDR PIETTE]:   No, Your Honor.

13          MJ [COL ACOSTA]:   All right.   Detective Hieb, you're  
14    permanently excused for the purpose of this session.   Do not discuss  
15    your testimony or your knowledge of this case -- **[no audio feed]**.  
16    You can step down and return to your day.

17          WIT:   Thank you.

18    **[The witness was warned, was permanently excused, and withdrew from**  
19    **the RHR.]**

20          MJ [COL ACOSTA]:   All right.   I'm going to take a ten-minute  
21    recess before coming out and talking about the rest of the -- rest of  
22    the -- this session.   All right.

23          The commission is in recess for ten minutes.

1   **[The R.M.C. 803 session recessed at 1358, 2 March 2023.]**

2   **[The R.M.C. 803 session was called to order at 1410, 2 March 2023.]**

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

4           All parties present as before, Government?

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

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

7           MJ [COL ACOSTA]: Okay. Tomorrow we're taking up AE 480. Is  
8 Agent Emley the last -- or he's the last witness that has been  
9 ordered produced to this extent on -- on Khallad, correct?

10          TC [MR. O'SULLIVAN]: No, sir, Dr. Jessen as well.

11          MJ [COL ACOSTA]: Dr. Jessen is on 480? I apologize. I  
12 apologize. Okay. Then -- I had him on a different topic.

13          The -- for 444, Government, is -- have you produced  
14 everything you're going to produce on that? Yes or no? Do  
15 you -- can you answer that?

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

17          MJ [COL ACOSTA]: Okay. Defense, what I'll tell you is we're  
18 not going to take it up this session, but what I'll do -- what I'm  
19 going -- what I'm ordering is that if you wish to reply or put an  
20 argument down on that, I'll give you two weeks, until the 20th of  
21 March, which is more than two weeks, to reply to 444L and any other  
22 reply to the base motion on that.

23          Is there any update on 027X yet? Are we making progress?

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1 Government?

2 MATC [MR. WELLS]: Your Honor, the defense has submitted a  
3 proposal, and we're evaluating it ----

4 MJ [COL ACOSTA]: Okay.

5 MATC [MR. WELLS]: ---- and will communicate this evening.

6 MJ [COL ACOSTA]: Keep talking.

7 ADC [MS. MORGAN]: And I guess, Judge, my only concern on 444  
8 is if Jessen is testifying in April for the purposes of 480 and the  
9 government is saying that they are not going to give us the  
10 additional material -- that they've given us everything ----

11 MJ [COL ACOSTA]: They say -- that's what they said, they've  
12 given you everything. They're not saying they not -- that they're  
13 not giving you something. They're saying they've given you  
14 everything that you've asked for. Is that ----

15 ADC [MS. MORGAN]: Right, except there still, based on at  
16 least their response in 444, appears to be a delta between what  
17 exists in the universe of Jessen as it relates to  
18 Mr. Khallad -- Mr. Bin'Attash and what exists in the universe, of  
19 what we have so far received.

20 And I can make sort of a quick -- if I can go ahead and just  
21 put a few points on the record. I don't think -- I think there's at  
22 least a few things that need to be addressed. I just don't want to  
23 get this to the 11th hour ----

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1 MJ [COL ACOSTA]: Right.

2 ADC [MS. MORGAN]: ---- and say, hey, we can't do Jessen.

3 MJ [COL ACOSTA]: Understood. No, Jessen is coming.

4 Government, I'm seeing head nods from the -- the lead trial counsel  
5 on this.

6 TC [MR. O'SULLIVAN]: Yes, Your Honor, he's coming.

7 MJ [COL ACOSTA]: And he's being emphatic in a way that leads  
8 me to believe that it's absolutely happening. So Jessen will be here  
9 in April.

10 So we'll take up the points on 444 tomorrow. I'm just  
11 trying to do some administrative stuff. I -- I've tried to cut down  
12 on the 802s because I want everything to be as in the open as  
13 possible. I want you to -- I do want you to think about April and  
14 what we're going to talk about there.

15 I'm -- I'm -- I have to double check some notes that I've  
16 made to make sure that I'm correct because, like I said, I just  
17 missed -- I left Jessen off the list for one of the -- one of the  
18 motions that -- because I was doing it from memory as opposed to  
19 going back and looking when I was making some hand notes here, so I  
20 don't want to do that.

21 I want to make sure that I've got everything so that I can  
22 talk about what's left and what we're going to take up  
23 at -- what -- what -- who's to be called on what in April. So that's



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1 what I'm looking for is to max -- is to -- if there's witnesses to be  
2 called on motions from ----

3 Well, 535, we know we're going to take up. I already told  
4 you we're taking that up on the first day of the next session. We're  
5 taking up 467, 480, 481, 482, 461, and more of 319, to the extent  
6 possible in April, and who's being called and when.

7 So the focus on -- what I will tell the parties is focus on  
8 the witnesses being here to receive evidence. That's what these  
9 sessions are most useful for, is receipt of evidence. Your arguments  
10 I can get, you know, in writing.

11 And honestly, with the reason that I say that, the reason  
12 that I'm having you guys put -- having part -- the parties put  
13 arguments in writing is to be fair to you and to me to take -- to be  
14 able to synthesize evidence that has been taken up over multiple  
15 sessions from multiple witnesses that might be on different topics,  
16 so you can synthesize that in a logical, coherent manner.

17 That said, you're going to get your order on the 319 hearsay  
18 lay witnesses probably today or tomorrow with a timeline to get that  
19 argument complete. So just start being able to -- be prepared to  
20 talk about witnesses for -- in April tomorrow and what we're going to  
21 take up then.

22 I'm just trying to give you a -- I know you have plenty to  
23 do this evening. I know that, you know, there's at least two counsel

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1 or -- one counsel or two counsel from each side that's going to be  
2 working very hard to be ready on the witness tomorrow. However, the  
3 remainder of the teams, please work on 027X and thinking about the  
4 next session and talking -- and giving me tight, cohesive points on  
5 444 tomorrow.

6 ADC [MS. MORGAN]: Just to update the commission, the defense  
7 transmitted our proposal for 027X to the government. And so  
8 hopefully we will ----

9 MJ [COL ACOSTA]: Yes.

10 ADC [MS. MORGAN]: ---- have that.

11 MJ [COL ACOSTA]: Yes. Right. I don't know if you -- there  
12 was a little crosstalk. The government already said they've got  
13 that. They're considering it. So they're going to get back with you  
14 this evening is what he said.

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

16 MJ [COL ACOSTA]: Okay. All right. I'm just trying to lay  
17 out the framework for the remainder of -- for tomorrow.

18 Defense, how long with Emley tomorrow?

19 ADC [MS. MORGAN]: Probably pretty close to McFadden, so call  
20 it an hour and a half.

21 MJ [COL ACOSTA]: So a McFadden length of time?

22 ADC [MS. MORGAN]: Yeah. I'm trying to remember exactly how  
23 long McFadden was on the stand, but I would say my direct is probably

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1 an hour and a halfish.

2 MJ [COL ACOSTA]: Okay. So when you say McFadden, McFadden  
3 has testified so many times ----

4 ADC [MS. MORGAN]: Oh, I apologize.

5 MJ [COL ACOSTA]: ---- it's very difficult for me to go  
6 which -- which McFadden testimony -- is it cumulative McFadden  
7 testimony? Is it single ----

8 ADC [MS. MORGAN]: Oh, my goodness, no. I apologize. I was  
9 thinking of Monday. Most recent.

10 MJ [COL ACOSTA]: About an hour and a half?

11 ADC [MS. MORGAN]: I think that's right, sir.

12 MJ [COL ACOSTA]: Okay. Then I don't need to know cross.  
13 You'll -- you'll deal with whatever you get, so ----

14 TC [MR. O'SULLIVAN]: Actually, Your Honor, I'm standing for  
15 something else.

16 MJ [COL ACOSTA]: Oh.

17 TC [MR. O'SULLIVAN]: I was going to ask about 534 argument  
18 tomorrow. Is that -- is that on your radar?

19 MJ [COL ACOSTA]: I did not have it on -- I did not -- this is  
20 the -- the peril of writing things down by hand and forgetting  
21 things. In the little breaks that I get, I try to keep a running  
22 tally, and I left that off.

23 So 534, yes, you can argue that -- that as well. Okay. So

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1 that will be the two things we're definitely going to take up  
2 tomorrow. Hold on one sec.

3 **[The military judge conferred with courtroom personnel.]**

4 MJ [COL ACOSTA]: So defense, on Emley, is he on any other  
5 motion? And again, this is my hand notes of -- that's what -- I have  
6 him only on 480. I don't think he's on any of the others, but I want  
7 to make sure that I know -- I confirm with you.

8 ADC [MS. MORGAN]: If I can have one moment?

9 MJ [COL ACOSTA]: You may.

10 ADC [MS. MORGAN]: I think that's right, but if I can have one  
11 moment.

12 MJ [COL ACOSTA]: Right. Again, I think I'm correct as well,  
13 that that's it, but I didn't crosscheck it against my chart.

14 LDC [MR. NATALE]: Your Honor, to just add something briefly,  
15 both parties are beginning and continuing to have active conversation  
16 with each other as to what witnesses, what motions, and everything,  
17 so we can have April as full and complete as we can, given the  
18 constraints. So ----

19 MJ [COL ACOSTA]: Okay.

20 LDC [MR. NATALE]: ---- we're doing our best to coordinate  
21 that.

22 MJ [COL ACOSTA]: Right. And I expect that to be led by lead  
23 counsel. You know, I don't have to say it, but lead counsel, sit

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1 down, talk to each other, drive the -- drive that bus, and make it  
2 a -- make it function and move smoothly.

3 Yes?

4 ADC [MS. MORGAN]: So Emley just on 480. And then one point  
5 on Emley, Judge, is that there will be a closed session as well.

6 MJ [COL ACOSTA]: Okay. So just for public notice, we're  
7 going to have to close for a portion of it. So let's start  
8 with -- well, you got Emley first thing in the morning, scheduled to  
9 be there for production, Government? Yes?

10 ATC [MR. RYAN]: Yes, sir.

11 MJ [COL ACOSTA]: Okay. We'll start with Emley. We're going  
12 to -- we're going to close then and then reopen at the end, which I  
13 prefer because if we end on an open session, that is preferred. So  
14 we're going to go open-closed-open tomorrow.

15 I want to start the witness first. When there's live folks,  
16 I want to get them done first. We'll do open session closed session  
17 on him and then we'll reopen and take up 534 and wrap up  
18 administration -- administration and set the stage for April, and get  
19 an update on 527, if there is any on that.

20 So, again, the -- the most cogent thing for you, Defense, is  
21 that -- well, think about the -- your points that you're going to  
22 make on 444, and if you need -- if -- if two weeks -- if -- if  
23 March 20th to reply to what they've turned over regarding

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1 444L -- right? -- that was on 444L, for you to reply to that, because  
2 I said none was permitted, but there might be something that you wish  
3 to clarify on that if you need to do that, then you've got until the  
4 20th of March to do a written reply to 444L.

5 And we'll go -- we'll overall talk about that tomorrow on  
6 the -- your closing points on if there's anything else that we need  
7 to take up on 444 in April if necessary, okay?

8 ADC [MS. MORGAN]: Copy.

9 MJ [COL ACOSTA]: Okay. And if that obviated your need to  
10 talk about 444 tomorrow, let me know. And if not, then you can tell  
11 me more about 444 tomorrow. All right.

12 Anything else to take up before I recess the commission  
13 until 0900 tomorrow?

14 Defense?

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

16 MJ [COL ACOSTA]: Government?

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

18 MJ [COL ACOSTA]: All right. The commission is in recess  
19 until 0900.

20 **[The R.M.C. 803 session recessed at 1421, 2 March 2023.]**

21 **[END OF PAGE]**

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23